

DL. December
35. 22, 2022

S.A.T. 327 of 2011

Smt. Ravi Kanta Bahety & ors.
Vs,
Bina Nathani

The matter appeared in the warning list on November 29, 2022 with a clear indication that the matter would be transferred to the daily cause list on December 5, 2022 before the regular bench. Since then the matter is appearing in the list. The present appeal is of the year 2011.

Today the appellants are not represented, nor any accommodation is prayed for.

It appears that the defects pointed out by the Additional Stamp Reporter in his report dated September 13, 2011 have not been removed as yet from which it seems that the appellants are not interested to proceed with the matter.

In absence of the appellants, we have carefully gone through the judgments of the first appellate court and the grounds taken by the appellants for considering the question of admission of the present second appeal.

Since the appellants have failed and neglected to file the judgment and decree of the trial court, we decide to proceed with the matter on the basis of the judgment of the first appellate court and the grounds of appeal.

In the grounds of appeal it is stated that the learned judge in the first appellate court committed a substantial error of law in granting eviction on the ground of reasonable requirement and subletting.

It appears from the judgment of the first appellate court that the plaintiff/respondent was able to establish that she reasonably required the suit flat by adducing oral and documentary evidence, which proved the fact that she was in acute shortage of accommodation with the present existing set up. Such fact was adequately established by the plaintiff by way of exhibits 6, 7, 8-series, 12 and 26. It was categorically stated in the exhibit 26 being the Commissioner's report that in a tenanted premises the plaintiff/respondent had been staying with her two major sons, husband and servants, which is inadequate for comfortable living, as there was one bed room with a covered veranda on the southern side of the room, one kitchen and three privies and two bath rooms.

It cannot be said on the basis of such evidence that the claim for reasonable requirement is fanciful or illusory.

The plaintiff/respondent was also able to establish that she has no suitable accommodation in Kolkata other than the suit flat and that for comfortable living the present accommodation is unsuitable and inadequate.

The trial court has arrived at a finding from exhibits 21 and 21(2) that there was a clear attempt to sublet the suit flat and the very intention to create such subtenancy has also been proved. The first appellate court has concurred with such finding.

We do not find any reason to interfere with the concurrent findings of fact arrived at by both the court below. The plaintiff/respondent cannot be compelled to be contained with a limited accommodation. There cannot be any doubt that having regard to the present existing accommodation, the need was genuine

and not a simple desire.

In any event, the plaintiff/respondent having been able to establish the ground of reasonable requirement, we do not find any reason to interfere with the concurrent findings of fact arrived at by both the courts below.

Having found no substantial question of law involved in this appeal for which the same is required to be admitted, the same is summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

There will be no order as to costs.

dns

(Uday Kumar, J.)

(Soumen Sen, J.)