

**SAT 64 of 2020
with
IA No. CAN 1 of 2021**

Kamaljit Singh

- Versus -

Ranbir Singh & Ors.

(Through Video Conference)

**Mr. Asit Kumar Bhattacharya – II
Mr. Koustava Ratan Chatterjee**

....For the appellant

The appeal is directed against a decree of affirmation in a suit for eviction, filed by the plaintiffs against the present appellant.

The second appeal can be admitted provided the substantial question of law is involved. The substantial question of law is arrived, if there is a perversity or illegality or where material or relevant evidence is not considered. If considered, would led to have opposite decision. Substantial question of law would also involve where finding has been arrived at by the appellate court by placing reliance on an admissible evidence and if it was omitted and passed his conclusion. The concurrent finding of fact would not ordinarily be interfered with in a second appeal, unless it is manifested from the pleading or otherwise that material or relevant evidence was not considered in arriving at the conclusion.

In the suit for eviction, the judgment of the trial court as well as the appellate court shows that the plaintiff has been able to establish service of notice upon the defendant

and also the relationship of the parties as landlord and tenant. A tenancy appears to have been terminated by servicing a notice by registered post with A/D. The defendant was unable to deny service of notice upon the said defendant. The notice was sent at the last shown address of the appellant and the presumption of service upon the defendant could not be rebutted. This is a clear finding of fact arrived at by both the courts below.

Moreover, there is non-compliance of the order passed by the appellant with regard to the deposit of arrears rent, even though mercy was shown to the appellant by a single judge of this Court in a revision application. Any tender of rent beyond time stipulated by the High Court cannot be regarded as valid. All rents tendered earlier were beyond time and not in accordance with law.

At the stage of admission of the second appeal, two issues have been raised – firstly, non-receiving of notice and secondly, the plaintiff has not proved the title of the property. The evidence recorded by the trial court as well as the appellate court to show that rents have been tendered to the plaintiffs, and the appellant has never denied the relationship of landlord and tenant earlier to the plea raised first time in the suit. In fact, the application has been filed for deposit of arrear rent accepting the plaintiff as a landlord.

Insofar as the title of the property is concerned, the plaintiff has exhibited the deed of sale being Deed No. 666

of 1981 marked as exhibit-2 in the said proceeding. exhibit – 1(b) and exhibit – 1(c), namely, the receipt of the notice sent and certificate of posting and envelope containing notice with endorsement of postal peon as 1(c) proves service of notice upon the defendant.

The allegation of conversion and change in the nature and character to the suit property was also to be by cogent reasons.

On such consideration, we do not find any reason to admit the second appeal. There is no substantial question of law involved, in which the second appeal can be admitted.

The appeal, accordingly, stands dismissed.

There shall, however, be no order as to costs.

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

(Subhasis Dasgupta, J.)

(Soumen Sen, J.)