

6.
sg 30-11-2021

Ct. 8

SAT 139 of 2020
With
CAN 2 of 2021

Gosai Das
Versus
Swapan Kumar Das

(Through Video Conference)

Mr. Supratik Shyawal, Adv.
Mr. S.M. Ismail, Adv.
...for the appellant

Mr. Tarak Nath Halder, Adv.
...for the respondent

This second appeal has come for admission against a decree of affirmation by the learned Trial Court. The plaintiff filed a suit for eviction of the appellant and mesne profit. The contention of the plaintiff before the learned Trial Court was that the defendant/appellant is a licensee. In the said proceeding, the defendant/appellant filed a written statement with counter-claim in which he has claimed his co-ownership over the suit property to the extent of 1/6th share. During trial the plaintiff was able to prove his absolute ownership over the property on the basis of the document dated 14th November, 1988. The said deed was admitted in evidence. It further transpired during trial that the defendant had also admitted that the plaintiff is the owner of the property. A question thus, hinges upon that whether the defendant has a right to occupy the suit property as a licensee. The defendant is the nephew of the plaintiff. It also transpired from the evidence that he was permitted to occupy the premises in question but no legal

right was created in his favour. The plaintiff being established his right, title and interest over the suit property and the defendant/appellant being failed to substantiate his claim of the co-ownership of the property, in our view, both the Courts were justified in decreeing the suit against the defendant/appellant. However, the learned Counsel for the defendant has prayed for sometime to find out an alternative accommodation.

The learned Counsel for the decree-holder is present in Court and he has submitted that today is fixed for execution of the decree by police help.

It is well past 12 o'clock and whether the decree has been executed in the meantime is not known to us. However, in the event, the defendant/appellant is not evicted from the suit premises by said decree through police help, the defendant/appellant may be permitted to occupy the suit property till 30th June, 2022 subject to payment of occupational charges of Rs.3000/- per month from the date of passing of the appellate decree till recovery of khas possession. The occupational charges for the month of December, 2021 shall be paid on or before 10th December, 2021 and for the subsequent periods, by 7th of each succeeding month. In default, the decree would be immediately executable. The arrear occupational charges shall be paid in three equal monthly instalments, commencing from 15th January, 2022 and shall be paid by 15th of each succeeding month. In default of making payment of first instalment or any of the instalments towards arrears, the decree would be immediately executable. All the payment would be paid to the designated bank account of the decree-holder through NEFT/RTGS and/or any other acceptable

modes.

An affidavit of undertaking shall be filed by the appellant/defendant with the learned Registrar General within one week from date upon prior service to the learned Advocate of the decree-holder, failing which the decree-holder shall be at liberty to mention this matter and pray for vacating of the order.

The appellate decree stands modified to the aforesaid extent. The appeal and the application stand disposed of with the aforesaid direction.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)