

DL. September
18. 21, 2022

S.A. 389 of 2010

**Kiran Devi Agarwala
Vs.
Bhagaban Prosad Budhiya**

**Mr. Amal Krishna Saha,
...for the appellant.**

The judgment and decree of affirmation dated March 10, 2010 passed by the learned Additional District Judge, Second Court at Malda, in O.C. Appeal No. 9 of 2005 arising out of judgment and decree dated February 16, 2005 passed by the learned Civil Judge (Junior Division), First Court at Malda, in O.C. Suit No. 20 of 1984, in a suit for eviction of a licensee, is the subject matter of challenge in this appeal.

Mr. Amal Krishna Saha, learned advocate appearing on behalf of the appellant, submits that both the courts below have failed to appreciate that the defendant/respondent had failed to establish his case of tenancy. As such, the trial court ought to have decreed the suit on a better title as the ownership of the appellant was established and recognized by both the courts below. Mr. Saha has relied upon a decision of the Supreme Court in the case of **Bhagwati Prasad vs. Chandramaul** reported in **A.I.R. 1966 S.C. 735** to argue that once a defendant fails to establish his right of tenancy and ownership of the plaintiff is admitted, then a decree of eviction would follow and it is immaterial whether the plaintiff was able to prove that the defendant was a licensee.

We have carefully considered the judgments of both the

courts below. It is a specific case of the defendant/respondent that he was inducted as a tenant by the parents of the person, who came to depose before the trial court. The status of the defendant could have been easily established by the persons who are alleging that the defendant is a licensee. The plaintiff did not depose. The person deposed has no personal knowledge. The plaintiff did not come to the box to deny the rent receipt. The creation of licence or tenancy is within the personal knowledge of the plaintiff. We do not find any satisfactory answer for not producing the plaintiff whom the defendant specifically claimed during the trial to be the person who inducted him as a tenant. The plaintiff was under no disability. The defendant produced one rent receipt. No doubt, there is discrepancy between the amount stated in the rent receipt and what was stated in the written statement. However, the said evidentiary value of the said document to the extent of showing tenancy could not be demolished either at the trial or at the first appellate court.

The concurrent finding of fact arrived at by both the courts below to the effect that the defendant/respondent is not a licensee does not call for any interference by this court.

No substantial question of law being involved in this appeal, the same is summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

There will be no order as to costs.

(Soumen Sen, J.)

dns

(Uday Kumar, J.)

