

08.12.2021
Item no.16

Aloke
Ct. no. 8

SAT 57 of 2020

Sri Chaturbhuja Kar
Versus
Sri Raju Kumar Show

Mr. Uttiya Raoy, Advocate
Mr. Anirban Ghosh, Advocate
... for the appellant/defendant

The appellate decree affirming the decree of the trial Court in a suit for eviction of licensee is a subject matter of challenge in the second appeal.

This second appeal has come up for admission.

Shorn of details, the plaintiff filed a suit on 7th April, 2003 against the defendant for eviction on the ground that the defendant is a licensee. The claim is based on the fact that the defendant on 9th September, 2002 by a registered deed of agreement for sale and subsequent by a registered deed of sale dated 13th December, 2002 sold the schedule suit property to the plaintiff. At the time of registration of the sale deed of the plaintiff, the defendant approached the plaintiff to accommodate him in the suit property for one month so that he could shift the goods and articles belonging to him to some other place.

The plaintiff granted such permission for one month. The plaintiff alleged that on the expiry of one

month, the defendant did not vacate the suit property, hence, the plaintiff filed the suit for eviction of the defendant. The defendant contested the suit in which the defendant denied that he had accepted the title deed in favour of the plaintiff and also rest portions with regard to the relevancy of the schedule of the plaint. On the basis of the pleadings and documents and the submissions of the parties, trial Court framed five issues.

The plaintiff in support of his claim has produced the original agreement for sale dated 9th September 2002, the original sale deed dated 13th December, 2002 and original single tax receipt of Bali Municipality. The defendant filed one certified copy of the sale deed being No. 5548 of 1999 along with a plan and LR rent receipt in support of his claim.

From the evidence it transpires that the defendant became the owner of the property from one Basanti Rani Roy who sold the schedule property to the defendant in the year 1991 by way of a registered deed of sale. Subsequently, the defendant sold the suit property to the plaintiff at Res.6,15,000/-.

The learned counsel for the appellant before us argued that the defendant had taken loan from the plaintiff and had signed blank document at the time of taking the loan and the said document has been

purported to have used for a different purpose. However, no such defence appears either in the pleading or in the oral evidence.

On the contrary, exbt. 2 conclusively establish that the property was sold in favour of the plaintiff at a consideration of Rs.6,15,000/-. Curiously, the defendant did not file any suit for cancellation of the said registered deed of sale nor for a declaration that he is the owner of the property (**see Ava Rani Sengupta & Ors. vs. Laxmi Sengupta & Ors. equivalent to AIR 2005 Cal 84, 2004(3) CHN 585 see paragraph 24 to 29**). This aspect of the matter could not be overlooked and has been rightly taken into consideration by both the courts below. Moreover, when registered deed of sale was tendered for evidence and marked as exhibit, no objection was raised on behalf of the defendant. The defendant did not even plead that he has repaid the loan and thereby became the owner of the property. The payment of Rs.6,15,000/- to the defendant is not in dispute. Once the said amount is received by the defendant fastended with the registered deed of sale it was for the defendant to establish that the amount received was a loan transaction and the deed of sale is merely a security for payment of loan. This case was never made

out before the trial Court as well as before the first appellate court.

On such consideration the findings of both the courts that the occupation of the plaintiff was a mere licenses and is liable to be evicted does not call for any interference as it does not involve any substantial questions of law.

On such consideration the appeal fails with costs assessed. Hence, the appeal stands dismissed with costs assessed at Rs.10,000/-.

(Ajoy Kumar Mukherjee)

(Soumen Sen, J.)