

GAHC010123082022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP/67/2022

SAROJ DAMANI AND 7 ORS
WIFE OF LATE SRILAL DAMANI, AGED ABOUT 68 YEARS, RESIDENT OF E-9 BAISHNOB GHATA, PATULI TOWNSHIP, 3RD FLOOR, KOLKATA- 94, WEST BENGAL.

2: ON THE DEATH OF LATE. KUSUM PERIWAL
HER LEGAL HEIRS

2.1: GAURAV PERIWAL
SON OF LATE RAMESH PERIWAL
AGED ABOUT 42 YEARS

2.2: ABHISHEK PERIWAL
SON OF LATE RAMESH PERIWAL
AGED ABOUT 39 YEARS

.
BOTH ARE RESIDENTS OF 1-D
SHREEMOYEE APARTMENT
1ST FLOOR
DINESH OJHA PATH
RAJGARH ROAD
GUWAHATI-781005
ASSAM

2.3: SMTI. SONAM PERIWAL
WIFE OF SRI SUDARSHAN DAGA
AGED ABOUT 36 YEARS
RESIDENT OF GANGA RESIDENCY
BLOCK- A
FLAT NO- 403
36 TALLIGANJ CIRCULAR ROAD
KOLKATA- 53

3: SMTI. KIRAN BIHANI

WIFE OF SRI MAHESH BIHANI
AGED ABOUT 63 YEARS
RESIDENT OF KIRAN KUNJ
10/11 PAOTA C- ROAD
5TH LANE
JODHPUR
RAJASTHAN- 342004

4: SMTI. RENU TAPARIA
WIFE OF RAVI TAPARIA
AGED ABOUT 59 YEARS
RESIDENT OF 5TH FLOOR
GANGA BUILDING
28/1 SHAKESPEARE SARANI
KOLKATA- 17

5: SMTI. KANTA SONI
WIFE OF ANIL SONI
AGED ABOUT 56 YEARS
RESIDENT OF 1-C
HARIPAL LANE
NEAR CARE AND CURE NURSING HOME
KOLKATA- 6

6: SMTI. RASHMI SOMANI
WIFE OF SHRI MANISH SOMANI
AGED ABOUT 49 YEARS
RESIDENT OF GARDENIA HOME
227/A
A.J.C. BOSE ROAD
4TH FLOOR
FLAT NO. 40
NEAR MINTO PARK
KOLKATA- 700020

7: PRAKASH SARDA
SON OF LATE DEOCHAND SARDA
AGED ABOUT 61 YEARS
RESIDENT OF M/S SARDA
JANIGANJ BAZAAR
SILCHAR- 788001

8: BIKASH SARDA
SON OF LATE DEOCHAND SARDA
AGED ABOUT 58 YEARS
RESIDENT OF C/O M/S SARDA
JANIGANJ BAZAAR
SILCHAR- 788001

VERSUS

ON THE DEATH OF SURENDRA NARAYAN SUKUL, HIS LEGAL HEIRS AND
ORS.

REPRESENTING

1.1:BISWAJIT SUKUL
N/G

1.2:SMT. SUSHILA DIXIT
W/O SHYAM SUNDAR DIXIT

1.3:SMT. SUNITI DUBEY
W/O NARAYAN DUBEY

1.4:SMT. MANJU GURSAHANI
W/O DHARAM RAM GURSAHANI
ALL ARE SON AND DAUGHTERS OF LATE SURENDRA NARAYAN SUKUL
ALL ARE RESIDENTS OF CENTRAL ROAD
SILCHAR TOWN
PARGANA- BARAKPAR
DISTRICT-CACHAR
ASSAM
PIN-788001

2:ON THE DEATH OF MONARAM DEBI
DAUGHTER OF LATE SURENDRA NARAYAN SUKUL
HER LEGAL HEIRS

2.1:SMT. SANGITA KURMI
WIFE OF BABUL KURMI

3:ON THE DEATH OF LAKSHMI AGNIHOTRI
HER LEGAL HEIRS

3.1:ANUP AGNIHOTRI
N/G

3.2:AJOY AGNIHOTRI
ALL ARE SONS OF LATE SURMONI AGNIHOTRI
ALL ARE RESIDENTS OF CENTRAL ROAD
SILCHAR TOWN
PARGANA- BARAKPAR
DISTRICT-CACHAR
ASSAM
PIN-788001

4:ON THE DEATH OF SARBAJIT SUKUL
SON OF LATE SURENDRA NARAYAN SUKUL
HIS LEGAL HEIRS ARE

4.1:SMT. SAROJ SUKUL
WIFE OF LT. SARBAJIT SUKUL

4.2:SMT. POONAM SUKUL
DAUGHTER OF LT. SARBAJIT SUKUL

4.3:SMT. SONIA SUKUL
DAUGHTER OF LT. SARBAJIT SUKUL.
ALL ARE RESIDENTS OF CENTRAL ROAD
SILCHAR TOWN
PARGANA- BARAKPAR
DISTRICT-CACHAR
ASSAM
PIN-788001

4.4:ON THE DEATH OF BIKRAM SUKUL
HIS LEGAL HEIR- SMT. SIBANI SUKUL
WIFE OF LATE BIKRAM SUKUL
ALL ARE RESIDENT OF CENTRAL ROAD
SILCHAR TOWN

PARGANA- BARAKPAR
DISTRICT-CACHAR
ASSAM
PIN-788001

5:ON THE DEATH OF AMARJIT SUKUL
S/O LATE SURENDRA NARAYAN SUKUL
HIS HEIRS ARE

5.1:SMT. GEETA SUKUL
W/O LATE AMARJIT SUKUL

5.2:JITENDRA SUKUL
SON OF LT. AMARJIT SUKUL

5.3:DIPAK SUKUL
SON OF LATE AMARJIT SUKUL

5.4:SMT. GAURI SUKUL
W/O MANISH SINGH
AND D/O LATE AMARJIT SUKUL
ALL ARE RESIDENTS OF CENTRAL ROAD
SILCHAR TOWN

PARGONA-BARAKPAR
DISTRICT-CACHAR
ASSAM

6:SMT. SAKUNTALA SARDA
WIFE OF LATE SHIV SANKAR SARDA
RESIDENT OF JANIGANJ BAZAAR
SILCHAR - 788001

7:ON THE DEATH OF SUCHIT SARDA ALIA SUJIT SARDA
HIS LEGAL HEIRS

7.1:NOORA SARDA
WIFE OF LT. SUCHIT SARDA ALIAS SUJIT SARDA
RESIDENT OF JANIGANJ BAZAAR
SILCHAR - 788001

7.2:SHIVANI SARDA
DAUGHTER OF LT. SUCHIT SARDA ALIAS SUJIT SARDA
RESIDENT OF JANIGANJ BAZAAR
SILCHAR - 788001

7.3:SHERYA SARDA
DAUGHTER OF LT. SUCHIT SARDA ALIAS SUJIT SARDA
RESIDENT OF JANIGANJ BAZAAR
SILCHAR - 788001

8:SUNIL SARDA
SONS OF LATE SHIV SANKAR SARDA
RESPONDENT NOS. 3 AND 4 SINCE ATTAINED MAJORITY
JANIGAJ
SILCHAR TOWN
DISTRICT-CACHAR
ASSAM

9:ON THE DEATH OF SUGNI DEVI SARDA
HER HEIRS ARE

9.1:ON THE DEATH OF GOURI SANKAR SARDA
HIS LEGAL HEIRS

9.1.1:SMTI LILA DEVI SARDA
WIFE OF LT. GOURI SANKAR SARDA
RESIDENT OF JANIGANJ BAZAAR
SILCHAR - 788001

9.1.2:RAMESH SARDA
SON OF LT. GOURI SANKAR SARDA

RESIDENT OF JANIGANJ BAZAAR
SILCHAR - 788001

9.1.3:MAHESH SARDA
SON OF LT. GOURI SANKAR SARDA
RESIDENT OF JANIGANJ BAZAAR
SILCHAR - 788001

9.1.4:UMESH SARDA
SON OF LT. GOURI SANKAR SARDA
RESIDENT OF JANIGANJ BAZAAR
SILCHAR - 788001

9.1.5:SMTI SUNITA SARDA
DAUGHTER OF LT. GOURI SANKAR SARDA
RESIDENT OF JANIGANJ BAZAAR
SILCHAR - 788001

9.1.6:SMTI VINITA SARDA
DAUGHTER OF LT. GOURI SANKAR SARDA
RESIDENT OF JANIGANJ BAZAAR
SILCHAR - 788001

9.2:RAVI SANKAR SARDA
SON OF LT. MULTAN SARDA
RESIDENT OF JANIGANJ BAZAAR
SILCHAR - 788001

9.3:ON THE DEATH OF SANTOSH SARDA
HIS LEGAL HEIRS

9.3.1:SMTI SANGEETA SARDA
WIFE OF LT. SANTOSH SARDA
RESIDENT OF JANIGANJ BAZAAR
SILCHAR - 788001

9.3.2:SUMIT SARDA
SON OF LT. SANTOSH SARDA
RESIDENT OF JANIGANJ BAZAAR
SILCHAR - 788001

9.3.3:PRASHANT SARDA
SON OF LT. SANTOSH SARDA
RESIDENT OF JANIGANJ BAZAAR
SILCHAR - 788001

9.4:ON THE DEATH OF CHANDRA SARDA
HER LEGAL HEIRS

9.4.1:GOKUL CHAND BAGRI
SON OF UNKNOWN
RESIDENT OF RESIDENT OF JANIGANJ BAZAAR
SILCHAR - 788001

9.4.2:KUMAR BAGRI
SON OF SRI GOKUL CHAND BAGRI
RESIDENT OF JANIGANJ BAZAAR
SILCHAR - 788001

9.4.3:SMTI MANISHA BAGRI
DAUGHTER OF SRI GOKUL CHAND BAGRI
RESIDENT OF JANIGANJ BAZAAR
SILCHAR - 788001

9.5:SMT. INDU SARDA
N/G

9.6:SMT. USHA SARDA
N/G

9.7:SMT. SEEMA SARDA
N/G

9.8:SMT. NEEMA SARDA
N/G

9.9:SMT. ASHA SARDA
ALL ARE DAUGHTERS OF LATE MULTAN SARDA
RESIDENT OF JANIGANJ
SILCHAR TOWN
PARGONA-BARAKPAR
DISTRICT-CACHAR
ASSAM-788001

9.10:ON THE DEATH OF SMT. UMA SARDA ALIAS UMA TAPARIA
HER LEGAL HEIRS

9.10.1:PRAHLAD DAS TAPARIA
SON OF UNKNOWN
RESIDENT OF JANIGANJ BAZAAR
SILCHAR - 788001

9.10.2:MANISH TAPARIA
SON OF SRI PRAHLAD DAS TAPARIA
RESIDENT OF JANIGANJ BAZAAR
SILCHAR - 788001

9.10.3:ASHISH TAPARIA
SON OF SRI PRAHLAD DAS TAPARIA
RESIDENT OF JANIGANJ BAZAAR
SILCHAR - 788001

9.10.4:RISHI TAPARIA
SON OF SRI PRAHLAD DAS TAPARIA
RESIDENT OF JANIGANJ BAZAAR
SILCHAR - 78800

Advocate for the Petitioner : MR G N SAHEWALLA

Advocate for the Respondent : MR. S D PURKAYASTHA (FOR CAVEATOR)

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the petitioners : Mr. G. N. Sahewalla. Sr. Advocate.
Ms. K. Bhattacharyya, Advocate.

For the Respondents : Mr. S. D. Purkayastha, Advocate.

Date of Hearing : 15.05.2023, 23.05.2023.

Date of Judgment : 23.05.2023.

JUDGMENT & ORDER (ORAL)

1. Heard Mr. G. N. Sahewalla, learned Senior Counsel assisted by Ms. K. Bhattacharyya, learned counsel for the petitioners. Also heard Mr. S. D. Purkayastha, learned counsel for the respondents.
2. The present appeal is filed assailing an order dated 31.03.2022 passed by the learned Civil Judge, Cachar in Title Appeal No. 14/2000.
3. **The facts in a nutshell leading to institution of the present**

proceedings are as under:-

- I. The predecessor-in-interest of the present respondents instituted a suit being Title Suit No. 189/1977 before the Court of Munsiff No. 1, Silchar now designated as Civil Judge No. 1, Silchar for eviction of the predecessor-in-interest of the present petitioners from the suit premises on the ground of default in payment of rent.
- II. The defendant took a stand that he is not a tenant under the plaintiff rather he became a tenant under the original lessor of the plaintiff namely Sri Narsingh Bigraha.
- III. It was also specifically pleaded that the tenanted house was gutted by fire and as the landlord did not construct the house, the defendant constructed the house on his own. Accordingly, the learned trial Court below framed one issue in the shape of issue No. 4 to the effect that whether the defendant No. 1 was a tenant under the plaintiff in respect suit house and if so whether the defendant No. 1 is a defaulter in payment of rent since August, 1977.
- IV. The learned trial Court held that the defendant No. 1 is a tenant under the plaintiff, however, it was further held that he was not a defaulter. Accordingly suit was dismissed.
- V. Being aggrieved, the plaintiff preferred an appeal which was registered as Title Appeal No. 14/2020. While dealing with the issue No. 4, the learned appellate Court held that the defendants are not tenant under the plaintiff and accordingly dismissed the appeal.

- VI. Such decision was challenged by the plaintiff before this Court in Civil Revision Petition No. 381/2002, which also met the same fate as this Court also dismissed the said revision petition.
- VII. Being aggrieved, the plaintiff approached the Hon'ble Apex Court. The Hon'ble Apex Court under its judgment dated 25.09.2018 in Civil Appeal No. 9956/2018, came to a conclusion that in absence of challenge to the decision of the trial Court below that the defendant was a tenant under plaintiff, the appellate Court could not have altered such finding and declared that the defendant No. 1 was not a tenant under the plaintiff, more particularly for the reason that the defendant No. 1 had not filed any cross-objection against the finding of the learned trial Court that defendant No. 1 was a tenant under the plaintiff.
- VIII. The Hon'ble Apex Court also held that at that belated stage, the defendant No. 1 cannot be allowed to have a cross-appeal before the first appellate Court. Accordingly, the Hon'ble Apex Court set aside the orders of this Court as well as the orders of the first appellate Court and remanded the matter to the learned trial Court to decide the issue of default. Accordingly, the learned appellate Court heard the matter and by the impugned judgment, held that the defendant No. 1 is a defaulter.

4. Argument advanced by Mr. G. N. Sahewalla, learned Senior Counsel on behalf the petitioner/defendant:-

- I. While assailing the judgment of the learned Appellate Court below,

Mr. Sahewalla, learned Senior Counsel submits that the defendant/petitioner had specifically pleaded in his written statement denying the allegation of default and took a stand that the tenanted premise was taken on rental basis for business purpose in April, 1969 and the predecessor of the respondent/plaintiff took lumpsum amount from the defendant with a condition of adjustment with rent, however, on the midnight of 06.07.1972, the tenanted premise was gutted by fire and the plaintiff did not construct the same and the defendant constructed the house at his own expenses, which is an admitted fact. The defendant also pleaded that the plaintiff took the land on lease from one Narsingh Bigrha Managing Committee of Tulapatty, Silchar and after the tenanted premises was gutted in fire, the said Narsingh Bigrha Managing Committee of Tulapatty, Silchar entered into a registered lease deed with the defendant and therefore, from the date of execution of such lease deed, the defendant/ petitioner, no more remain a tenant under the plaintiff/landlord.

II. Mr. Sahewalla, learned Senior Counsel strenuously argues that such factual aspects has not been considered by the learned trial Court below and held that the house alone did not constitute a demised premise.

III. It is also contended by Mr. Sahewalla, learned Senior Counsel that such pleading of the defendant in the written statement was neither considered by the learned trial Court nor the apex Court or by the appellate Court subsequently after remand, though it is an admitted

fact taking of the land from the original owner on lease by the defendant remains. Therefore, non consideration of such specific pleading is a perversity inasmuch as after the defendant / petitioner becoming a lessee under the original landlord i.e. Narsingh Bigraha Managing Committee of Tulapatty, Silchar, the proceeding for eviction itself was not maintainable. Therefore, this Court needs to consider the aforesaid aspect of the matter.

IV. Mr. Sahewalla, learned Senior Counsel further contends that tenancy was merged with the defendant as original landlord i.e. the Bigraha by a registered deed of tenancy acknowledged the defendant as tenant and therefore, the defendant cannot be treated as a tenant under the plaintiff / respondent. Such aspect of the matter has been ignored by all the courts. In support of such contention, Mr. Sahewalla, learned Senior Counsel relied on the judgment of the Hon'ble Apex Court in the ***Nalakath Sainuddin –Vs- Koorikadan Sulaiman*** reported in ***(2002) 6 SCC 1.***

V. Mr. Sahewalla, learned Senior Counsel further contends that the tenancy between the Bigraha and the plaintiff was not only determined by virtue of the registered lease deed entered into by the Bigraha with the petitioner / defendant but also, the tenancy between the plaintiff and defendant. In support of such contention Mr. Sahewalla, learned Senior Counsel relies on the judgment of the Hon'ble Apex Court in the case of ***Pramod Kumar Jaiswal and Others –Vs- Bibi Husn Bano and Others*** reported in ***(2005) 5 SCC 492.***

5. Argument advanced by Mr. S. D. Purkayastha, learned counsel on behalf of the respondent/plaintiff:-

- I. Per contra Mr. S. D. Purkayastha, learned counsel for the respondent argues that such questions cannot be raised at this stage in view of the Judgment of the Hon'ble Apex Court in Civil Appeal No. 9956/2018 wherein the Hon'ble Apex Court while remanding the matter to the learned appellate Court allowed the appellate Court only to decide afresh the issue of defendant on merits and to decide only the legality and correctness of the issues framed which were decided by the learned trial Court against the plaintiff which led to dismissal of the suit.
- II. Mr. Purkayastha, learned counsel for the respondent further contends that whatever he submitted regarding the issue of creation of tenancy and construction of house has been settled by the learned trial Court against the defendant though the suit of the plaintiff was dismissed. Accordingly, the Hon'ble Apex Court in the judgment (supra) decided that as the defendant has not filed any cross-objection against such finding by the Trial Court on the 1st part of issue No. 4, the defendant/petitioner shall not have any right to raise such issue afresh in the appellate Court in absence of any cross-objection and the Hon'ble Apex Court also in no unambiguity held that the defendant cannot be allowed to file cross-objection at this belated stage. Therefore, the appellate Court as well as this Court may not re-adjudicate the aforesaid issues which essentially involves the determination of tenancy between the plaintiff and the

defendants.

- 6.** This Court has given anxious consideration to the submissions advanced by the learned counsel for the parties.
- 7.** The undisputed fact remains that the plaintiff and the defendant had a relation of landlord and tenant. It is also not disputed that Narsingh Bigrha Managing Committee of Tulapatty, Silchar is the original landlord so far relating to the suit land and the plaintiff was a tenant under the said landlord. The plaintiff constructed a house and rented it out to the defendant and that the house was gutted in fire and after that defendant constructed the house thereon and did not pay any rent thereafter.
- 8.** It was also a fact that subsequent to the fire which gutted the house, the original landlord entered into a separate registered lease agreement with the defendant. All those facts were pleaded by the defendant and as discussed hereinabove, certain facts were admitted.
- 9.** The learned trial Court framed Issue No. 4 on the basis of aforesaid pleadings (denial of tenancy) to the effect that whether the defendant No. 1 is a tenant under the plaintiff in respect of the suit house and if so, the defendant No. 1 defaulted in payment of rent since August, 1977. Such issue was decided holding that the defendant No. 1 came into the occupation as a tenant in respect of the suit holding under the plaintiff. Though the learned Court below came to a conclusion that the house was gutted in fire dated 06.07.1972 on the basis of the evidence of PW-2, the learned trial Court below came to a conclusion that for the reason of destruction of the tenanted house, the tenancy does not come to an end

inasmuch as house alone does not constitute a demised property. It was also the conclusion of the learned trial Court below that the property not only includes the house but also the land on which the house stand and that being so, there cannot be any determination of tenancy by virtue of the destruction and construction of house by the defendant. Accordingly it was held that as the tenancy was not determined and that tenanted house was constructed by the defendant No. 1 and by advance payment, admittedly rent was realized upto July, 1977, the defendant cannot be said to be a defaulter and the issue was decided against the plaintiff.

- 10.** As discussed hereinabove, it is clear that, the plaintiff preferred an appeal, same was also dismissed and the plaintiff challenged the same before this Court in a revision petition which was also dismissed by upholding both the judgments of the learned Courts below.
- 11.** However, the Hon'ble Apex Court set aside the orders of the learned appellate Court as well as of this Court and remanded the matter to the learned 1st appellate Court. The determination made by the Hon'ble Apex Court can be summarized as follows:
 - I. The learned appellate Court committed jurisdictional error in deciding the legality and correctness of the 1st part of Issue No. 4 on merit.
 - II. The plaintiff did not challenge the finding of the learned trial Court below recorded on the 1st part of Issue No. 4 as the same was already answered by the learned trial court in his favour.

III. The 1st appellate Court, therefore, could not have examined the legality and correctness of this finding in the plaintiff's appeal, until it was challenged by the defendant by filing cross-objection under Order 41 Rule 22 of the Code of Civil Procedure, 1908. The defendant did not file any cross-objection against such determination made under 1st part of the Issue No. 4.

IV. The Hon'ble Apex Court was also of the view that this Court committed mistake by not noticing the aforesaid jurisdictional error and by dismissing the plaintiff's revision petition.

V. Accordingly, the matter was remanded back to the learned appellate Court to decide on merit, however, a specific direction was issued not to endeavor to decide the 1st part of the Issue No.4, which was against defendant.

12. Accordingly, the learned appellate Court decided the appeal and reversed the finding of the learned trial Court below by holding that the defendant was a defaulter in respect of the suit premises for the reason that it is an admitted position that since, August, 1977, i.e. after fire gutted the house, the defendant has not offered any rent.

13. In the aforesaid factual and legal position concerning the present case, this Court is of the opinion that, at this stage this Court cannot entertain the 1st part of Issue No. 4, which revolves whether the defendant was a tenant under plaintiff in the given facts of the fire and execution of agreement. Therefore, even though the arguments of merger and tenancy are raised, same shall be an academic discussion for the purpose of this

case inasmuch as, this Court, in view of the determination made by the Hon'ble Apex Court, cannot make an endeavor to decide the aforesaid issue afresh.

14. The learned appellate Court below after remand, came to a conclusion that there is nothing on record to hold that defendant had offered rent to the plaintiff on every month since August 1977 and the plaintiff refused to accept and accordingly, the defendant had taken recourse to the provision of Sub Section 4 of Section 5 of the Assam Urban Areas Rent Control Act, 1972 to deposit the rent. Therefore, in absence of such material, the defendant has become a defaulter.
15. This Court has also considered the materials available on record and this is an admitted position that the defendant has taken a stand that they were no more tenant under the plaintiff and therefore, no rent was paid. As the dispute and issue regarding the relationship of landlord and tenant has already been decided and settled by the Hon'ble Apex Court, non-payment of rent in the given facts of the present case from the year 1977 which is an admitted position will make the defendant as defaulter. Therefore, such finding of fact by the appellate Court cannot be said to be a perverse decision, to interfere.
16. Accordingly, this revision petition stands dismissed. Parties to bear their own cost.

JUDGE