

20.12.2021
SL No.06
Court No.1
(AJ/SM)

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

SAT 13 of 2021
IA No. : CAN 1 of 2021

Rathin Majumder
-Vs-
Narayan Chandra Kundu

Mr. Navin Barik,
Mr. Sandip Majumder.
Ms. Esha Acharya.
... for the appellant.

The instant Second Appeal is at the instance of the defendant in a suit for eviction and is directed against the judgment and decree dated March 16, 2021 passed by the First Court of learned Additional District Judge, Darjeeling in Title Appeal No. 02 (1) of 2019 thereby affirming the judgment and decree dated August 31, 2018 passed by the learned Civil Judge (Junior Division), Siliguri, District: Darjeeling in Title Suit No. 236 of 2005.

The learned Advocate for the appellant submits that both the Courts below have committed substantial error of law in decreeing the suit inasmuch as the plaintiff has not proved any of the grounds of eviction mentioned in the notice to quit. Moreover, the plaintiff accepted the defendant as his tenant in the agreement of

tenancy; therefore, the said tenancy ought to be governed by the Rent Control Legislation not by The Transfer of Property Act, 1882.

Learned advocate for the appellant refers to an unreported judgment of the Hon'ble Supreme Court passed in the case of **Civil Appeal Nos. 2843-2844 of 2010 (Nazir Mohamed –versus- J. Kamala and others)**.

Having heard the learned advocate for the appellant and on perusal of the materials on record, it appears that the present Second Appeal is arising out of the suit for eviction simplicitor under The Transfer of Property Act, 1882.

The tenancy of defendant of such a suit is not protected under the Rent Control Legislation, to succeed in a suit of the said nature the plaintiff is required to prove that the tenancy has been terminated by a valid notice under Section 106 of the Transfer of Property Act, 1882.

In the present case, both the learned Courts below have concurrently found that the notice to quit is valid and legal.

We are in Second Appeal unable to interfere with the said concurrent findings of fact.

The decision of the Hon'ble Supreme Court relied on by the learned advocate for the appellant is of no help for his client since in the

said decision the Hon'ble Supreme Court has laid down the scope of Section 100 of the Code of Civil Procedure of which we are not concerned in the present Second Appeal.

We, therefore, hold that there is no substantial question of law as suggested by the learned advocate for the appellant is involved in the present Second Appeal.

S.A.T 13 of 2021 is dismissed under XLI Rule 11 of the Code of Civil Procedure.

In view of the dismissal of the appeal, the connected application being C.A.N. 1 of 2021 has become infructuous and is also dismissed.

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

(Biswajit Basu, J.)

(Soumen Sen, J.)