

Item-7. 14-09-2022

FA 38 of 2009
CAN 5 of 2022

sg

Ct. 8

Kanhaiya Lal Surana, since deceased,
represented by his legal heirs and representatives,
Kuldeep Surana
Versus
Smt. Angurabala Majumder, since deceased,
represented by her legal heirs and representatives
Pallab Majumder & Ors.

Mr. Asish Chandra Bagchi, Sr. Adv.
Mr. Prabir Kumar Misra, Adv.
Mr. Shibendra Nath Chattopadhyay, Adv.
Mr. Priyam Misra, Adv.

...for the respondents

Mr. Asish Chandra Bagchi, learned Senior Counsel representing the applicants/decreed-holders/respondents in this appeal has submitted that the order dated 24th August, 2022 has not been complied with. Mr. Bagchi has further submitted that the occupational charges have not been paid in terms of the order dated 23rd February, 2022.

In spite of service, the appellants are not represented nor any accommodation is prayed for on their behalf.

From the record it appears that the suit was filed for eviction on the ground of expiry of lease.

Mr. Bagchi, in support of the judgment impugned, has submitted that the suit is for eviction of the lessee on the expiry of the fixed terms of lease.

Our attention is drawn to the registered lease deed in respect of the suit premises executed on 16th October, 1963 for a period of 35 years commencing from 1st November, 1963 and ending on 31st October, 1998. The plaintiffs sent a notice through their learned Advocate on 17th September, 1997 requesting the appellant to

make over its peaceful vacant possession of the suit premises after 31st October, 1998. The factum of the lease and the service of notice upon the applicant are not in dispute. The appellant however, contended in the trial court that he is the monthly tenant of his tenancy which is protected under the provision of the West Bengal Premises Tenancy Act.

The learned Judge on consideration of the evidence on record opined that the defendant is not entitled to occupy the suit premises as tenant after the expiry of the period of lease. The defendant could not establish at the trial that upon the expiry of the lease, a new relationship was created as landlord and tenant and he become a premise tenant after the expiry of the lease for the periods covered under the lease. The relationship is required to be governed by the registered deed and no amount of oral evidence can be looked into to contradict the written terms in the lease deed.

In view of the fact that the lease is for a period of more than 20 years and executed in the year 1963, the provision of Section 3 of the West Bengal Premises Tenancy Act, 1956 shall not apply in this case.

Under such circumstances, the appeal fails. However, there shall be no order as to costs.

In view of dismissal of the appeal, the connected application being CAN 5 of 2022 also stands dismissed.

LCR may be sent down to the trial court by the department.

(Uday Kumar, J.)

(Soumen Sen, J.)