

Form No. J (1)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION

Present:

The Hon'ble Justice Biswajit Basu.

SA No. 125 of 2010

LAKSHMI SHAW, SINCE DECEASED,
HER HEIRS AND LEGAL REPRESENTATIVE BHAGWATI DEVI & ORS.
VS.
RANA PRATAP SINGH

For the appellants:

Mr. Probal Kumar Mukherjee,
Mr. Shurid Sur.

For the respondent:

Mr. Arijit Chatterjee,
Ms. Sharmishta Dhar.

Heard on : 29.06.2022

Judgment on : 13.07.2022

Biswajit Basu, J.

1. The present second appeal is at the instance of the defendant in a suit for eviction of trespasser and it is directed against the judgment and decree dated June 25, 2009 passed by the 2nd Court of learned Civil Judge (Senior Division) at Howrah in Title Appeal No. 219 of 2007 thereby affirming the judgment and decree dated October 04, 2007 passed by the 1st Court of learned Civil Judge (Junior Division) at Howrah in Title Suit No. 36 of 2005.

2. The plaint case in short is thus, the erstwhile landlady Radhika Devi by an agreement of license dated January 02, 1989 inducted the defendant in the suit shop-room; on expiry of the term of the said license, the defendant became trespasser to the said shop-room. The plaintiff purchased the suit premises from the heirs of said Radhika Devi and thereafter by a notice dated August 17, 2001 asked the defendant to quit and vacate the suit shop-room, which the defendant failed to comply.

3. The defendant contested the said suit by filing written statement, wherein he denied being a licensee in respect of the suit shop-room and claimed to be a premises tenant under the said Radhika Devi and alleged payment of rent to her. He disputed the veracity of the said agreement for license. In support of his defence of tenancy, the defendant produced some hand-written pages alleging to be the rent receipts in respect of the suit shop-room issued by the said Radhika Devi. The said documents were marked Exhibit 'A' series in the suit.

4. The learned Trial Judge refused to accept those documents as rent receipts for want of signature of said Radhika Devi therein and for the failure of the defendant to bring the persons, whose signatures are appearing in the said documents, as witnesses in the suit. The plaintiff's title over the suit premises is not in dispute. The learned Trial Judge decreed the suit holding that the defendant is nothing but a licensee in respect of the suit shop-room. The appeal against the judgment and decree of the learned Trial Judge was dismissed by the impugned appellate decree.

5. The instant second appeal was admitted under Order XLI Rule 11 of the Code of Civil Procedure to answer the following substantial question of law:-

When the defendant had produced certain rent receipts in support of his claim of tenancy in relation to the property in

suit, whether the learned judges in the courts below, substantially, erred in law in holding that the defendant was not a tenant in respect of the property in the suit?

6. Mr. Probal Mukherjee, learned senior counsel appearing for the appellant submits that sons of the Radhika Devi, whose signatures are appearing in Exhibit 'A' (series), used to put signature in the rent receipts on her behalf, therefore both the learned Courts below have committed substantial error of law in discarding the said exhibit for want of signature of Radhika Devi in the said documents.

Heard Mr. Mukherjee, perused the materials-on-record.

7. When tenancy is the defence in a suit for eviction of trespasser on determination of license, burden lies heavily upon the defendant to prove such tenancy. In the present case, the defendant came into possession of the suit shop-room in the year 1989. It appears from Exhibit 'A' (series) that the payments recorded in the said documents is from the month of January, 1996; the defendant offered no explanation as to the payment of rent for the period from 1989 to 1995. Besides, the defendant in his reply to the notice to quit, marked Exhibit 'C' in the suit, has alleged that Radhika Devi never issued rent receipts, such stand of the defendant puts Exhibit 'A' (series) under a serious doubt.

8. The appeal Court held that the alleged signatures appearing in the rent receipts are contradictory to each other and there are inconsistencies in the calculation of arrear rents therein. The defendant never brought the signatories of the Exhibit 'A' (series) as witnesses to corroborate their signatures in the said documents. The appeal Court below, on such default of the defendant, has rightly refused to believe that the said documents are rent receipts. That apart, description of the tenancy in the said documents is not sufficient to relate it with the suit shop-room, absence of signature of the defendant in the said documents raises a serious

doubt about the genuinity of it and leads to an irresistible conclusion that Exhibit 'A' (series) have been manufactured for the purpose of the suit.

Therefore, considering the facts and circumstances of the present case as discussed above, this Court is of the opinion that no such substantial question of law as framed under Order XLI Rule 11 of the Code on March 11, 2011 is involved in the present second appeal, in consequence, S.A. 125 of 2010 is dismissed with costs of **Rs. 75,000/-** (Seventy Five Thousand rupees only) to be paid by the appellants to the respondent within two weeks from date.

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

(BISWAJIT BASU, J.)

LATER

Let the lower Court records be sent down immediately to the Court below by special messenger at the costs of the respondent to be put in within a week from date.

(BISWAJIT BASU, J.)