

29.08.2022

Sl. 5

Ct.No. 3

Amalranjan

(Via Video Conference)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

SA 124 of 2022

With

CAN 1 of 2022

Saraswati Singh & Anr.

Vs.

Jasimuddin Ahamed

Mr. Partha Sarathi Bhattacharyya, Sr. Adv.

Mr. Mihir Kundu

Mr. Raju Bhattacharyya

Mr. Arunava Maity

Mr. Tanweer J. Mandol

...for the appellants/plaintiffs

Mr. Arijit Bardhan

Mr. Salman Hasan

...for the respondent/defendant

Re: CAN 1 of 2022 (Stay)

We have examined the impugned judgment and decree dated 6th January, 2022 of the learned District Judge, Malda in Title Appeal No. 43 of 2018.

Several issues were involved in that appeal, the most fundamental of which was whether there was due determination of the monthly tenancy by the appellants upon service of a notice under Section 106 of the Transfer of Property Act, 1882 upon the respondent.

We find that the learned first court and the learned first appellate court have not addressed themselves adequately to these issues. Whereas the learned first court has opined that upon proof of despatch of the notice, the burden of proof shifted to the tenant, the learned first appellate court went further, holding the plaintiffs had not been able to prove service of the said notice.

Proof of proper service of the said notice is, in our opinion, the backbone of this proceeding.

The plaintiffs were under an obligation to furnish more substantial evidence or argument to support his case of proper issuance and service of the said notice under Section 106 as this fact was within their special knowledge.

The defendant need not have furnished any further proof apart from saying that he did not receive the notice. He was not required to furnish proof of non-service i.e., how the notice was handed over to the postal authority and was lost in transit etc. etc.

The other issues would only become germane on proof of the above issue.

In those circumstances, we set aside the judgment and decree dated 6th January, 2022 and remand the matter back to the learned court

of the District Judge, Malda, with a direction that the issue regarding service of notice under Section 106 of the Code of Civil Procedure shall have to be decided afresh.

Upon determination of the said issue the other issues may be re-adjudicated if necessary.

In exercise of his powers under order 41 of the Code of Civil Procedure the learned Judge will be at liberty to invite further evidence to be adduced in the matter.

We request the learned District Judge, Malda to decide afresh this appeal as early as possible not later than 31st December, 2022.

The appeal and the connected application are disposed of.

(Subhendu Samanta,J.)

(I. P. Mukerji,J.)