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21-03-2022

SA 5 of 2022
CAN 1 of 2022

Ct. 8

Asit Chatterjee
Versus
Kanai Lal Das

(Through Video Conference)

Mr. Subhasish Pachhal, Adv.
...for the appellant

The second appeal has come up for admission. The appellant is aggrieved by the judgment and decree dated 10th February, 2021 passed by the learned Additional District Judge, 1st Court, Howrah in Title Appeal No. 256 of 2018 thereby setting aside the judgment and decree dated 25th September, 2018 passed by the learned Civil Judge (Junior Division), 4th Court, Howrah.

The plaintiff filed a suit for eviction of the defendant on the ground that the defendant is a trespasser and he is likely to be evicted. The defendant in his written statement alleged that the property is a thika tenanted property and the plaintiff is a thika tenant. It is further alleged that the defendant is a bharatia under the plaintiff. On the basis of the pleadings and documents, the learned Trial Judge framed 11 issues. One of the issues framed by the Trial Court relates to the status of the defendant in relation to the said property. The Trial Court held that in view of the fact that the property is a thika property and the plaintiff is the thika tenant, the dispute raised by the defendant in the written statement is required to be decided by the Thika Controller in accordance with Section 8(2) of the West Bengal Thika Tenancy (Acquisition and

Regulation) Act, 2001.

The learned Trial Judge relied upon the decision of this Court in the matter of *Krishna Shaw & Ors. vs. Netai Pandit* reported in 2016 (3) CHN (Cal) 1 and held that the suit filed for eviction of the defendant/tenant from the suit property, which is a thika property that is required to be decided by the Controller. The learned Court did not go into the other issues at all. The learned Court did not decide whether the relationship between the plaintiff and the defendant is landlord and tenant or the defendant is trespasser.

The learned First Appellate Court, on the basis of the evidence on record by a detailed judgment found the defendant to be a trespasser and, accordingly, arrived at a finding that the provision of Section 8(2) of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 has no manner of application. The learned First Appellate Court had taken into consideration that the defendant has failed to produce any rent receipt to show that there is a relationship between the landlord and tenant and also title of the defendant in relation to the suit property. The contention of the plaintiff that taking advantage of the illness of the plaintiff and his staying away from the suit property for sometime, the defendant trespassed in the suit property and had taken the illegal possession of the suit property was proved and accepted.

This defence was established by the plaintiff at the trial. The defendant witness during his cross-examination has admitted that he has no document to show that his father used to reside in the suit property as tenant along with his aunt and he cannot also

say to whom, his father and aunt used to pay rent. He also admitted that he is not a tenant in respect of the suit property. This admission clearly nullifies the stand taken by the appellant before us that he is a bharatia under the thika tenant. On such facts emerging from the pleading and evidence, it cannot be said that the suit for eviction of a trespasser would be barred under Section 8(3) or Section 21 of the West Bengal Thika Tenancy Act.

In our view, the learned First Appellate Court was justified in reversing the judgment of the Trial Court as it is elementary that in order to ascertain whether the Civil Court has jurisdiction to try and determine the suit initially the pleadings and at the trial evidence are to be looked into by the trial court. Merely raising an issue so as to create a bar to proceed before a Civil Court, would not suffice as the Court has to come to a finding that there are enough materials to justify that the issue raised cannot be decided by the Civil Court and it has to be decided by the Controller alone. Moreover, nothing prevented the defendant from raising an issue before the Thika Controller to decide his status under Section 8(2) of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001.

While we accept the submission of the learned Counsel for the appellant that a dispute between the thika tenant and bharatia has to be adjudicated under Section 8(2) of the said Act but having regard to the admission of the defendant that he has no document or rent receipt to show that he is a bharatia under the thika tenant, we are unable to accept that the suit is barred under Section 8(2) of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 and Section 21 of the West Bengal Thika Tenancy Act.

In this regard, we refer to a judgement of this Court in *Md. Jamil Akhtar vs. Abdul Mojid* reported in 2011 (1) CLJ (Cal) 308 where it has been held that the suit for eviction of licensee can be heard by the Civil Court. The said judgment was rendered in similar facts where a plea was taken that defendant is a bharatia and not a licensee.

In view of the issue being settled by this Court and also having regard to the findings arrived at by us and the facts and circumstances of this case, we are not inclined to admit the second appeal.

SA 5 of 2022 is, accordingly, dismissed. CAN 1 of 2022 is also dismissed.

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

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)