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**SAT 288 of 2019  
With  
CAN 1 of 2019 (Old CAN 9902 of 2019)**

**Sri Rabin Pal  
VS  
Sri Susobhan Dutta & Anr**

**Mr. Malay Bhattacharya,  
... For the Appellant.**

**Mr. Abhisek Banerjee,  
... For the Respondents.**

The instant Second Appeal arises from a judgement and decree dated 31<sup>st</sup> May, 2019 passed by learned Additional District Judge, 5<sup>th</sup> Court, Howrah in Title Appeal No. 71 of 2014 affirming the judgment and decree dated 29<sup>th</sup> April, 2014 passed by learned Civil Judge (Junior Division), 3<sup>rd</sup> Court, Howrah in Title Suit No. 138 of 2018.

The plaintiff/appellant filed a suit for declaration of his tenancy right in respect of the suit premises under the defendant no. 1 concerning one room with verandah, common user of privy and bath, separate kitchen in holding no. 65, Lakshan Das Lane, PS and District – Howrah at a monthly rent of Rs. 50/- payable according to English calendar. It is a specific case that the rent was paid to the said defendant regularly but later on defendant refused to accept the same on the pretext of the enhancement of rent. Plaintiff, having no other alternative to tender the rent to him by money order, thereafter deposited rent in the office of the Rent Controller. The plaintiff further asserts that he has got an electric connection at the suit premises in his name

and have also been issued a Ration Card and Aadhar Card showing the suit premises as the ordinary place of residence.

The defendant appeared and contested the suit denying the allegations made in the plaint. It is the specific case of the defendant no. 1 that the suit property was tenanted to one Shanti Khan, against whom suit for eviction under the West Bengal Premises Tenancy Act, 1956 was filed. The said suit was decreed and the decree was put into execution sometime in the year 2007.

Both the Courts have held that plaintiff/appellant has failed to prove his right as tenant in respect of the suit premises and proceeded to dismiss the suit.

It is a glaring example relating to correctness of the celebrated observation of the Privy Council "*the real trouble starts after getting decree.*" The decree was obtained and subsequently all the litigations came to be launched with the intent to frustrate the decree. It is not in dispute that the plaintiff/appellant has filed a miscellaneous case challenging the validity, legality and the executability of the decree and as of this date he appeared unsuccessful.

The present suit was filed sometime in the year 2008 admittedly, after the passing of the decree of eviction against the tenant, i.e., Shanti Khan.

It is pertinent to record that the said Shanti Khan appeared in the execution proceeding and conveyed her intention to surrender the tenancy, which appeared to have been accepted by the Court. The appellant and the respondent are not ad idem on the possession

having obtained through execution of the decree. Admittedly, the suit was filed after the decree for eviction is passed against the tenant in respect of the suit premises. By an amendment having brought in the year 1976 the provision contained under Order XXI Rule 101 of the Code of Civil Procedure received a sea change. There is an express embargo created in institution of the suit relating to a decreetal property and the executing Court has been blessed with the jurisdiction and conferment of power to decide the right, title and interest of a person in respect of the decreetal premises. Had it been a case that a suit for declaration of such nature is filed prior to the decree for eviction having passed in respect of the suit premises, it would have very well conceived that the same is maintainable but the suit after the decree for eviction is passed is not maintainable if it relates to the decreetal property and the person sought for his status to be declared by the Civil Court. Mere providing an electric connection at the suit premises does not ipso facto lead to a presumption of a tenancy. The electric connection given to a person in occupation does not necessarily mean that the tenancy right is established.

The issuance of Ration Card and the Aadhar evincing the address that of the decreetal premises also does not lead to a inchoate conclusion that the person is occupying the same as tenant. Those documents may have presumptive value of possession but cannot have any nexus to the nature of the occupation, more particularly, the tenancy right.

We, thus, do not find any infirmity and illegality in the ultimate decision of both the Courts below and find that the suit deserves dismissal.

The appeal is dismissed under Order XLI Rule 11 of the Code of Civil Procedure, as it does not involve any substantial question of law.

As the main appeal is dismissed, the connected CAN application is also dismissed.

There shall be no order as to costs.

***(Harish Tandon, J)***

**(Kausik Chanda , J)**