

**Smt. Swarna @ Swaraja Bhagat & Ors.
Vs.
Smt. Sita Devi Shaw & Ors.**

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The appeal appeared in the warning list on 16th November, 2022. Thereafter transferred to the regular list on 21st November, 2022 and since then the matter is appearing in the list. The appellants are deemed to have knowledge of the matter, in spite of thereof, the appellants are not represented.

The appeal was filed with deficit court fees along with various other defects, as would appear from the report filed by the stamp reporter dated 9th March, 2016. On 11th October, 2018 a coordinate bench recorded that the appeal is defective and directed the appellants to remove the defects, as indicated by the stamp reporter.

The appellate judgment and decree dated 27th July, 2015 passed by learned Additional District Judge, Fast Track Court-I at Sealdah in Title Appeal No. 2 of 2014 affirming the judgment and decree dated 30th August, 2011 passed by learned Civil Judge (Junior Division), First Court at Sealdah, in Title Suit No. 57 of 2001 is the subject matter of challenge in this second appeal.

The suit was decreed on the ground of reasonable requirement. The trial court relied upon the report filed by the Commissioner on 26th July, 2017. The Commissioner was also examined.

In the suit the plaintiff claimed reasonable requirement of the suit premises for his own use

and occupation. P.W 1 in his evidence stated that the plaintiff has three rooms, one open verandah with roof, one latrine and bath in the suit premises i.e., at B-23/H/1, B.T Road, P.S Chitpur, Kol-2. The family of the plaintiff consists of the plaintiff himself, his wife, 5 adult sons, who are marriageable in age but for want of suitable sufficient accommodation the plaintiff could not proceed with their marriage. The plaintiff has no other reasonable suitable accommodation elsewhere, however, the plaintiff is also the owner of the thika tenanted property known as 22/1, B.T Road, P.S Chitpur, Kol-2. In the said premises the plaintiff has in his occupation one motor cycle repairing shop room in the ground floor and one small room in the first floor used as residential purpose of the workers of the said Motor cycle repairing business.

The said motor cycle repairing business is conducted by the elder son of the plaintiff. The plaintiff has trade licence of the said business. Due to paucity of accommodation the said business also cannot be extended. He said that the property at 22/1, B.T Road, is double storied mud kotha. There are three rooms in the first floor. The defendant was present at the time of commission at premises no. 22/1, B.T Road. The defendant, at the time of the cross-examination, submitted that the landlord/plaintiff had 5 sons and they are adult. The plaintiff claimed that he had three rooms along with verandah, latrine and bath. The defendant himself admitted that the plaintiff has 5 adult sons. So the minimum requirement for the living purpose for the plaintiff and his family

should be at least 6 rooms and also the kitchen, bath and privy. Though the defendant claims that the plaintiff has separate accommodation at 22/1, B.T Road, Kolkata-2 and claims that it is adjacent to the suit premises but he admits that he has no document to show that the plaintiff is the owner of that property. From the local inspection report it appears that only 2 rooms are in possession of the plaintiff in 22/1, B.T Road, and he claims that there are 5 tenants in the suit premises i.e. at 23/1 B.T Road and from the local inspection of the commissioner's report it appears that there are 5 rooms in possession of the plaintiff in the suit premises. The court cannot direct the landlord to split up his family on the ground that it will cause hardship to the defendant/tenant.

On the aforesaid basis, the suit was decreed by the trial court and affirmed by the first appellate court.

The requirement of the suit rooms appears to be bona fide, honest and not illusory. The concurrent findings of facts are not likely to be interfered with unless it is perverse.

On such consideration, the appeal accordingly fails.

The second appeal is, therefore, summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure at the admission stage.

We could have dismissed the second appeal due to non-payment of deficit court fees but we are of the view that the appellants have deliberately kept the matter pending without removing the defects realising that there is no merit in the second appeal.

There will be no order as to costs.

This order shall be immediately communicated to the learned Civil Judge (Junior Division), First Court at Sealdah, in Title Suit No. 57 of 2001 for information and doing the needful.

Registrar (L & OM) is directed to ensure the compliance of this order.

(Uday Kumar,J.)

(Soumen Sen, J.)