

20.12.2021
SL No.3
Court No.1
(PJ/SK)

Circuit Bench of Calcutta High Court
At Jalpaiguri
(Via video Conference)

SAT 8 of 2021
IA No : CAN 1 of 2021

Anand Singh @ Anand Kumar Singh
-Vs-
Smt. Gomti Devi Poddar & Ors.

Mr. Bhaskar Roy Mahasaya,
Mr. Sumit Kumar
... For the Appellant.

The instant Second Appeal is at the instance of the defendant in a suit for eviction under Section 6 of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the said Act, in short) and is directed against the judgment and decree dated December 23, 2020 passed by the learned District Judge, Darjeeling in O.C. Appeal No. 1 of 2017 thereby setting aside the judgment and decree dated March 28, 2017 passed by the learned Civil Judge (Senior Division), Darjeeling in O.C. (Eviction) Suit No. 19 of 2014.

The original tenant, the father of the appellant, died on January 02, 2005. The plaintiffs/respondents long time thereafter in the year 2014 filed the aforesaid suit for eviction of the defendant/appellant from the suit property, inter alia, on the grounds that since five years

have elapsed after the death of the original tenant in terms of Section 2(g) of the said Act no relationship of landlords and tenant exists between the plaintiffs and defendant.

The learned Trial Judge dismissed the said suit holding that since the plaintiffs have withdrawn the rent deposited with the Rent Controller by the original tenant and thereafter by the defendant, the relationship of landlords and tenant do exists between the parties.

The Appeal Court below by the decree under challenge has reversed the said finding of the learned Trial Judge holding that after the death of the original tenant except the defendant all other heirs of the original tenant have left the suit property, as such, on the expiry of the period of five years the defendant is no longer a tenant under the plaintiffs.

The learned Counsel for the appellant submits that the plaintiffs by withdrawing the rent deposited by the appellant and his father with the Rent Controller has accepted the appellant as their tenant as such the appeal Court below has committed substantial error of law in holding that by operation of Section 2(g) of the said Act of 1997, the defendant ceased to be tenant under the plaintiffs after expiry of five years from the death of date of the original tenant.

Having heard the learned Counsel for the appellant and on perusal of the materials on record, it appears that admittedly five years have elapsed after the death of the original tenant. There is no material on record to suggest that the widow of the original tenant, qualifies the requirement of Section 2(g) of the said Act to be in possession of the suit property as the tenant of it under the plaintiffs after the death of her husband. On the contrary, record suggests that she has left the suit property and is residing permanently at her native place.

Deposit of rent with the Rent Controller to the credit of the landlords does not create any landlord and tenant relationship.

Section 24 of the said Act prescribes that the withdrawal of rent deposited with the Rent Controller shall not operate as an admission against the person withdrawing it of the correctness of the rent or the rate thereof, the period of default, the amount due or any other fact stated in the application of the tenant for depositing the rent under sub-section (1) of Section 22, nor shall it operate as a waiver of any notice to quit given by him to the tenant.

Therefore, deposit of rent with the Rent Controller or withdrawal thereof by the plaintiffs are of no consequence in view of the fact that all the conditions of Section 2(g) of the said Act

in the present case have been satisfied to hold that the defendant/appellant is a trespasser in the suit property.

The Appeal Court below has rightly held that upon expiry of the period of five years after the death of the original tenant, the relationship of landlords and tenant between the plaintiffs and the defendant ceased to exist.

No substantial question of law as suggested by the learned Counsel for the appellant is involved in the present appeal.

Accordingly, the Second Appeal being S.A.T. 8 of 2021 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

In view of dismissal of the appeal, the connected application for stay being IA No : CAN 1 of 2021 has become infructuous and is also dismissed.

However, there shall be no order as to costs

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

(Biswajit Basu, J.)

(Soumen Sen, J.)