

DL. February
7. 15, 2022

F.A.T. 131 of 2018

M/S. Paul Variety Stores

Vs.

Sri Ashoke Kumar Paul

Ms. Shohini Chakraborty,
Ms. Prajaaini Das,
Mr. Amit Choudhury,
...for the appellant.

Mr. Amitava Pain,
Ms. Manideepa (Paul) Roy,
...for the respondent.

Although the matter is appearing under the heading “application”, by consent of the parties, we take up the appeal itself for consideration treating the same as on day’s list.

This appeal is directed against judgement and decree dated November 7, 2017 passed by the learned Judge, Second Bench, City Civil Court at Calcutta, in a suit for eviction of the licensee being Title Suit No. 1601 of 2011.

The plaintiff/respondent instituted the suit for eviction against the defendant/appellant in respect of one room which, according to the plaintiff, was given under licence to his brother being the defendant. In the suit, a dispute arose with regard to the nature of tenancy.

The defendant/appellant, in the written statement, has taken a plea that there is only one tenancy in respect of one room, which is extended to the southern portion under tenancy and that there has been a mis-description in the schedule of the plaint.

Ms. Shohini Chakraborty, learned advocate appearing on behalf of the appellant, submits that the trial court has completely misdirected its mind in relying upon the written statement to hold that there is a document in favour of the respondent with regard to existence of two separate rooms and such misreading of the relevant pleadings in the written statement has resulted in a perverse finding.

The learned advocate appearing on behalf of the decree holder/respondent, however, submits that it is clear from the pleadings of the parties that the parties were fully aware that there were two rooms – one was given under tenancy and the other was under leave and licence.

In support of his contention, the respondent has relied upon the application made under the Right to Information Act before the Kolkata Municipal Corporation on February 17, 2021 wherein an enquiry was sought with regard to number of rooms under occupation of the defendant/appellant. In reply to such queries, Kolkata Municipal Corporation informed that Dilip Kumar Paul is carrying on his business under the name and style “Pal Variety Stores” occupying two rooms.

Although the said document was marked as Exhibit with objection, but from the evidence adduced by the parties in respect of the aid document, it is clear that there is no effective denial by the defendant/appellant with regard to existence of two rooms from which Pal Variety Stores was carrying on its business. Once the said document was tendered in evidence and not being rebutted by any contrary evidence, the onus is on the

defendant/appellant to establish that the recording in the said document is incorrect. The defendant/appellant was in possession of best evidence to contradict the information furnished by Kolkata Municipal Corporation. The information came from an independent public body on the basis of the records maintained by the said authority. The evidentiary value of the said document cannot be discarded.

On such consideration, we do not find any reason to interfere with the judgment and decree passed by the learned trial judge.

The appeal, therefore, fails and the same is, accordingly, dismissed. .

In view of disposal of the appeal, nothing remains in the application for stay filed under CAN 5003 of 2019 and the same is also dismissed.

There will be no order as to costs.

(Soumen Sen, J.)

(Ajoy Kumar Mukherjee, J.)