

06.12.2021
SL No.7
Court No.8
(gc)

**SAT 345 of 2017
With
CAN 2 of 2018
(Old No: CAN 1136 of 2018)**

**Mrs. Hazra Zaman & Ors.
Vs.
Md. Quasim & Anr.**

(Via Video Conference)

Mrs. Sohini Chakraborty,
Ms. Prajaaini Das,
Sk. Mehbub Hossain,
...for the Appellants.

**Re: CAN 2 of 2018
(Old No: CAN 1136 of 2018)**

This is an application for restoration and/or recalling of the order dated 29th January, 2018, by which the second appeal being SAT 345 of 2017 was dismissed for default.

Upon perusal of the averments made in the said application, this court finds that sufficient grounds have been made justifying the absence of the appellants on the said date.

The application being CAN 2 of 2018 (Old No: CAN 1136 of 2018), is, thus, allowed and disposed of.

The second appeal being SAT 345 of 2017 is restored to its original final and number.

Re: SAT 345 of 2017

The second appeal is directed against a decree of affirmation in a suit for eviction on the ground of reasonable requirement.

Sk. Md. Yasin filed an Ejectment Suit No.186 of 2005 before the learned Judge, 5th Bench, Presidency Small Causes Court, Calcutta on the ground of default. The suit was instituted against the predecessor of the present appellants who were tenants under one Durga Rani Seal, the owner of the suit premises. By a registered deed of lease dated 8th October, 1959 executed by said Durga Rani Seal in favour of Sk. Md. Yasin, the original lessee was permitted to collect rent. Subsequently, the plaintiff granted sub-lease in favour of Ashok Dhar, Aritra Dhar and Shyamal Dhar, who in their turn executed sub-lease in favour of Michel P.T. Gomes and Roshni Yasmin to collect rents and arrear rents. However, said Michel P.T. Gomes and Roshni Yasmin surrendered their sub-lease on 22nd January, 2003 in favour of Ashok Dhar, Aritra Dhar and Shyamal Dhar, who also surrendered their sub-lease through their constituted attorney in favour of the original plaintiff, namely, Sk. Md. Yasin. The incidents of lease, sub-leases and subsequent surrender thereof were duly communicated to the defendants through notice of attorney. On 15th October, 2009, the original owner, Durga Rani Seal, transferred her right, title and interest in the suit property in favour of the present plaintiffs/decreed-holders by way of a registered deed of conveyance dated 15th October, 2009 after the lease of the original plaintiff, Sk. Md. Yasin, was surrendered in her favour.

By reason of such subsequent transfer, the present plaintiffs/decreed-holders substituted themselves in the pending proceeding for eviction and amended plaint. In the amended plaint in addition to the earlier grounds for default, the ground for reasonable requirement was included. The said suit was contested and after contested herein the suit was decreed in favour of the plaintiffs on the ground of reasonable requirement. The present appellants preferred an appeal before the Appellate Court challenging the said decree. In the said proceeding, the appellants filed an application under Order XLI Rule 27 of the Code of Civil Procedure in order to bring on record a subsequent document to show that Durga Rani Seal registered a lease deed in favour of the original plaintiff, Sk. Md. Yasin, which include the flat of the present appellants.

It was argued before us that while considering the appeal on merits, the Appellate Court did not consider the application under Order XLI Rule 27 of the Code of Civil Procedure. The consideration of the said application is not reflected in the impugned judgment. It is submitted that if the said property sold by Durga Rani Seal in favour of Sk. Md. Yasin subsequent to the deed of conveyance dated 15th October, 2009, which, *inter alia*, include the property of the present appellants, the learned Appellate Court ought to have decided the said application on merits as the issue of ownership of the property is in dispute and the original plaintiff did not file

the suit for eviction on the ground of reasonable requirement. The suit was decreed only on the purported plea raised by Sk. Md. Shamim that he requires the suit property for reasonable requirement. It is thereby contended that the requirement of the respondent No.2 was never issued in view of the original plaintiff and having regard to the fact that the subsequent document would show that the suit property was sold in favour of the Sk. Md. Yasin, the ground for reasonable requirement on the basis of which the decree was passed by the learned Trial Court could not be sustained.

The said argument although seems to be attractive but is not sustainable in law. It is correct that we do not find any reflection of the application claimed to have been filed by the present appellants under Order XLI Rule 27 of the Code of Civil Procedure, however, it is clear from the orders of both the Courts that the respondent No.2 was able to establish his reasonable requirement. The original plaint was amended. On the basis of the amended plaint, issues were framed and both oral and documentary evidence were led by the parties. The title to the property cannot be disputed by the present appellants. It is immaterial whether the property was sold in favour of Sk. Md. Yasin subsequent to the deed of conveyance dated 15th October, 2009. In fact, there could not have been any sale by Durga Rani Seal after 15th October, 2009 since he has relinquished her right, title and interest in the property in question in

favour of the present respondents/decree-holders. It is elementary that once a party divested all of his rights in respect of the property, there cannot be any further transfer of the property which is a *non-est*, vis-à-vis, the original owner which in the instant case is Durga Rani Seal. The right, title and interest of the decree-holders are well-established by reason of the deed of conveyance dated 15th October, 2009. The appellants never raised any objection with regard to the ownership of the property by the present respondents and they were fully aware that the property was purchased by the present respondents. A tenant is estopped from challenging the ownership of the landlord. The Appellate Court has proceeded on the aforesaid basis and has affirmed the order of the Trial Court. There is no substantial question of law involved in this matter for which appeal needs to be admitted.

In view thereof, the second appeal being SAT 345 of 2017 stands dismissed.

However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)