

Form No. J (1)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION

Present:

The Hon'ble Justice Biswajit Basu.

SA No. 18 of 2014
(IA No: CAN 07 of 2021)

TULSI SARAN PANDEY (SINCE DECEASED)
GAYATRI DEVI PANDEY & ORS.
VS.
SHYAM SUNDAR DEY.

For the appellants:

Mr. Ayan Kumar Boral,
Mr. Bishalaxmi Ghosh.

For the respondent:

Ms. Surya Prasad Chattopadhyay,
Mr. Arjun Samanta,
Ms. Tanmoy Kar.

Heard on : 09.03.2022

Judgment on : 22.03.2022

Biswajit Basu, J.

1. The instant second appeal is at the instance of tenants/defendants in a suit for ejectment. The predecessor-in-interest of the appellants was a tenant under the plaintiff in respect of one room with common bath and privy situated at the ground floor of the premises No. 12/2 Akrur Dutta

Lane Kolkata at a rent of ₹ 105 payable according to English calendar month.

2. The plaintiff, the respondent herein filed the Ejectment Suit No. 64 of 2000 in the Court of learned Chief Judge, Presidency Small Causes Court at Calcutta for eviction of the said predecessor-in-interest of the appellants from the suit room on the grounds that he requires it for his own use and occupation as well as for the use and occupation of his family members which consists of himself, his wife and two daughters. The other ground of eviction is that the tenant and his family members by their conduct are causing annoyance and nuisance to the plaintiff.

3. The plaintiff in the plaint of the suit pleaded his requirement for two bedrooms, one drawing room, one study room, one dining room and one Thakur Ghar. The plaintiff alleged that except two rooms and one Thakur Ghar in the suit premises, he has no other suitable alternative accommodation elsewhere. It is the further case of the plaintiff that tenancy of the defendant was determined by a valid notice asking the tenant to quit and vacate the suit room on the expiry of April 1, 1997 but the tenant in spite of receipt of the said notice did not vacate the suit room, hence the suit.

4. The tenant contested the suit by filing written statement. It is the specific case of the defendant that the plaintiff has sufficient accommodation in the suit premises for his own use and occupation as well as for the use and occupation of his family members. The tenant alleged that the suit premises is a two storeyed building and the entire first floor of

the said building is under possession of the plaintiff which consists of four bedrooms, one kitchen, one storeroom, one veranda with separate bath and privy besides another room on the roof of the suit premises.

5. The learned Trial Judge on the basis of the pleadings of the parties framed as many as eight issues; issues regarding maintainability of the suit, ownership of the plaintiff over the suit premises and the validity of the notice to quit were decided in favour of the plaintiff. The issue as to whether the tenant is guilty of causing nuisance and annoyance to the plaintiff was not pressed by the plaintiff.

6. The learned Trial Judge considered the rest of the issues together. The two relevant issues viz. whether the plaintiff reasonably requires the suit room for his own use and occupation and for the use and occupation of his family members and whether the plaintiff has any other suitable alternative accommodation to satisfy his said requirement, and the consequential issues whether the plaintiff is entitled to the decree as prayed for and what are the other reliefs the plaintiff is entitled to in the suit were decided against the plaintiff.

7. The report of the advocate Commissioner appointed in the suit to hold local inspection of the suit property was proved and was marked as Exhibit-8 in the suit. The learned Trial Judge on the basis of the said exhibit came to a finding that the plaintiff is in possession of entire first floor consisting of two rooms, one kitchen with bath and privy and a veranda covered in three sides by iron grill with asbestos shed on it and the plaintiff has also in his

possession one small room used as store room and a small tin shade room on the roof of the suit premises used as Thakur Ghar. The learned Trial Judge discarded the requirement of one of the daughters of the plaintiff since the said daughter during the pendency of the suit was given in marriage. In the 'Exhibit-8' the advocate Commissioner mentioned about the existence of two other rooms besides the suit room at the ground floor of the suit premises which the said commissioner at the time of inspection found under lock and key. The learned Trial Judge on the basis of the said report held that no evidence is forthcoming from the side of the plaintiff to show as to who is in occupation of the said two rooms.

The learned Trial Judge by the judgement and decree dated July 30, 2011 dismissed the said suit.

8. The plaintiff aggrieved by the said judgement and decree preferred the connected Title Appeal No. 18 of 2009. The plaintiff in the said appeal filed an application under Order XLI rule 27 of the Code of Civil Procedure for production of additional evidences relating to the studies of his unmarried daughter and documents to prove that two rooms at the ground floor of the suit premises which the advocate Commissioner found under lock and key are under the occupation of another tenant.

9. The 12th Bench of City Civil Court at Calcutta by the impugned judgment and decree allowed the said appeal thereby reversed the judgment and decree of the learned Trial Judge and decreed the suit. The appeal Court below on assessment of the said 'Exhibit-8' has come to a finding that the plaintiff is in possession of the entire first floor of the suit premises

consisting of two rooms, verandah, kitchen, bath and privy along with one tin shed room on the roof of the suit premises, used by the plaintiff as Thakur ghar therefore even though the requirements of the plaintiff for two bed rooms, bath and privy, kitchen and Thakur ghar are satisfied but plaintiff requires one study room for his major daughter who is studying MSc, the appeal Court below further held that the plaintiff requires one drawing-room for meeting the friends, relatives and one room for night stay of the married daughter with her husband cannot be a mere desire of the plaintiff but is a necessity. The appeal Court held that the two rooms in the ground floor of the suit premises which the advocate Commissioner found under lock and key is under the occupation of another tenant as it transpired from the evidence of DW₁ which the learned Trial Judge overlooked.

The appeal Court below accordingly reversed the judgement and decree of the learned Trial Judge and decreed the suit.

10. The instant second appeal was admitted by the Hon'ble Division Bench of this Court under Order XLI Rule 11 of the Code of Civil Procedure on the following substantial questions of law to be answered: –

“A. Whether the First Appellate Court was competent to decree the suit in part on the ground that the plaintiff was not aware of the facts made in the plaint?”

B. Whether the learned Judge should have allowed the application made under Order 41 Rule 27 of the Code of Civil Procedure and having not done so the learned judge committed grave error which mislead the First Appellate Court?”

11. The learned Trial Judge dismissed the suit as a whole and the appeal court reversed the said judgement and decree as a whole. This Court is unable to follow as to how the appellants suggested that the appeal Court below has decreed the suit in part when neither of the parties had ever put forward any case of partial eviction. The appeal Court below did not at all consider the application filed by the plaintiff under Order XLI Rule 27 of the Code as the evidences on record were sufficient for the appeal Court below to decree the suit.

Summing up the discussions made above, this Court is of the opinion that in the present second appeal no such substantial questions of law as framed under Order XLI Rule 11 of the Code are involved. The appeal, therefore, fails.

S.A. No. 18 of 2014 is dismissed, the judgment and decree dated July 13, 2011 passed by the 12th Bench of City Civil Court at Calcutta in Title Appeal No. 18 of 2009 is hereby affirmed. There shall be no order as to costs.

CAN 07 of 2021

In view of dismissal of the appeal, the application for extension of the interim order passed in the appeal being IA No: CAN 07 of 2021 has become infructuous and the same is dismissed as such.

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

(BISWAJIT BASU, J.)

