

Item 27. 06-06-2022

SAT 172 of 2017

sg Ct. 8

Anjali Pal & Anr.
Versus
Radha Krishna Pal, since deceased,
represented by his legal heir Debkanta Pal & Ors.

Mr. Gopal Chandra Ghosh, Adv.
...for the appellants

Mr. Sailesh Kumar Gupta, Adv.
...for the respondent No.1

The second appeal has come up for admission.

The appellants have suffered decrees in both the courts below. The second appeal is directed against the decree of affirmation passed by the learned Civil Judge (Senior Division), 10th Court at Alipore in Ejectment Appeal No. 3 of 2014 affirming the judgment and decree dated 27th September, 2013.

Mr. Goutam Chandra Ghosh, the learned Counsel appearing on behalf of the appellants submits that both the courts below have completely misdirected its mind in not appreciating that the defendants are the co-owners of the suit property and the relationship of the landlord and tenant never existed between the parties. It is submitted that the father of the appellants, namely, Sudhir Chandra Pal, has constructed a tile and tin shed structure in the year 1942. Since then, Sudhir Chandra Pal was in continuous and exclusive possession of the suit property. Both the courts on wrong appreciation of evidence arrived at an erroneous conclusion that the appellants are tenants under the plaintiffs. The findings with regard to reasonable requirement is also perverse as the plaintiffs have failed to establish that the space for which they are

carrying on their business is not sufficient.

We have considered both the judgements in detail. The partition deed marked as exhibit 20 read with rent receipts marked as exhibit 8 series and the record of rights marked as exhibit 3 conclusively prove the ownership of the plaintiffs in the suit property and the relationship of landlord and tenant between the parties. The clear findings of fact in exhibit 8 establishes the landlord and tenant relationship. The defendants at their own peril did not take any steps under Section 7(2) of the West Bengal Premises Tenancy Act and, accordingly, at this stage, the defendants/appellants have to suffer consequence of non-complying with the said provision of law. The report of the Advocate Commissioner read with exhibit 21 and exhibit 13 clearly establish that the business is being carried on within the premises of the plaintiffs and there has been no unauthorised use of any portion of any land belonging to the defendants.

There are concurrent findings of fact with regard to the reasonable requirement. The requirement of the plaintiffs has to be given due importance and the court cannot sit over the need of requirement of a premises and the nature of such requirement unless it appears to the Court that such claim is illusory. It cannot be said that for the purpose of carrying on a business for construction, the plaintiff would require a larger space than what is presently under their possession. The defence was that the portion wherefrom they are carrying on such business is unauthorised and belonging to the defendant. Even if one accepts the said submission and once it is established that the plaintiffs are carrying on business within their own premises which is

insufficient, then it defeats the claim of the defendants to deny eviction on the ground of reasonable requirement. The Commissioner's report clearly establishes that the space is inadequate and the plaintiffs are carrying on business within their suit premises.

Both on the ground of default and reasonable requirement, the suit succeeded and we do not find any reason to interfere with such concurrent findings of facts arrived at by both the Court.

On such consideration, we are not inclined to admit the second appeal. The second appeal stands dismissed. However, there shall be no order as to costs.

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

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)