

Court No. 8

SA 69 of 2021

05.07.2022

(AD 15)

(S. Banerjee)

Manjushri Roy

Vs.

Sandeep Nandy @ Thakur Nandy

The unconditional apology tendered by the Second Appeal Section, the Stamp Reporter and the Joint Registrar, Appellate Side, High Court Calcutta is accepted.

The second appeal appeared in the warning list on 22nd June, 2022 and continued to appear in the list until it was transferred to the daily cause list on 28th June, 2022.

The appellants are not present.

Record shows that the Second Appeal has the tender number of 2005 and since then it was never presented for admission. In fact on the earlier occasion on 10th January, 2022 and on 27th January, 2022 the appellant was not represented.

This appeal is directed against the judgement and decree passed by the learned Additional District and Sessions Judge, Fast Track Court, Howrah, in Title Appeal No. 206 of 2003 reversing the judgement and decree passed by the learned Civil Judge (Junior Division), 6th Court at Howrah in Title Suit No. 29 of 1999. In order to appreciate the lis, brief facts of the case are required to be indicated.

The plaintiff/appellant herein filed the suit for declaration and permanent injunction contending inter alia that the father of the defendant, Sahadeb Nandi, was a tenant under the plaintiff at a monthly rental of Rs. 110 per month, payable according to the English calendar month. The said tenancy was determined by a legal notice and Title Suit No. 148 of 1994 was filed against the father of the defendant/respondent for his eviction in respect of the shop room. It is contended that father of the defendant/respondent herein took the tenancy for the purpose of running a grocery shop which was converted into a residential accommodation. The defendant/respondent Sandip Nandi is in occupation of the suit property since 01.11.1998 without the knowledge and consent of the plaintiff/appellant, who started using the privy of the plaintiff/appellant forcibly to the annoyance and embarrassment of the plaintiff/appellant and her daughter. The defendant/respondent turned a deaf ear to the request of the plaintiff/appellant while he was requested not to use the privy. The respondent/defendant, however, entering into appearance by filing written statement categorically stated that he used to help his father Sahadeb to run the grocery shop in the suit premises. He never used the exclusive privy of the plaintiff/appellant at any point of time. From the attending facts of the case it stands

admitted that the defendant/respondent Sandip Nandi is the son of Sahadeb Nandi against whom a suit for eviction is pending before the court of the Civil Judge (Junior Division), Howrah. It is also not in dispute that the defendant/respondent Sandip Nandy used to help his father in the matter of running the grocery shop and the schedule of the plaint explicitly indicates that the tenant was given right of use of privy. Learned First Appellate Court upon evaluating the evidence, both oral and documentary, came to a conclusion that common user of the privy is a part and parcel of tenanted property, i.e., the grocery shop, the respondent/plaintiff cannot and should not get any order restraining the lawful statutory tenant from using the same and the judgement of the learned trial court was accordingly reversed.

In our considered view, the impugned judgement and decree passed by the learned First Appellate Court does to suffer from any perversity and we do not find any substantial question of law involved in this matter as well. Consequently the appeal is not admitted and the same is thus dismissed.

(Soumen Sen, J.)

(Siddhartha Roy Chowdhury, J.)