

Form No. J (1)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION

Present:

The Hon'ble Justice Biswajit Basu.

SA No. 110 of 2018

CAN 02 of 2021

SRI HEMANTA KUMAR PRASAD

VS.

***SRI SRI LAKSHMI NARAYAN JEW REPRESENTED BY ITS SEBAIT
NAMELY SRI SWAPAN KUMAR DAS & ANOTHER***

For the appellant:

Mr. Aniruddha Chatterjee,
Mr. Debabrata Roy,
Mr. Abir Lal Chakraborti.

For the respondents:

Mr. Tarak Nath Halder.

Heard on : 06.07.2022, 13.07.2022, 25.07.2022

Judgment on : 24.08.2022

Biswajit Basu, J.

1. This is tenant-defendant's appeal against the appellate decree of eviction. The plaintiffs, the respondents herein filed the connected ejectment suit before the Additional Court of learned Civil Judge(Junior Division), Sealdah being Ejectment Suit No. 491 of 2004 for eviction of the appellant from a self-contained flat consisting of three rooms, one kitchen, one bathroom and one veranda situated at the ground floor of the suit premises

(hereinafter referred to as the 'suit flat' in short). The eviction of defendant from the suit flat although was sought for on several grounds but the main thrust was on the personal requirement of the plaintiffs for the suit flat.

2. The plaint case in short is that the paternal grandparents of the plaintiffs by a deed of Arpannama dated November 18, 1935 settled the suit premises in favour of 'Sri Sri Lakshmi Narayan Jew' whereby they appointed themselves as the sebais of the said deity and nominated their only son, the father of the plaintiffs to succeed to their said office after their death. The father of the plaintiffs by an agreement dated July 16, 1986 inducted the defendant as a tenant of the suit flat for a period of three years on a rent @ ₹ 550 per month payable according to English calendar. The said tenancy was extended for a further period of three years by a subsequent agreement dated July 1, 1989 with an enhanced rate of rent @ ₹ 575 per month. The father of the plaintiffs on March 25, 1985 executed a deed of trust appointing the plaintiffs as the sebais of the said deity and beneficiaries of the said the debuttar estate, as such, on the death of their father, the plaintiffs have become sebais. The plaintiffs alleged that they are in possession of twelve rooms in the suit premises, which is far less than their requirement and sought eviction of the defendant from the suit flat on the said ground. The plaintiff no. 2 is a practicing advocate, he under compelling circumstances and in serious detriment to the privacy of his family, is using the drawing room at the first floor of the suit premises as his chamber. The suit flat is on the ground floor of the suit premises and is on the main road, as such it is absolutely suitable as the chamber of the plaintiff no 2. The wife of plaintiff no. 2 is an educated lady, she wants to

run a coaching class but is unable to do so due to dearth of accommodation. The tenant of the non-suit flat at the ground floor of the suit premises has kept it under lock and key.

3. The defendant in his written statement denied the plaint case and alleged that the requirement of the sebais cannot be equated with the requirement of the deity. He disputed the *bona fide* requirement of the plaintiffs for the suit flat alleging that the plaintiff no. 1 is currently residing at Siliguri and has suppressed the fact that he has a flat at Bangur Avenue, Kolkata. The defendant further denied that the non-suit ground floor flat is under possession of another tenant and alleged that the plaintiffs have kept the said flat under lock and key. The defendant also challenged the legality and validity of the notice of eviction.

4. The learned Trial Judge, by the judgment and decree dated August 30, 2014 held that the plaintiffs have a cause of action to file the said suit for eviction, overruled the defendant's objection as to the legality and validity of the notice of eviction and held that the plaintiffs who are the landlords have not done any mistake in praying for eviction on the ground of their personal requirement, nonetheless the learned Trial Judge dismissed the suit holding that the plaintiffs have suppressed the availability of an alternative accommodation of the plaintiff no. 1 and have also failed to prove that they reasonably require the suit flat for their own use and occupation.

5. The plaintiffs, aggrieved by and dissatisfied with the said judgment and decree of the learned Trial Judge, preferred an appeal before the 2nd Court of learned Additional District Judge, Sealdah, District-24 parganas

(South) being Title Appeal No. 2 of 2015. The Appeal Court below on the assessment of the materials-on-record, particularly the two Commissioners' reports, by the impugned judgment and decree dated January 31, 2018 has reversed the judgment and decree of the learned Trial Judge and decreed the suit holding that the plaintiffs have been able to prove their reasonable requirement for the suit flat.

6. The following substantial questions of law have been formulated in the instant second appeal. The appeal was admitted under Order XLI Rule 11 of the Code of Civil Procedure to answer the first substantial question of law, the rest have been formulated as additional substantial questions of law:-

- I. Whether the personal requirement of the sebaite ought to be regarded as the requirement of the deity in terms of the provisions of the relevant deed of dedication?**
- II. Whether the finding of the appeal Court below that the plaintiffs reasonably require the suit property for their own use and occupation is based on evidence-on-record or contrary to it?**
- III. Whether the Appeal Court below has committed substantial error of law in discarding Exhibits 'e', 'f' and 'g' for not being public documents to hold that the non-suit flat at the ground floor of the suit premises is under occupation of another tenant Sri Pravin Jain?**
- IV. Whether the Appeal Court below has committed substantial error of law in not dismissing the suit for suppression of facts of availability of suitable alternative accommodation to the plaintiff no. 1 since the said suppression affects the bona fide of the requirement of the plaintiffs?**

7. The learned advocate for the appellant on the above mentioned substantial questions of law submits as follows:-

(i) The suit premises admittedly belongs to the deity and the plaintiffs being its Sebaitis, in terms of the deed of Arpannama(Exhibit 1), are only entitled to enjoy a part of the suit premises, rest is to be let out to fetch income for the deity, the suit flat falls in the said rest part, therefore the personal requirement of the plaintiffs cannot be equated with the requirement of the said deity but the Appeal Court below has failed to appreciate this aspect of the matter, consequently has committed substantial error of law in equating the requirement of the plaintiffs with the requirement of the deity.

(ii) The evidences on record, particularly the reports of the two Commissioners would demonstrate that the accommodation available to the plaintiffs in the suit premises is more than what they require, the findings of the Appeal Court below that the plaintiffs have been able to prove their requirement for the suit flat is based on no evidence, rather the said finding is contrary to the evidences on record, as such perverse.

(iii) The Chief Manager(Revenue) of the Kolkata Municipal Corporation by his letter dated January 17, 2013 replied to the defendant's application under the Right to Information Act, 2005 and supplied the names of the tenants of the suit premises recorded in the inspection book in respect of the said premises where the name of said Sri Pravin Jain, the alleged tenant of the non-suit ground floor flat does not find place, absence of the name of the said alleged tenant clearly signifies that there is no such tenant of the

said non-suit flat, as soon as such evidence came into the record, onus shifts upon the plaintiffs to prove that the said non-suit flat is under occupation of the said alleged tenant, the plaintiffs could have discharged their said obligation by citing the said alleged tenant as witness, but did not do so. That being the position, the appeal Court below has committed a substantial error of law in discarding the Exhibits 'e', 'f' and 'g' to come to a finding that the said flat is under the occupation of the said tenant relying on the alleged rent receipts relating to the tenancy in respect of the said non suit ground floor flat being Exhibit 12(series).

(iv) The plaintiff no. 1 has a flat at Bangur Avenue, Kolkata but the plaintiffs to project their artificial requirement for the suit flat have suppressed the said fact, the said suppression affects the bona fide of the requirement of the plaintiffs as such the plaintiffs are not entitled to a decree of eviction on the ground of their bona fide requirement.

8. In response to the above arguments, the learned counsel for the respondents submits as follows:-

(i) The plaintiffs are admittedly the landlords of the defendant as such neither the defendant is entitled to question the ownership of the plaintiffs over the suit premises nor the plaintiffs are required to prove their such ownership to succeed in a suit for ejectment on the ground of their bona fide requirement under section 6(d) of the West Bengal Premises Tenancy Act 1997, therefore the plaintiffs being the Sebaites of the deity and the beneficiaries of the Debutter estate can maintain the suit for ejectment of a tenant of the Debutter estate for their bona fide personal requirement. The

suggestion of the tenant to split the requirement of the sebit from the requirement of the deity is mala fide and speculative.

(ii) The plaintiffs are in possession of two bed rooms, one drawing room, one dining room, one kitchen, bath and privy in the first floor of the suit premises, one Thakur Ghar and one dilapidated room on the roof of it. The plaintiffs' such possession would be evident from the Commissioner's reports. The plaintiffs' requirement of one bed room for himself, one bed room for his adult daughter, one dining room, one kitchen and one Thakur Ghar, two bed rooms for occasional visits of two married sisters, one bed room for occasional visits for plaintiff no. 1 and his wife and one bed room for the adult daughter of the plaintiff no. 1, even on conservative assessment cannot be termed as fanciful. On the contrary, the said requirement is an absolute necessity. That apart, the plaintiff no. 2 is a practicing lawyer, he has no separate chamber in the suit premises, as such he is using the drawing room at the first floor of the suit premises for his professional work. The suit flat is absolutely befitting for use of the chamber of the plaintiff no. 2 whereas the tile shed rooms in the eastern side of the suit premises are not at all suitable to meet the requirements of the plaintiffs. The decision of the Hon'ble Supreme Court in the case of **RAGA VENDRA KUMAR vs. FIRM PREM MACHINERY & CO.** reported in **(2000) 1 SCC 679** is cited for the proposition that the landlord is the best judge of his own requirement and has complete freedom in the matter.

(iii) The inspection book of a municipality is not admissible in evidence as such the learned Trial Judge, by discarding the rent receipts produced by

the plaintiffs in respect of the tenancy of the non-suit ground floor flat, had committed a grave error of law in relying on the information supplied by the Kolkata Municipal Corporation regarding the entries of the information book in respect of the suit premises to hold that there is no such tenant in the suit premises named Sri Pravin Jain. Reliance has been placed on the decision of the Hon'ble Division Bench of this Court in the case of **DIPEN DUTTA & ORS. vs. KASHINATH MONDAL** reported in **93 CWN 1045** and the decision of the learned Single Judge of this Court in the case of **JITENDRA JOARDAR vs. MAKHAN LAL** reported in **61 CWN 175** for the proposition that entries in the inspection book of the lands and buildings maintained by Kolkata Municipal Corporation are not relevant under Section 35 of the Evidence Act, 1872, as such not admissible. Therefore, the Appeal Court below has rightly discarded the Exhibits 'e', 'f' & 'g' in holding that the non-suit ground floor flat is under the occupation of another tenant.

(iv) The plaintiff no. 1 is a Sebait and the beneficiary of the debuttar estate as such his requirement at least for a bed room for his occasional visits in the suit premises cannot be termed as far-fetched as such plaintiff no. 1's availability of an accommodation far away from the suit premises neither affects his such requirement nor the non-disclosure of the ownership over the said flat is a suppression of material fact which can affect the maintainability of the suit.

9. I have heard the learned counsel for the parties and have thoroughly perused the materials-on-record. Let me now proceed to deal with the formulated substantial questions of law *seriatim*.

I. The first substantial question of law:-

The defendant objected to the maintainability of the suit alleging that the plaintiffs are the Sebaitis of the deity and they are holding the Debutter Estate as such, therefore, not being the owner of the said Estate neither can they maintain the suit nor their personal requirement can be considered as the requirement of the deity.

The learned Trial Judge overruled the said objection holding that the plaintiffs praying eviction of the defendant on the ground of their reasonable requirement have not committed any wrong as they are the landlords of the defendant.

The defendant since has accepted the said findings of the learned Trial Judge without challenge, it is not open to him to re-agitate the said issue in the second appeal. Moreover, the plaintiffs need not be the owners of the suit property, the existence of jural relationship of landlord and tenant between the parties to the suit is sufficient to maintain a suit for eviction under Section 6 of the West Bengal Premises Tenancy Act, 1997 on the ground of reasonable requirement as envisaged under Section 6(d) thereof. The first formulated substantial question of law is therefore, answered in affirmative.

II. The second substantial question of law:-

The suit premises has two parts. A two storey building facing the corporation road is situated in the front portion of the suit premises and the tile shed rooms are in the back of it.

The learned Trial Judge on the basis of the first commissioner's report (Exhibit. 13) held that in the first floor of the said building the plaintiffs have available accommodation and on the basis of the other commissioner report, (Exhibit. C) held that they have also available accommodation in the back portion of the said building.

The appeal Court below on reassessment of the said two exhibits opined that the available accommodation in the first floor of the said building is not sufficient to meet the requirements of the plaintiffs, besides the suit flat is the only suitable available accommodation for the plaintiff no. 2 to run his chamber and it is also fit to be used as coaching class of his wife. The tile shed rooms at the rear part of the suit premises cannot substitute the said requirement of the plaintiff no. 2 or of his wife.

The correctness of the reassessment of the said two exhibits need not be gone into for the simple reason that the suit flat being situated in the ground floor and it is on the corporation road, therefore, only available accommodation befitting for the said uses of the plaintiff no. 2 or his wife. The law is well settled that the landlord has complete freedom in judging his requirement, the decision of the Hon'ble Supreme Court relied by Mr. Haldar reported in **(2000) 1 SCC 679 (supra)** is an authority for the said proposition.

The appeal Court below, therefore, has rightly reversed the findings of the learned Trial Judge on this issue and the findings of the appeal Court below that the plaintiffs have been able to prove their *bona fide* requirement do not suffer from any perversity, it is based absolutely on the materials-

on-record. The second formulated substantial question of law is therefore, answered accordingly.

III. The third substantial question of law:-

The plaintiffs have alleged that one Sri. Pravin Jain is the tenant of the non-suit ground floor flat who has kept the said flat under lock and key. The plaintiffs to prove the said tenancy, produced and proved the rent receipts issued to the said tenant which were marked Exhibit 12(series) in the said suit, in contrast, the defendant proved the Exhibits 'e', 'f' and 'g' i.e. his applications to the appropriate authority of the Kolkata Municipal Corporation under the Right to Information Act, 2005 and the reply thereto. In the said reply, the names of the tenants recorded in the inspection book of the suit premises were supplied wherein the name of the said tenant of the non-suit ground floor flat did not find place.

The learned Trial Judge discarded the Exhibit. 12(series) on the ground that the Exhibit 'f' being a public document is more reliable than the rent receipts being the private documents, consequently held that the plaintiffs have failed to prove that the said Pravin Jain is the tenant of the said non-suit flat.

The appeal Court below reversed the said findings holding that the inspection book of the Kolkata Municipal Corporation is not admissible in evidence and placed reliance on the said rent receipts to hold that the said non-suit flat is under occupation of the said tenant.

Under Section 35 of the Evidence Act, 1872 any entry in any public or other official book, register stating a fact in issue or relevant fact made by a public servant in discharge of his official duty is relevant, the absence of an entry is not, therefore, the absence of the name of Sri. Pravin Jain in the extract of the said inspection book is not relevant to the fact in issue. On the contrary, the rent receipts in respect of the said non-suit ground floor flat being proved without objection firmly establishes the case of the plaintiffs that the said flat is under occupation of a tenant.

Besides, the inspection book of lands and buildings maintained by Kolkata Municipal Corporation is not a public document as has been decided by the Hon'ble Division Bench of this Court in the case reported in **93 CWN 1045(supra)** and by the learned Single Judge of this Court in the case reported in **61 CWN 175 (supra)**.

The learned Trial Judge fell in error in treating Exhibit. 'f' as a public document and in giving more credence to the said exhibit than the Exhibit 12(series). The appeal Court below therefore has rightly discarded the said Exhibits. 'e', 'f' and 'g' and in reversing the finding of the learned Trial Judge on this issue relying Exhibit 12(series).

The third formulated substantial question of law therefore is answered in negative.

IV. The fourth substantial question of law:-

The plaintiffs are admittedly the Sebaitis of the Debutter Estate. The plaintiff no. 1 may not reside regularly in the suit premises but he deserves

allocation in the suit building, at least of one room for his occasional visits. The availability of a flat far away from the suit premises neither can substitute the said requirement of the plaintiff no.1 nor the non-disclosure of the availability of such accommodation can affect the bona fide of the requirement of the plaintiffs, particularly when the suit can be decreed on the requirement of the plaintiff no. 2 alone.

The fourth formulated substantial question of law therefore is answered in negative.

Conclusion:-

SA 110 of 2018 is dismissed with costs of **Rs. 10,000/- (Rupees Ten Thousand only)**, the judgment and decree dated January 31, 2018 passed by the 2nd Court of learned Additional District Judge Sealdah District. 24-Parganas (South) in Title Appeal No. 02 of 2015 is hereby affirmed. The plaintiffs are entitled to realise the arrear occupational charge, if there be any, in accordance with law.

CAN 02 of 2021

This is an application for modification of the order dated March 09, 2021 whereby the appellant was directed to pay occupation charges @ Rs. 9000/-per month as the condition for stay of all further proceedings of the Execution case levied to execute the decree of eviction, in view of the disposal of the present second appeal, the application has become infructuous and CAN 02 of 2021 is dismissed as such without any order as to costs.

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

(BISWAJIT BASU, J.)

After delivery of this judgment, Mr. Halder, learned advocate for the respondents prays that the Lower Court records be sent down immediately to the Court below by special messenger at the costs of his clients.

The department is directed to send down the Lower Court records to the Court below by special messenger at the costs of the respondents, such costs be put in by August 26, 2022.

(BISWAJIT BASU, J.)