

3 02.2.2022
Sc Ct. no.8

(Via Video Conference)

**S. A. 58 OF 2020
with
I.A. No.CAN 1 OF 2022
with
I.A. No.CAN 2 OF 2022**

Shrimati Jamuna Mandal & Anr.

Vs.

Saibal Prasad Gupta & Ors.

Mr. Rabindranath Mahato
Mr. Aaritra Shankar Ray.

.....For the Plaintiffs

This is a clear case of abuse the process of law. The plight of decree-holder after the decree is passed is well manifested in this proceeding. An unmeritorious appeal with a prayer for addition of party on the ground that one of the plaintiffs died during the pendency of the suit which the present appellants were not aware of until recently. It is accordingly contended the said decree is not enforceable against the defendants/appellants - is sought to be raised before us.

The matter has a chequered history.

Shorn of all details, it is emerged from the facts that the defendants/appellants were granted permissive possession in the suit property and based on such gratuitous act on the part of the plaintiffs the defendants/appellants claim right, title and interest on the property in question by adverse possession.

The trial court and the appellate court on appreciation of facts and law has clearly held that the occupation of the defendants/appellants was of a mere licensee and the licence was duly revoked by the plaintiffs.

This issue has been settled by a catena of decisions including a decision of the Hon'ble Supreme Court in *Maria Margarida Sequeira Fernandes and Ors. -vs.- Erasmo Jack De Sequeira (Dead) through Lrs.*, reported in (2012) 5 SCC 370. In *Maria Margarida* (supra) the Hon'ble Supreme Court has enumerated a few principles of law which are as follows :

"97. Principles of law which emerge in this case are crystallised as under:

- (1) No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property.*
- (2) Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.*
- (3) The courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.*
- (4) The protection of the court can only be granted or extended to the person who has valid,*

subsisting rent agreement, lease agreement or licence agreement in his favour.

(5) The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession.”

This decision was also followed by a subsequent decisions of the Hon’ble Supreme Court in *Behram Tejani & Ors. vs. Azeem Jagani*, reported in (2017) 2 SCC 759 [Paragraph 13]. A further reference may be made to the decision of the Hon’ble Supreme Court in *A. Shanmugam vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandavana Paripalanai Sangam*, reported in (2012) 6 SCC 430 where similar issue was decided.

In view of such well settled principles of law and having regard to the fact that the possession of the appellant was purely gratuitous and could be as caretaker, we do not find any substantial question of law for which the appeal is required to be admitted.

In view of the fact that there is no conflict of interest between the plaintiffs 1, 2 and 3, the death of the plaintiff no. 3 does not make the decree as against the present appellants unenforceable. The right to sue of the other plaintiffs survive.

Accordingly the appeal and the applications are dismissed.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)