

24.08.2021
Item No. 22
Ct. No. 04
RP

S.A. 26 of 2010
(Via Video Conference)

Sri Suminta Ram
Vs.
Sri Kalo Bhangi

Mr. Samiran Mandal
Mr. Abhinaba Das

... for appellant

Mr. Mandal, learned advocate appears on behalf of appellant/plaintiff. He submits, the suit was for declaration and eviction of licensee. It was decreed at trial but the lower appellate Court reversed the judgment and dismissed the suit. Clear finding of licence was set aside by relying upon a petition made under section 144 of Code of Criminal Procedure, bearing left thumb impression (LTI) of his client, as proof by admission, of tenancy. No rent receipt could be produced and the lower appellate Court was in error to disregard provision in section 116 of Evidence Act, 1872 and section 25 in West Bengal Premises Tenancy Act, 1956.

On perusal of both judgments we find there was some connection between plaintiff and defendant. Both Courts below have tried to ascertain what was/is the connection, whether licence or tenancy. Relief of declaration on title is not really necessary for

the purpose of relief claimed of eviction. One thing is clear, the lower appellate Court accepted case of defendant to be tenant under plaintiff.

Proof, relied upon by the lower appellate Court, is admission of plaintiff in filing said petition bearing averment that defendant is tenant under him. Explanation was, the contents of the petition were not stated by plaintiff to be true. The petition bears his LTI. The trial Court accepted the explanation, in context of defendant's inability to otherwise prove himself to be tenant within meaning of the word given in clause (h) in section 2 of West Bengal Tenancy Premises Act, 1956.

We admit the appeal on following question of law:-

“Can the claim of tenancy, otherwise not proved to be within the meaning of clause (h) in section 2 of West Bengal Premises Tenancy Act, 1956, be accepted on mention of claimant as tenant in a pleading drawn up on behalf of the landlord, bearing his LTI and filed in a criminal proceeding, inspite of the explanation?”

The lower Court records be called for, on receipt of which appellant will put in requisites for preparation of paper books and issuance of notice of appeal.

Liberty to mention before the learned single
Judge for hearing of the appeal.

(Arindam Sinha, J.)

(Saugata Bhattacharyya, J.)