

Form No. J (1)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION

Present:

The Hon'ble Justice Biswajit Basu.

SA No. 186 of 2017

I.A No. CAN 1 of 2017 (Old No : CAN 7705 of 2017)

I.A No. CAN 2 of 2020 (Old No : CAN 4476 of 2020)

M/S. MANGALIC ENTERPRISE

VS.

SWAPAN KUMAR DAS & ORS.

For the appellant:

Mr. Ashok Banerjee, Senior Advocate,
Mr. Amal Krishna Saha,
Mr. Uttam Basak.

For the respondents:

Ms. Nirmalya Dasgupta,
Mr. Dibnath Dey,
Mr. Anujit Biswas,
Ms. Pallavi Pain.

Heard on : 06.07.2022

Judgment on : 20.07.2022

Biswajit Basu, J.

1. This is the plaintiff's second appeal against the appellate decree. The plaintiff had filed an ejectment suit in the 3rd Court of learned Civil Judge(Junior Division) at Sealdah being Ejectment Suit no. 15 of 2014 seeking inter alia, the following reliefs:-

“a. Leave under Order II Rule 2 of the Code of Civil Procedure:

b. Decree of declaration that the defendants and none of them have any manner of right or entitlement

to occupy any portion of the said entire premises described in Schedule 'A' hereunder;

c. Decree of eviction of the defendants from the erstwhile tenancy held by late Jyotindra Nath Das described in Schedule 'B' hereunder including all persons claiming through, by or under the defendants and obtaining vacate and khas possession thereof. ”

2. The plaint case of the said suit, in short is thus, the father of the defendants Jyotindra Nath Das was the original tenant of the suit property, on his death the said tenancy devolved upon his widow Laxmipriya Das who also died in December, 2012 and on her death the said tenancy was extinguished since the other heirs of the said original tenant are not coming within the definition of tenant under Section 2(g) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the 'said Act of 1997'). The defendants are therefore, possessing the suit property as trespassers. The plaintiff, through its learned advocate served notice dated January 21, 2013 asking the defendants to quit and vacate the suit property but they failed to comply with it, hence the suit.

3. The defendants to contest the said suit filed written statement wherein they stated, inter alia, that their father, the original tenant died on October 31, 1985, leaving behind his widow and the defendants i.e. his sons and daughter and after the death of their mother, the widow of the original tenant on December 19, 2012, the defendants are holding the tenancy on payment of regular rent.

4. The plaintiff in the suit filed an application under Order XII Rule 6 of the Code of Civil Procedure contending, inter alia, that the period of five

years after the death of the original tenant has elapsed and on the death of the widow of the said original tenant, the tenancy of the said original tenant has extinguished, the defendants since are not coming within the definition of the tenant under Section 2(g) of the said Act of 1997, they have no right to occupy the suit property and accordingly prayed for a decree on admission. The defendants contested the said application with a written objection wherein they have alleged that their father, the original tenant was inducted into the suit property by the predecessor-in-interest of the plaintiff and upon his death on October 31, 1985, the said tenancy, by operation of the provision of the West Bengal Premises Tenancy Act, 1956 (hereinafter referred to as 'the said Act of 1956 in short) was inherited by his heirs, i.e. his widow, sons and daughter as joint tenants in respect of the suit property.

5. The learned Trial Judge allowed the said application under Order XII Rule 6 of the Code thereby decreed the said suit on admission holding that the father of the defendants, the original tenant admittedly died on October 31, 1985, and on expiry of the five years' period from the said date, his sons and daughters, the defendants of the said suit, in terms of Section 2(g) of the said Act of 1997 are not entitled to enjoy the said tenancy, more so, on the death of their mother, the widow of the original tenant on December 19, 2012, the said tenancy has extinguished.

6. The defendants assailed the said judgment and decree of the learned Trial Judge in appeal being Title Appeal No. 06 of 2017. The appeal Court below, by the impugned judgement and decree allowed the said appeal

thereby reversed the judgment and decree of the learned Trial Judge holding that the original tenant since had died long before the commencement of the said Act of 1997, the said tenancy was either inherited by the defendants, or on the death of the original tenant a new tenancy might have been created and the defendants have been residing in the suit premises upon paying rent regularly, as pleaded by them in their written statement.

7. The instant second appeal was admitted by the Hon'ble Division Bench under Order XLI Rule 11 of the Code of Civil Procedure to answer the following substantial question of law:-

“Whether in view of the admitted fact that Jatindra Nath Das, the father of the defendants, died on October 31, 1985 and Laxmipriya Das, the mother of the defendants, died on December 19, 2012 and that the landlords have not accepted rent from the defendants after the death of the original tenant Jatindra Nath Das, the Court of appeal below erred in law in not holding that after coming into force of the West Bengal Premises Tenancy Act, 1997 in 2001 the right of the widow of the original tenant, viz. Laxmipriya Das, in the said tenancy existed upto her lifetime, i.e. upto December 19, 2012 and thereafter the defendants have no right in that tenancy?”

8. Mr. Ashok Banerjee, learned senior counsel appearing on behalf of the appellant submits that the appeal Court below has committed a grave error of law in holding that the defendants have inherited the tenancy on the death of their father as he died prior to commencement of the said Act of 1997. He submits that under the said Act of 1956 by virtue of Section 2(h) thereof, the heirs of the deceased tenant were entitled to inherit the tenancy but in the subsequent rent control legislation i.e. the said Act of 1997, the

said advantage is not available to the heirs of the deceased tenant as it has been expressly withdrawn by Section 2(g) thereof. The said right has now been restricted for a period of five years from the death of the said deceased tenant or from the commencement of the said Act of 1997, whichever is later, for a definite class of heirs of the deceased tenant. Mr. Banerjee, relying on the decision of the Three Judges Bench of Hon'ble Supreme Court in the case of **MYLAPORE CLUB vs. STATE OF T.N. AND ANOTHER** reported in **(2005) 12 SCC 752** submits that the benefit given in the earlier rent control legislation not being a vested right can be withdrawn by the legislature which made the enactment.

9. Mr. Banerjee next contends that in view of the two successive decisions of the Hon'ble Division Bench of this Court in the case of **SUSHIL KUMAR JAIN vs. PILANI PROPERTIES LIMITED** reported in **2018 (1) CHN (CAL) 396** and in the case of **SATYANARAYAN MORE & ANOTHER vs. MS. MILAGRINA ROSE CORREIA ALIAS MILLIE CORREIA** reported in **(2020) 3 CAL LT 501 (HC)**, the issue sought to be canvassed by the respondents is no longer *res integra*. Mr. Banerjee further submits that the finding of the Appeal Court below that a new tenancy after the death of the father of the defendants might have been created on payment of regular rent is based on surmises and conjectures, as admittedly, there was no payment of rent after the death of the said original tenant or acceptance thereof by the plaintiff.

10. Mr. Nirmalya Dasgupta, learned advocate for the respondents on the other hand submits that the appeal Court below is right in holding that the subject tenancy since was devolved upon the defendants under the said Act

of 1956, the suit cannot be decreed on admission on the basis of the definition of 'tenant' under Section 2(g) of the said Act of 1997. He refers to the decisions of the Hon'ble Supreme Court in the case of **TEXTILE ASSOCIATION (INDIA) BOMBAY UNIT vs. BALMOHAN GOPAL KURUP AND ANOTHER** reported in **AIR 1990 SUPREME COURT 2053** and the decision of the Hon'ble Division Bench of this Court in the case of **JA HARLAL SAHA & OTHERS vs. PRADIP SAHA & OTHERS** reported in **2006 (1) CHN 515** to contend that the heirs of the deceased tenant are necessary parties in a suit for eviction.

11. He further argues that judgment on admission is not a matter of right, the objections raised by the defendants, if go to the root of the case the suit cannot be decreed on admission and in support of his such contention he refers to the decision of the Hon'ble Supreme Court in the case of **S.M ASIF vs. VIRENDER KUMAR BAJAJ** reported in **(2015) 9 Supreme Court Cases 287**. He further submits that Order XII Rule 6 of the Code is an enabling provision, it is neither mandatory nor peremptory but discretionary, therefore, unless the admission is clear, unambiguous and unconditional, the said discretion should not be exercised to deny the valuable right of a defendant to contest the suit, to lend support to his such contention, he refers the decision of the Hon'ble Supreme Court in the case of **HARI STEEL AND GENERAL INDUSTRIES LIMITED VS. DALJIT SINGH AND OTHERS** reported in **(2019) 20 Supreme Court Cases 425**.

12. Having heard the learned counsel for the parties and on perusal of the materials-on-record, this Court answers the substantial question of law

framed in present second appeal in affirmative, the reasons follow herein below.

13. Under the said Act of 1956, by virtue of Section 2(h) thereof, on the death of a tenant, his heirs who were ordinarily residing with him, were entitled to inherit the said tenancy without any ceiling on time but the said benefit has been expressly withdrawn by the subsequent rent control legislation i.e. the said Act of 1997. The legislative competence of the State legislature in withdrawing such benefit cannot be called in question as the benefit enjoyed under the said Act of 1956 being a benefit under the statute is not a vested right, as such the legislature, which made the said enactment is competent to withdraw the said benefit. Suffice to quote the following observation of the Hon'ble Supreme Court in the case of **MYLAPORE CLUB (supra)** in this regard "conferment of a right to claim the benefit of a statute being not a vested right, the same can be withdrawn by the legislature which made the enactment".

14. The issue sought to be canvassed by the respondents in defence is that they have inherited the tenancy of their deceased father by operation of Section 2(h) of the said Act of 1956, as rightly submitted by Mr. Banerjee, is no longer *res integra* in view of the two successive judgments of the Hon'ble Division Bench of this Court, first of which is the case of **SUSHIL KUMAR JAIN (supra)**, paragraphs 11 and 12 of the said judgment would clarify the situation, as quoted below:-

"11. The 1997 statute replaced the 1956 legislation and changed the fundamental bases in certain cases. Just as certain classes of tenants have been given

protection under the 1997 statute, the landlords of certain classes of tenants have been freed from the claustrophobic clutches of the 1956 Act.

12. Though the present matter primarily hinges on the quantum of rent paid for the residential tenancy by the appellants herein or their predecessor-in-interest, the appellants insist that since the death of father K.C. Jain, the original tenant, in the year 2000 was anterior to the 1997 Act coming into effect on July 10, 2001, a right vested in the joint tenants under the 1956 Act which could not have been taken away by the 1997 Act. Such contention amounts to suggesting that when a rent control legislation creates or confer right, it cannot be curtailed by a subsequent legislation. Such contention is exceptionable and cannot be countenanced. In a sense, the contention amounts to this: that if the original tenant died prior to the 1997 Act coming into force, the heirs of the original tenant who were covered by the definition of “tenant” in Section 2(h) of the 1956 Act would have to be regarded as original tenants within the meaning of the expression in Section 2(g) of the 1997 Act. Clearly, such an interpretation is impermissible and absurd.”

15. The ratio laid down in the case of **SUSHIL KUMAR JAIN (supra)** was followed by another Hon’ble Division Bench of this Court in the case of **SATYANARAYAN MORE (supra)** to hold that the restriction of Section 2(g) of the said Act of 1997 to inherit the tenancy would also apply to tenants who have inherited tenancy by the reason of Section 2(h) of the said Act of 1956.

16. In the present case, admittedly the original tenant, the father of the defendants had died on October 31, 1985 and the said Act of 1997 came into force with effect from July 10, 2001. Therefore, the period of five years has elapsed from the said date of coming into force of the said Act of 1997. The said tenancy was subsisting till the death of the widow of the original tenant who also died on December 19, 2012 and after her death the said

tenancy since has extinguished and admittedly, the plaintiff never accepted any rent from the defendants as such, there cannot be any question of a creation of a new jural relationship of landlord and the tenants between the plaintiff and the defendants.

17. The Hon'ble Supreme Court in the decisions of **S.M ASIF (supra)** has graphically analysed the scope of Order XII Rule 6 of the Code and has held that the power of the Court under the said provision of the Code is a discretionary power which a party to a suit cannot claim as a matter of right and unless the admission is clear, unambiguous and unconditional, such discretion cannot be exercised. The tests laid down in the aforesaid decisions, if applied to the facts and circumstances of the present case, the inevitable conclusion would be that the suit should have been decreed on admission under the said provision of the Code, as was done by the learned Trial Judge.

Accordingly, S.A. 186 of 2017 is allowed, the judgment and decree dated June 30, 2017 passed by the Additional District Judge, Fast Track Court- III Barrackpore, District- 24-Parganas (North) is set aside and judgment and decree dated December 19, 2016 passed by the 3rd Court of learned Civil Judge (Junior Division) Sealdah in Ejectment Suit No. 15 of 2014 is hereby restored.

There shall be no order as to costs.

The Department is directed to send down the Lower Court Records to the Court below immediately.

I.A No. CAN 2 of 2020

In view of the disposal of the second appeal, no further order need be passed in the instant application for expeditious disposal of the second appeal, as such, CAN 2 of 2020 (Old No: CAN 4476 of 2020) is disposed of without any order as to costs.

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

(BISWAJIT BASU, J.)