

IN THE HIGH COURT AT CALCUTTA

CIVIL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

THE HON'BLE JUSTICE Kesang Doma Bhutia.

C.O. No. 2138 of 2021

Dipu Sarkar & Ors.

VS.

Pradip Kumar Basak

For the Petitioners :-Mr. Rahul Karmakar,
Mr. Iftekar Munshi,

For the Opposite party :-Mr. Shyamal Chakraborty,

Hearing concluded on :-31.01.2022

Judgment on :-04.02.2022

Kesang Doma Bhutia, J:- - Being aggrieved by the order allowing opposite party's applications under Section 7 (1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 by the learned Judge, Second Bench, City Civil Court, Kolkata in Title Suit no. 856 of 2021 on 16.11.21, the land lords/petitioners have filed the present application under Article 227 of the Constitution of India.

The facts giving rise to the present revisional application in gist is that the petitioners/plaintiffs/landlords have filed Title Suit No. 856 of 2021 for eviction of the opposite party from the disputed shop room on determination of registered lease deed of 30 years.

It has been alleged by learned lawyer for petitioners that they never filed the eviction suit against the opposite party under West Bengal Premises Tenancy Act, 1997, but surprisingly the opposite party with ulterior motive has filed applications under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 and which were allowed vide impugned order with the observation the execution and genuineness of registered lease deed produced before it by the landlords would be considered at the time of trial.

Further, it has been contended that petitioners have filed the eviction suit against a trespasser and without invoking any of grounds mentioned in the section 6 of West Bengal Premises Tenancy Act, 1997. The learned Court below has failed to take into consideration the provisions of Section 3(c) of the West Bengal Premises Tenancy Act, 1997 and allowed those applications filed by the opposite party treating him as a monthly tenant in respect of the suit property.

Perused the copy of the plaint of Title Suit No. 856 of 2021 from where it appears the plaintiffs have filed the suit for recovery of khas possession of the disputed tenanted shop room by efflux of time

of registered lease deed dated 8.04.1989 with damage and mense profit. It has been averted that tenancy in favour of the opposite party was created on the basis of a registered/lease executed on 08.04.1989 for a period of 30 years. That on expiry of lease period of 30 years, the petitioners have requested the opposite party to vacate and deliver peaceful possession of the tenanted shop room but he has refused to do so and as such plaintiffs/landlords served notice on the opposite party on 28.01.2019, but he continued to remain in possession.

From the copy of lease deed it appears the same to be a registered lease deed and duly executed in between Kanai Lal Dey and Pradip Kumar Basak on 08.04.89. I find signatures of both lessee and lessor on lease deed and that of lessor Kanai Lal Dey on each and every page of the deed along with the signatures of witnesses namely Nityananda Basak and Tapas Basak an advocate of City Civil Court. Then it is not known how the learned Court below found only the signature of Pradip Kumar Basak on the last page of the deed.

It is true that Court is presumed to be experts expert but Court is not a handwriting expert as it needs to be examined by an expert a specially skilled person. In case, if any, signature appearing on any document under challenge is disputed, the court normally call for the document which bear the admitted signature or obtain specimen signature of the person challenging the signature appearing on

disputed document in open court and send those documents containing both admitted and disputed signatures to Hand Writing expert for examination. Surprisingly, the learned Court below without help of an expert had come to the conclusion that signature appearing on the lease deed is not that Pradip Kumar Brasak, the opposite party.

Further, this court finds the learned court below has overlooked section 90 of the Indian Evidence Act, 1872 and wrongly observed that 30 years old registered lease deed need to be proved at the time of trial.

Section 90 of the Indian Evidence Act, 1872 provides; Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation.—Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

Therefore, in view of section 90 of the Indian Evidence Act, 1872 a document which is 30 years old produced from proper custody could be read as evidence without formal proof as a presumption can be drawn about its execution by the person by whom it purports to have been executed. More so, impugned order is silent that at the time of hearing opposite party/defendant had challenged the genuineness of the deed in question and the learned court below had to decide such issue. The lease deed *prima facie* shows the same was executed and registered on 08.04.1989.

When such deed was executed in the year 1989 at that time West Bengal Premises Tenancy Act, 1956 was in operation. Therefore, how learned advocate for the petitioner could say the present case is hit by of Section 3(C) of act of 1997 and which read as follow ***“any tenancy where lease with due consent of the tenant has been registered under the Registration Act, 1908 (16 of 1908), after the commencement of this Act and the fact of such consent has been recorded in the instrument so registered.”***

Therefore, this court is of view disputed lease deed having registered prior to the commencement of 1997 Act and as such it shall not come within exemption clause as contained in section 3(c) of the Act of 1997. However, the registered lease deed dated 08.04.1989 *prima facie* show the tenancy was created for a period of thirty years.

Then tenancy of the opposite party comes within the purview of general law and it will be governed by Transfer of Property Act and not by West Bengal Premises Tenancy Act, 1956 or by West Bengal Premises Tenancy Act, 1997.

Under the circumstances applications under Section 7(1) and 7(2) of West Bengal Premises Tenancy Act, 1997 filed by the opposite party whose lease period of 30 years stands determined by efflux of time are not maintainable. Therefore, this Court holds the impugned order suffers from material irregularity and illegality and liable to be set aside.

Accordingly, **C.O. No. 2138 of 2021 is allowed.**

Connected application, if any, is disposed of.

Interim order, if any, stands discharged.

In view of the order made above Affidavits are not invited. Allegations made shall be deemed to be denied.

There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Kesang Doma Bhutia, J.)