

Item-28. 22-09-2022

sg Ct. 8

SA 67 of 2021

M/s. Ghosh & Nandi Company  
Versus  
Estate Manager & Ors.

In terms of the order dated 27<sup>th</sup> January, 2022, a report is filed by the Assistant Registrar-XVI dated 17<sup>th</sup> May, 2022.

The report filed by the Assistant Registrar-XVI dated 17<sup>th</sup> May, 2022 shall be placed in the Administrative Side.

The appellate judgment and decree dated 10<sup>th</sup> February, 2005 affirming the judgment and decree dated 16<sup>th</sup> August, 2002 passed by the Trial Court in a suit for permanent injunction is the subject matter of this second appeal.

The learned Trial Judge dismissed the suit. The Appeal Court affirmed the said decree. The Trial Court on the basis of the oral and documentary evidence arrived at a finding that it is a admitted position that when the plaintiff filed the suit, he was facing an eviction and accordingly, it cannot be contended that the defendant has adopted any step de hors the provision of the law. In fact, for the purpose of taking possession, the defendant has issued a notice to quit and has not made any attempt to dispossess the plaintiff from the suit property by using any force. The suit property comprised of three tanks that were leased to the plaintiff company by the Urban Development Department. The said lease was exclusively extended for two years and the last extension was made on 1<sup>st</sup> January, 1990. The plaintiff urged before the trial court that although an application for extension of the lease period was made and an assurance was made that the it would extend, the defendant issued notice to quit and vacate possession of the suit

property. Admittedly, the lease period has expired and recently is not a matter of fact.

The Appeal Court did not interfere with the notice to quit and having found that the plaintiff is not entitled to be in possession, dismissed the suit for permanent injunction. Moreover, as per the lease agreement (Exhibit 3) which was agreed between the parties that upon expiry of the lease and licence, the licensee would make over the possession of the said tank in the same conditions as the same were when the period of licence granted commenced. The plaintiff company was merely a licensee. The plaintiff could not prove that the defendant has threatened to dispossesses the plaintiff without due process of law. It is an admitted position that the licence period is over and even if it is considered to be a lease that had expired by the efflux of time. In the instant case, the lease or licence was determined on 31<sup>st</sup> December, 1991 that is by efflux of time, the notice to demand possession is permitted under the agreement.

On such consideration, we do not find any reason to interfere with the orders passed by both the courts. The second appeal is not admitted and the same stands dismissed at the admission stage. However, there shall be no order as to costs.

**(Uday Kumar, J.)**

**(Soumen Sen, J.)**