

02 **20.01.22**

Ct. No. 04

Akd

S.A.T. 88 of 2020

With

CAN 1 of 2020

Akhilesh Bagchi & Ors.

Vs.

Swapn Kumar Dutta & Ors.

Mr. Partha Pratim Roy,

Mr. Satyam Mukherjee.

... for the appellants.

The instant Second Appeal has arisen from a judgement and decree dated 23rd December, 2019 passed by the learned Additional District Judge, Fast Track Court, Rampurhat, Birbhum in Title Appeal No. 08 of 2018 affirming the judgement and decree dated 15th November, 2017 passed by the learned Civil Judge (Junior Division), 2nd Court, Rampurhat, Birbhum in Title Suit No. 33 of 2013.

The suit for recovery of possession upon revocation of licence was filed by the plaintiffs / respondents against the defendants / appellants with the categorical assertion that one Sudhir Kumar Dutta, the predecessor of the plaintiffs/respondents, permitted the defendants/appellants to use the suit premises and upon his death and on the request of the appellants such permission was extended by the plaintiffs / respondents. Subsequently, such permission was revoked but despite such revocation the appellants did not hand over the possession thereof.

The appellants took a defence that they were inducted as tenants in respect of the suit premises at monthly rent of Rs.40/- per month and, therefore, the allegation that they were the licensee is the outcome of concoction aimed at to get away with the appellants. Further defence was taken that the appellants have raised permanent construction on

the suit property and, therefore, in view of Section 60 of the Easement Act the protection against eviction has been extended to them.

Both the Courts below disbelieved the story of tenancy having created in respect of the suit property in favour of the appellants and further found that the plea of Section 60 of the Easement Act is unsupported and unfounded in absence of any corroborative evidence.

Mr. Roy, learned Advocate appearing for the defendants/appellants, submits that admittedly the appellants have raised permanent construction on the suit property and, therefore, the decree of eviction was passed without ascertaining the cost of the construction and relief for disbursement thereof and, accordingly, the judgements of both the Courts below warrant interference, as the same being the integral part of the substantial questions of law.

Our attention is drawn to the evidence of the plaintiffs' first witness, where he admitted that there has been a construction at the behest of the appellants to the extent of a bathroom and a room; but there was no permission sought for.

Section 60 of the Easement Act cannot be made applicable unless there are convincing materials forthcoming in course of the evidence that such construction was permitted to be made by the owner. The Appellate Court further found that there is no material forthcoming in this regard nor there is any iota of piece of evidence produced by the appellants.

It is no doubt true that some immunity has been provided under Section 60 of the Easement Act, but it is circumscribed with further conditions and unless such conditions are eminent and cogent evidence is adduced in this regard, the Court shall not extend such benefits. Furthermore, the

Easement Act has not been extended to the State of West Bengal as yet. However, the principles relating to justice, equity and good conscience applies in a case pertaining to the provisions contained in the Easement Act.

There is an uniform findings of both the Courts below that the appellants have failed to prove not only the case pertaining to the tenancy having created in respect of the suit premises, but also the immunity provided under Section 60 of the Easement Act. Apart from the same, once a plea has been taken that the appellants are the tenants in respect of the suit property, the other plea relating to protection under Section 60 of the Easement Act appears to us a mutually inconsistent if not destructive.

From whatever angle we look at the matter, we do not find that the instant appeal involves any substantial question of law.

Accordingly, the appeal is dismissed under Order XLI Rule 11 of the Code of Civil Procedure. Consequently, the application being CAN 1 of 2020 is also dismissed.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)

