

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

BEFORE:

The Hon'ble Justice Soumen Sen

And

The Hon'ble Justice Siddhartha Roy Chowdhury

FA 245 of 2008

Madhusudan Ghosh

vs.

Subir Kumar Banerjee & Anr.

For the Appellant : Mr. Dipankar Dandapath, Adv.

For the Respondents : Mr. Souradipta Banerjee, Adv.
Mr. Naba Krishna Das, Adv.
Ms. Fatima Hassan, Adv.

Hearing concluded on : 10th August, 2022

Judgement on : 11th August, 2022

Siddhartha Roy Chowdhury, J.: Challenge in this appeal is to the judgement and decree passed by the learned 10th Bench of City Civil Court at Calcutta in Title Suit No. 519 of 2001 and Title Suit No. 671 of 2001, both the suits were tried analogously and disposed of by a common judgement and decree passed on 20th July, 2007. For proper appreciation of the appeal it is expedient to delineate the facts of the case in brief.

Depicting themselves as owners of the suit property, Sri Subir Kumar Banerjee and Sri Saswata Bandyopadhyay filed a suit against Madhusudan Ghosh for recovery of possession and mesne profit. It is their specific case that they acquired the ownership of this property in

suit by purchase on 8th January, 2001. Smt. Subala Bala Sahu was the erstwhile owner of the property. The plaintiffs/respondents herein further stated that they used to reside in the suit premises and their father Sri Bhupendra Kumar Banerjee was a tenant. Sri Sailesh Chandra Sengupta was another tenant and after his demise on 20th February, 1997 Smt. Mira Sengupta and Sakti Prasad Sengupta stepped into his shoes and became tenants. Sengupta family left the said premises in the year 1997 keeping one of the two bed rooms and kitchen let out to them under lock and key. They allowed the defendant Madhusudan Ghosh who illegally to occupy one room, bathroom and privy (hereinafter referred as “suit premises”). On or about 16th October, 2000, Smt. Mira Sengupta and Sakti Prasad Sengupta surrendered their tenancy in favour of the owner of the property and delivered possession of one bed room and kitchen to the owner, the other room was given to the defendant as licensee. Sri Dulal Chandra Sahu son of Smt. Sushila Bala Sahu lodged a General Diary with the local Police Station and informed the police about this fact. The defendant Madhusudan Ghosh became trespasser in respect of the said property he was possessing pursuant to surrender of tenancy by the Senguptas. The defendant does not have any right to occupy the suit property. The defendant without obtaining any license from Calcutta Municipal Corporation and other statutory authorities started the business of printing press which was the source of noise pollution and it was causing damage to the age old property. The plaintiffs requested the defendant to stop running the machine but it was not adhered to. On the contrary the defendant and his associates threatened the plaintiffs.

Several representations were made by the plaintiffs to various authorities over such illegal act of the defendant. Ultimately, they filed an application on 18th January, 2001 under Section 144 (2) of the Code of Criminal Procedure. The defendant used to create nuisance in the suit property under the influence of liquor, police was informed. It was further contended that the plaintiffs are in need of space for their own use and occupation. By filing this suit, the plaintiffs prayed for recovery of Khas possession of the suit premises after evicting the defendant and also prayed for mesne profit @ 800 per month from the defendant.

Defendant Madhusudan Ghosh contested the suit by filling written statement denying all material allegations made against him. The defendant expressed his ignorance about the transfer of ownership as the erstwhile owner Subala Bala Sahu did not inform him regarding attornment of tenancy. It is the specific case of the defendant that he has been occupying or possessing the suit property as tenant in respect of two rooms, kitchen, separate bath and privy on the ground floor of the house being inducted by Subala Bala Sahu. Dulal Sahu son of Subala Bala Sahu used to collect monthly rent but did not issue rent receipts on regular basis. The defendant used to pay rent either by cash or by account payee cheque. It is contended by the defendant that Smt. Mira Sengupta and Sakti Prasad Sengupta were not tenant under Subala Bala Sahu at any point of time. The defendant was inducted in respect of the property in suit as tenant by Subala Bala Sahu and he claims to have paid monthly rent before the Rent Controller, Calcutta, after complying with the provision of Section 21 of the West Bengal Premises Tenancy Act, 1956,

the defendant denied to have caused any nuisance as alleged and also denied to have installed any printing press or running the same at the suit premises. According to the defendant the proceedings under Section 144 (2) Cr.P.C. was filed by the plaintiffs on the basis of false imputations. The defendant prayed for dismissal of the suit.

Title Suit No. 671 of 2001 was also filed by the plaintiffs Sri Subir Kumar Banerjee and Sri Saswata Bandyopadhyay against Madhusudan Ghosh seeking permanent mandatory and prohibitory injunction.

Learned Trial Court after considering the pleadings of the parties framed seven issues in Title Suit No. 519 of 2001 and after considering the evidence both oral and documentary, learned Trial Court was pleased to pass a decree for eviction in favour of the plaintiffs and the defendant was directed to quit and vacate the suit property within two months from the date and to pay mesne profit @ Rs. 10,000/- per month.

Being aggrieved by and dissatisfied with such judgement and decree the defendant Madhusudan Ghosh preferred this appeal.

Learned advocate for the defendant/appellant assailing the impugned judgement adverted that learned Trial Court passed judgement and decree upon misreading the evidence on record. Learned Trial Court failed to appreciate the fact that the plaintiffs/respondents withheld the best evidence to prove his case and learned Trial Court ought to have drawn up adverse inference against the plaintiffs/respondents instead of passing the impugned judgement directing the defendant/appellant to quit and vacate the suit premises.

It is further adverted that learned Trial Court failed to appreciate the fact that plaintiffs were under obligation to prove the case. But the decree was granted banking upon the failure of the defendant. Leaned Trial Court had no reason to disbelieve Exhibit-A, the rent receipt and Exhibit-E, the passbook. An erroneous appreciation of evidence by learned Trial Court has made the judgement perverse.

It is argued further that there is no cogent document to hold that the suit property occupied by the defendant was originally under the occupation of Senguptas as tenant. Learned Trial Court failed to appreciate the fact that the defendant/appellant was never ever a licensee under Senguptas but a tenant under the predecessor in the interest of the plaintiffs and he was using the suit premises by installing electric meter in his own name and by paying rent to landlady.

Supporting the impugned judgement learned Advocate for the plaintiffs/respondents however, adverted that the defendant was never inducted as tenant in respect of the suit property either by the erstwhile owner/landlady or by the present owners. He has been possessing the property illegally. Exhibit-A, the so called rent receipt is manufactured one. It is adverted that the defendant/appellant neither is the owner of the property nor is a tenant or licensee. Therefore his possession in respect of the suit property is that of a trespasser and he is liable to be evicted.

Upon careful perusal of the evidence both oral and documentary we find that the plaintiffs/respondents purchased the suit house and became

joint owners on and from 8th January, 2001 prior to that their father used to stay over the said property as tenant under Subala Bala Sahu.

While adducing evidence PW 1 Saswata Bandyopadhyay, in reply to a question put by Court stated that the defendant has been staying in the suit premises since 1997. The suit premise is comprised of one room, bath room with privy on the ground floor of the suit house. PW 1 further stated that the said room was previously occupied by Sailesh Chandra Sengupta after his demise widow and son of Sailesh Chandra Sengupta surrendered their tenancy in favour of the land lady Subala Bala Sahu and the defendant became a trespasser. Exhibit-10 is the document regarding such surrender of tenancy. Upon perusal of the document we find that on 16th October, 2000 an agreement was entered into by and between Subala Bala Sahu and Mira Sengupta and another. From the recital of the said document we find that legal heirs of Sailesh Chandra Sengupta the original tenants were in possession of two bed rooms, one bath with privy, kitchen and verandah in portion of the ground floor of the suit premises. They delivered the peaceful vacant possession of the entire premises they used to occupy as tenant, to the land lady on 16th October, 2000.

Therefore, it can safely be presumed that the room in possession of the defendant/appellant i.e. the suit property is different from that of the property possessed by Sailesh Chandra Sengupta and after his death by his widow and son as tenant.

This document, Exhibit-10 negates the claim of the plaintiffs/respondents that the defendant/appellant was given possession

of one of the rooms occupied by Mira Sengupta and Sakti Prasad Sengupta while leaving the house in October, 2000.

Now, the question that calls for consideration is whether the defendant/appellant has been possessing the suit premises as a trespasser or he is tenant in respect of the suit property. As we have already pointed out from the oral testimony of PW 1 we find that defendant/appellant has been possessing the suit property since 1997. He is claiming to have been occupying the suit premises as a tenant and it is his further evidence that no tenancy agreement was entered into between him and landlady. As DW 1 the appellant filed one rent receipt which was admitted as Exhibit-A and he also submitted challans showing deposit of rent before the Rent Controller in favour of the Subala Bala Sahu collectively admitted as Exhibit-C. Exhibit-B is the electric bill standing in the name of the defendant/appellant.

Unlike the criminal proceeding, merely the rule that governs civil proceeding is that the fact can be said to be established if it is proved by preponderance of probability. Section 3 of the Evidence Act envisages that the fact is said to be proved, when the Court either believes it to accept or consider but so probable that a man of ordinary prudence, under the circumstance of the case can act upon the belief regarding the existence of that particular fact. This belief regarding the existence of particular fact may thus be found on the balance of probability or in other words a mere preponderance of probability may constitute the basis of decision.

As we have already pointed out Exhibit-10 the deed of surrender suggests that the erstwhile tenants delivered the suit property comprising of two bed rooms, one bath, privy, kitchen and verandah in portion of the ground floor. This document Exhibit-10, does not lend support to the claim of the plaintiff/respondent that Senguptas gave license to the defendant /appellant to occupy one of the rooms rather negates such assertion. Therefore, we do not find any reason to hold that the defendant/appellant was given license by the Senguptas in 1997. During cross-examination defendant/appellant as DW 1 stated that he has been occupying the suit property since 1990 as tenant.

The term tenant has been defined under the West Bengal Premises Tenancy Act, 1997 under Section 2 (g) which says :

“2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

(a) xxxxxxxx

(b) xxxxxxxx

(c) xxxxxxxx

(d) xxxxxxxx

(e) xxxxxxxx

(f) xxxxxxxx

(g) "tenant" means any person by whom or on whose account or behalf the rent of any premises is or, but for a special contract, would be payable, and includes any person continuing in possession after termination of his tenancy and, in the event of death of any tenant, also includes, for a period not exceeding five years from the date of death of such tenant or from the date of coming into force of this Act,

whichever is later, his spouse, son, daughter, parent and the widow of his predeceased son, who were ordinarily living with the tenant up to the date of death of the tenant as the members of his family and were dependent on him and who do not own or occupy any residential premises, and 2 [in respect of premises let out for non-residential purpose his spouse, son, daughter and parent who were ordinarily living with the tenant up to the date of his death as members of his family, and were dependant on him or a person authorised by the tenant who is in possession of such premises] but shall not include any person against whom any decree or order for eviction has been made by a Court of competent jurisdiction: Provided that the time-limit of five years shall not apply to the spouse of the tenant who was ordinarily living with the tenant up to his death as a member of his family and was dependent on him and who does not own or occupy any residential premises,

Provided further that the son, daughter parent or the widow of the predeceased son of the tenant who was ordinarily residing with the tenant in the said premises up to the date of death of the tenant as a member of his family and was dependent on him and who does not own or occupy any residential premises, shall have a right of preference for tenancy in a fresh agreement in respect of such premises 1 [on condition of payment of fair rent]. This proviso shall apply mutatis mutandis to premises let out for non-residential purpose.”

From the aforesaid definition we find that payment of rent is an essential element to constitute the tenancy. In other words, it is the pointer towards status of a person occupying a permises as tenant. Here in this case Madhusudan Ghosh while adducing the evidence produced single piece of rent receipt Exhibit-A claiming to have been issued by Subala Bala Sahu on 3rd January, 2001. From Exhibit-C we find that the

defendant/appellant deposited rent before the Rent Controller in favour of Subala Bala Sahu for the month of January, February, March, June, July and August, 2001. Exhibit-B, the electric bill, is for the year 2006.

It is contended by the plaintiff/respondent that Exhibit-A is a forged document and it does not bear signature of Subala Bala Sahu.

Our attention is drawn to the document Exhibit-1, Exhibit-10 containing the admitted signature of Subala Bala Sahu and Exhibit-A the purported rent receipt, that contains the signature of Subola Bala Sahu. Exercising our jurisdiction conferred under Section 73 of the Evidence Act when we compare the signatures appearing on Exhibit-A, Exhibit-10 and Exhibit-1 we do not feel any hesitation to say that signature appearing on Exhibit-1 and 10 are different from the signature on Exhibit-A. Exhibit-A does not contain signature of landlady Subala Bala Sahu. It contains the signature of Subola. That apart if not from 1990, admittedly the defendant/appellant has been possessing the property in suit since 1997. He failed to produce any rent receipt other than Exhibit-A to substantiate his claim to have been occupying the property as tenant. The claim of the defendant/appellant regarding payment of Rs. 10,000/- in the month of January, 2001 to the son of erstwhile owner of the property by cheque, in absence of any receipt, does not lead to us to hold that the said amount was paid towards rent. The challans obtained from the Office of the Rent Controller for the month of January, 2001 to August, 2001 showing deposit of rent in favour of Subala Bala Sahu also do not inspire any confidence in us to hold that the defendant/appellant

paid rent in discharge his obligation as tenant because by that time Subala Bala Sahu transferred the ownership of the property in favour of the plaintiffs. Therefore, the challans Exhibit-C series are also of no consequences. Installation of electric meter in the name of occupant is not an incident of tenancy. We find the appellant became proactive towards payment of rent only in the year 2001, that too after Subala Bala Sahu transferred her right. There is no explanation as to why the defendant/appellant did not take step against his landlady for receiving rent without rent receipt.

A person can occupy a property either as an owner, tenant, licensee or trespasser. Since the defendant/appellant, who wishes the Court to believe that he has been occupying the property as tenant, onus lies upon him to prove the same, under Section 103 of the Evidence Act. But he has failed to discharge his onus. 'Proof' means the effect of evidence adduced in the case judged by the standard of a man of ordinary prudence, the evidence led by the defendant/appellant cannot be said to be sufficient to hold that he was a tenant under Subala Bala Sahu.

Therefore, we can safely say that he was not a tenant under Subala Bala Sahu though he has been possessing the property since 1997 without any apparent resistance from the side of the erstwhile owner of the property. Thus, the status of the defendant/appellant could be that of a licensee under the original owner and he is not entitled to any statutory protection as is available to a tenant under the West Bengal Premises Tenancy Act, 1997. The owners of the property after filing a suit for

eviction of a person, occupying the suit property but not as tenant, when get a decree from the competent Court of law, we do not find any reason to interfere with such judgement and decree passed by the learned Trial Court.

The impugned judgement and decree passed by learned Trial Court is affirmed.

Consequently the appeal fails.

Copy of the judgement along with L.C.R. be sent down to the learned Trial Court immediately.

Urgent Photostat certified copy of this judgment, if applied for, should be made available to the parties upon compliance with the requisite formalities.

I agree

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)