

10.08.2021
Item No. 22
Ct. No. 04
PG

S.A. 40 of 2016
Sri Prem Chand Shaw alias Jaiswal
Vs.
Sri Sanjoy Singh

Mr. Buddhadev Ghosal
Mr. Souri Ghosal.....for appellant/plaintiff

Mr. Ghosal, learned advocate appears on behalf of plaintiff and presses for admission of the appeal on a question of law as to whether in a suit for eviction of trespasser, the lower appellate Court while reversing the decree could do so upon relying on evidence to hold that the security deposit was not refunded, there being no pleading to that effect in the written statement. He relies on judgment of Privy Council in **Siddik Mahomed Shah vs. M.T. Saran** reported in **(1930) AIR (PC) 57(1)** for saying that no amount of evidence can be looked into upon a plea, which was never put forward.

For purpose of hearing the appeal regarding its admission, Mr. Ghosal hands up copies of the plaint and written statement. We find that the suit was for eviction of trespasser, recovery of khas possession and consequential reliefs. Defendant in his written statement had said in paragraphs 6 and 7 as follows:

“6. That the allegations made in paragraph ‘1’ and ‘2’ of the plaint are matter of documents and this Defendant without admitting the same put the plaintiff to proof thereof. On the other hand this Defendant is still in possession of the suit property as tenant and regularly is depositing his rent in the Court of Rent Controller of Howrah.

7. That the allegations made in paragraph ‘3’ of the Plaint are totally false and manufactured one for the purpose of this false suit and hereby categorically denied by this Defendant and the plaintiff is put to strict proof thereof. No such alleged notice ever tendered and reached to the Defendant and the alleged endorsement “left out of Station” was procured by the Defendant in collusion with the postal peon and the said alleged notice, if any, is not valid, legal and sufficient.”

Issues framed in the suit were:

“1. Is the suit maintainable in its present form either in law or in fact ?

2. Has the plaintiff any cause of action to file the suit ?

3. Is the suit barred under Section 34 of the Specific Relief Act, or by any other Law for the time being in force in the country?

4. Is there exist any relationship of landlord and tenant in between the parties?

5. Is the defendant a defaulter in payment of rent?

6. Is the plaintiff entitled to get the decree as prayed for ?

7. To what other relief, if any, is the plaintiff entitled to get?”

Issue nos. 4 and 5 obviously were framed based upon the written statement case.

We have been through both the judgments. Appellant/plaintiff had sued on termination of agreement, entered into in year 2004, to run till year 2007. The agreement was regarding defendant's occupation of the demise. There is evidence that this was the third agreement. A certain amount of money

was taken upfront as security, which the lower appellate Court found, had not been refunded.

If we look at the agreement as a lease for term of three years, section 107 in Transfer of Property Act, 1882 says that it can only be made by a registered instrument. Admittedly, the document was not registered. Registration Act, 1908 bars receipt of the agreement, compulsorily registrable, as evidence of the transaction. In that context, defendant's pleading of tenancy would require a decree for eviction to be granted only in a suit for eviction of tenant on one of the grounds available for eviction. However, the trial Court decreed the suit for eviction of trespasser by answering the issue regarding tenancy in favour of plaintiff.

The lower appellate Court found against plaintiff, as would appear from, *inter alia*, passage therefrom extracted below:

“This observation of the Ld. Trial court in my view is of little value when in cross-examination PW-1 himself has admitted the fact that two agreements were executed by him and in between period there was no 3rd agreement though he accepted rent from the tenant month by month. In view of such admission by the PW-1 himself non-production of rent receipt would not have really mattered in the facts and circumstances of the present case. It also appears from the cross-examination that PW-1 has admitted that he had given notice of ejectment to tenant on 18.10.07 which was received by the tenant/appellant is again apparent from the reply dated 21.11.07 but the contentions as were made in the said reply were never

refuted by the land-lord/plaintiff/respondent by way of any letter neither any documentary evidence was placed before the Ld. Trial Court to observe as has been done so by the Ld. Trial Court quoted hereinabove. On the contrary from the cross-examination of PW-1 it is again found that he admitted that he did not give any reply to the said letter of the tenant as meanwhile he had filed the eviction suit. It also appeared from the cross-examination of PW-1 that the land-lord/respondent had knowledge of the fact that tenant/appellant was depositing rent before the Rent -Controller.”

Having said so, the lower appellate Court went on to reverse the decree by saying as follows:

*“In my considered opinion the judgement and decree so passed against the defendant/appellant is not tenable in the eye of law as well as in the facts and circumstances that speaks loudly against the conduct of the land-lord/respondent who having failed to comply with his part of the agreement of refunding the security deposit cannot approach the court of law, seeking justice in unclean hands.
The appeal thus succeeds.”*

Both the Courts below did not address controversy between the parties by applying provisions in the 1882 Act or West Bengal Premises Tenancy Act, 1997. Having gone through both the judgments and pleadings in the plaint and written statement, we do not find any substantial question of law arises, the outcome thereof being that defendant continues in possession.

SA 40 of 2016 is dismissed. Appellant is at liberty to find his remedy in law.

(Arindam Sinha, J.)

(Saugata Bhattacharyya, J.)