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Ct-08

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SAT 126 of 2021

withs

I.A No. CAN 1 of 2021

Tapan Ganguly & Anr.

Vs.

Tarak Nath Dey & Ors.

(Via Video Conference)

Ms. Anyasha Das

... For the Appellants

Mr. Tarak Nath Halder

... For the Respondents

By consent of the parties, the appeal and the application are taken up for hearing and it is treated as on day's list and disposed of by this common order.

The appeal was heard at some length yesterday.

The second appeal is arising out of the ejectment decree passed by the learned Additional District Judge, Fast Track Court-I at Sealdah in Ejectment Appeal No. 05 of 2019 affirming the judgment and decree of eviction passed by the learned Civil Judge (Junior Division), Additional Court at Sealdah on 28th June, 2019 in Ejectment Suit No. 04 of 2017.

We have heard the learned counsel appearing for the parties.

For disposal of the matter, notice was given to the respondents.

Mr. Tarak Nath Halder, learned counsel, appears on behalf of the respondents.

We do not find from the pleadings that the plaintiffs have alleged eviction of the respondents on the ground that they became trespassers after five years from the date of death of the original tenant under Section 2(g) of the West Bengal

Premises Tenancy Act, 1997. The plaint was not amended nor any such issue was raised by the plaintiffs at the time of framing of the issues before the Trial Court.

The learned Counsel for the appellant submits that the landlords/plaintiffs have admitted the joint tenancy of the tenants, however, both the learned First Appellate Court as well as the learned Trial Court has decreed the suit primarily on the ground that by reason of Section 2(g) of the West Bengal Premises Tenancy Act, 1997, the right of tenancy of such joint tenants has extinguished. It is, thus, argued that when this point has not been specifically taken in the pleadings, it was not open for the learned Trial Judge as well as the learned First Appellate Court to decree a suit on that basis of disregarding the pleadings. It is further argued that the learned First Appellate Court did not even consider the propriety of the order of the learned Trial Court with regard to the reasonable requirements.

We have gone through the order of the learned Trial Judge as well as the learned First Appellate Court. The suit was filed on the ground of default as well as reasonable requirements. The learned Trial Judge, upon consideration of the evidence on record, found that all the five plaintiffs are brothers and sisters and all of whom are unmarried and residing at the suit premises. It was, thus observed that when it is apparent that all the plaintiffs are adult, the requirement of five separate bedrooms for each of them appears to be a modest requirement. In addition to that, requirement of one kitchen, one guest room and one thakurghar is also reasonable for a family. Accordingly, a finding was arrived at that the plaintiffs reasonably

require five bedrooms, one guestroom, one thakurghar and one kitchen to live their life conformably.

The learned Trial Judge considering the evidence of the plaintiffs and relying on the report of the commissioner returned a finding in favour of the plaintiffs with regard to the reasonable requirement.

However, in deciding issue no. 7 to 8 which does not specifically relate to Section 2(g) of the West Bengal Premises Tenancy Act, 1997. The learned Trial Court decreed the suit also on the ground that the appellants became trespassers being in possession of the suit premises beyond a period of 5 years from the date of death of the original tenant in view of Section 2(g) of the West Bengal Premises Tenancy Act, 1997. The issue No. 7 to 8 does not concern Section 2(g) at all.

The first appellate court allowed the appeal only on the ground that the defendants have ceased to become tenants after expiry of the period of five years in terms of Section 2(g) of the West Bengal Premises Tenancy Act, 1997. The first appellate court did not go into the other issues, namely, defaulter and reasonable requirement.

We are in agreement with the submission of the learned Counsel that the Appellate Court cannot make out a third case for the parties when there is no pleading to support such a case nor any evidence was adduced in support of such issue. The Court will not allow any evidence not supported by pleadings and on the issues not framed. Moreover, we find from the judgment reported in 2018 (2) CHN (Cal) 6 in the case of Manu Kar vs. Hironmoy Das that on identical issue the second appeal was admitted by the co-ordinate Bench on the following questions of law, which are

set out hereinbelow:-

“5. This appeal will be heard on the following substantial question of law:-

Whether the learned First Appellate Court was justified in passing a decree for eviction against the defendant/appellant by referring to the provision contained in section 2(g) of the West Bengal Premises Tenancy Act, 1997, even though the suit for eviction was not founded on the ground of extinguishment of the tenancy of the defendant in conformity with the provision of section 2(g) of the said Act or not.”

Although, our attention is drawn by Mr. Halder to two decisions in *Sri Utpal Roy Vs. Krishna Banerejee*, reported in 2017(1)CLJ (Cal) 253 and *Montee Dey Vs. Chandralekha Roy*, reported in 2010(3)CHN (Cal) 443 respectively to emphasis that by operation of law the said appellants had no legal right to occupy the suit premises at all. It still needs to be decided as observed in *Manu Kar* (supra) that whether the appellant could have been evicted on the ground which are entirely different from the grounds on which the decree was passed. This issue, in our respectful reading of the said two decisions, does not appear to have been decided by the Co-ordinate Benches. It is a basic principle of law that the plaintiffs have to plead and prove their case. The plaintiffs may take the benefit of change in law but it has to be pleaded and proved at the trial. It could be a cakewalk for the plaintiffs by reason of section 2(g) of the West Bengal Premises Tenancy Act, 1997 it could be established at the trial and the plaintiffs might not have to prove any other grounds at all, but it cannot be presumed that the defendants would have no case to answer. Mr. Halder, at this stage, has fairly submitted that the first Appellate Court may be directed to reconsider the matter on merits and leave

may be given to the appellants to suitably amend the plaint.

In view of the fact that the first appellate court had decreed the suit only on the ground of extinguishment of tenancy in terms of section 2(g) of the West Bengal Premises Tenancy Act, 1997, we set aside the order under appeal and direct the appellate court to decide on all issues as framed by the trial court and to write the judgment afresh without being influenced by any observations made by us.

The prayer for amendment of the plaint, if made, may be considered by the first appellate court in accordance with law and in the event such amendment is allowed to pass a fresh judgment taking into consideration the amended pleadings.

The appeal succeeds. CAN 1 of 2021 is also disposed of.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)