

04 26.04.22

Ct. No. 04

Akd

S.A.T. 14 of 2015

With

CAN 1 of 2015 (Old No. CAN 12129 of 2015)

Ashalata Halder & Ors.

Vs.

Shri Shri Ishwar Dwadas Shib Thakur & Ors.

Mr. Basudev Gayen,

Mr. Debasis Nandi.

... for the appellants.

The suit for recovery of possession based on title filed by the plaintiffs/respondents was decreed by the Trial Court and affirmed by the first Appellate Court.

Indubitably, the property belonged to a Deity and the suit was instituted through Shebaites for recovery of possession treating the appellants as trespassers/licensee. The appellants claimed possession in respect of the suit property through his predecessor, namely Harendra Nath Halder, whose name would appear in the Record of Rights to have possessed as Dakholikar Chadina.

According to the appellants, such occupation is in respect of a 'bazar land' and, in fact, rents were paid to the Deity, which would be evident from the rent receipts issued in this regard. It is further pleaded that the appellants are non-agricultural tenants at the rent of Rs.9.50 per month according to Bengali Calender and, therefore, the status of tenant as alleged by the appellants as 'trespasser' is incorrect and not tenable. The plea of demur was also taken stating that the suit is bad for defect of parties and the plaintiffs/respondents deity is not properly and legally represented by the Shebaites/trustees.

The Trial Court did not accept the version of the appellants nor find any corroboration thereto and

held that the appellants are licensee and not non-agricultural tenants and, therefore, are not entitled to any protection under Section 3A of the West Bengal Land Reforms Act, 1955. The Appellate Court also affirmed the findings of the Trial Court negating the stand of the appellants, which is challenged in the instant appeal.

It is contended on behalf of the appellants that the moment the possession is found in respect of the suit property, which is non-agricultural, such possession would be construed under the Non-agricultural Tenancy Act and in view of incorporation of Section 3A of the West Bengal Land Reforms Act, 1955, the appellants cannot be dispossessed as the property stood vested with the State and they would be holding the land under the State.

It is further contended that both the Courts below have wrongly held that the appellants are the trespassers/licensee when the rent receipt being Exhibit – 'B' would clearly corroborate that the rent was received from the appellants by the plaintiffs/respondents and is a valid piece of evidence in support of the defence taken in the written statement.

To sum up the submissions so advanced the emphasis is traced upon the provisions contained in Section 3A of the said Act on the basis of the rent receipts exhibited in the case as well as the entry made in the Record of Rights, which shows the occupation as Chadina.

At the first blush, the aforesaid argument advanced before us appeared attractive and a fit case for admission under Order XLI Rule 11 of the Code of Civil Procedure, but after inviting the learned Counsel for the appellants to produce the relevant Exhibits, which have been dealt with in the said

judgement, we find such contention has virtually become academic.

It is undisputed that the appellants faced two suits filed by the plaintiffs/respondents. The present suit being Title Suit No. 42 of 1997 pertains to plot no. 1293/19937, whereas another suit is filed by the same plaintiffs/respondents against the appellants being T. S. No. 32 of 1998 in respect of a plot no. 1293/19931. Though the instant suit was instituted earlier but the later suit was allowed to be continued and ultimately decreed on 29th July, 2000. The judgement and decree of the said suit was carried to Appellate Court in T. A. no. 127 of 2000 and the Appellate Court declined to interfere with the judgement and decree passed in the said suit. The Second Appeal was further dismissed and thereafter the same was not carried further and, therefore, it can be reasonably inferred that the said judgement has attained finality.

From the categorization of plot number it can be reasonably inferred that originally the entire plot was numbered as 1293 and the aforesaid two plots being the subject matter of the aforesaid two suits were dissected therefrom and renumbered in such fashion, which make it distinct and separate.

The predecessor of the appellants claimed possession in respect of both the plots on a categorical stand that the possession is in lieu of payment of rent to the plaintiffs/respondents. The similar and identical defence was taken in the other suit, which attained finality, that the possession of the predecessor was not a licensee but non-agricultural tenants. The aforesaid fact can be discerned from the certified copy of the judgement rendered in T.S. 32 of 1998 and marked Exhibit – '9' in the instant suit. Issue nos. 4 and 5 of the said T.S.

32 of 1998 are relevant for the present purposes.

The aforesaid issues pertain to whether the predecessor of the appellants was a licensee or a non-agricultural tenant or a trespasser in respect of the suit property. It is relevant and important to record that in the said suit as well the occupation was shown as Chadina and interpretation is sought to be made that it relates to an occupation of a non-agricultural tenant and, therefore, the stand of the plaintiffs/respondents that the appellants are trespassers/licensee is not tenable.

The Trial Court categorically observed that such right is neither transferable nor heritable, therefore, the status of Harendra Nath Halder, the predecessor of the present appellants, cannot be elevated above the status of a licensee; in other words, it has been held that the predecessor of the appellants was, in fact, the licensee, which is distinct and separate from the concept of non-agricultural tenant. Such finding stood affirmed up to this Court and, therefore, the appellants cannot take a contrary stand to what has been decided finally.

Both the occupations in the respective plots appeared to be identical and similar and if in one proceeding the Court has held that such occupation is akin to a licensee and not a non-agricultural tenant, the appellants cannot take such plea again in another suit, if the common points or the issues are involved. In the said suit the nature of occupation was considered and decided against the appellants on its contention of non-agricultural tenancy. Such finding on the issue remained binding upon the appellants even in another suit from which the present appeal has arisen.

The moment the status of Harendra Nath Halder is declared as licensee and not a non-agricultural

tenant, the appellants being the heirs cannot claim a better title than the title of their predecessor.

Under the law of succession the heir inherits the estate of a predecessor and is precluded from claiming any status in consistent or contrary to the status of the predecessor. There is a distinction between a licensee and tenancy. The broader distinction being that in case of licensee the possession remains with the licensor; whereas in case of tenancy the possession is divested or given to the tenant.

Since the Court has found the appellants to be licensee, which connotes that the predecessor of the plaintiffs/respondents was not in exclusive possession but in permissive occupation, the plea of non-agricultural tenancy is not available and cannot be accepted.

We thus do not find any substantial questions of law involved in the instant appeal.

The appeal is dismissed. The connected application is dismissed accordingly.

There will be no order as to costs.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)

