

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE SOUMEN SEN
&
THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

SAT 391 of 2019
CAN 1 of 2019 (old CAN 10977 of 2019)
Arati Dutta

vs.

Rajnarayan Singh, since deceased,
his legal representatives Maya Singh & Ors.

For the Appellant : Mr. Tarak Nath Halder
Mr. Sagnik Chatterjee

For the respondents : Mr. Probal Mukherjee
Mr. Piush Chaturvedi
Mr. Uttam Kumar Mandal

Heard on : 10.03.2022

Judgment on : 24.03.2022

Ajoy Kumar Mukherjee, J. :

1. Being aggrieved by and dissatisfied with the judgment and decree dated July 10th, 2019 passed by Additional District Judge, First Court, Sealdah, South 24 Parganas in Ejectment Appeal No. 2 of 2019, affirming the judgment and decree dated January 7th, 2019 of Civil Judge (Senior Division), Sealdah, South 24 Parganas in Ejectment Suit No. 2 of 2012 present second Appeal has

been preferred by Defendant /Appellant. Be it mentioned that said Trial Court in the said suit was pleased to pass decree of eviction against Appellant /Defendant with a direction to quit and vacate the suit premises and deliver khas possession of the same to the plaintiffs.

2. Ejectment Suit No.2/2002 was filed by the plaintiffs /respondents, contending that the plaintiffs purchased the suit property from one Ganesh Chandra Pal. Plaintiffs instituted suit on the ground that defendant is defaulter in payment of rent since 2011 and further more the suit property is reasonably required for plaintiffs' personal use and occupation. Moreover the defendant is guilty for making illegal addition and alteration by through renovation and such illegal work was done by the defendant without the permission of the plaintiffs. Plaintiffs sent notice to quit on 12.12.2011 through their advocate, asking defendant to quit and vacate the schedule mentioned suit property on the expiry of January, 2012. The defendant received the said notice to quit on 16.12.2011, but failed to vacate the suit property. Hence the suit.

3. The defendant contested the suit by filing written statement. According to defendant the suit is neither maintainable in fact nor in law. Late Rabindra Nath Dutta, deceased father of the defendant was original tenant in the suit property, who passed away on 23.11.1947, leaving behind his wife late Mina Rani Dutta, the defendant and late Sova Rani Das and as such right of tenancy devolved upon all those legal heirs and successors. After the death of Mina Rani Dutta , Sova Rani Das also died in the year 2007, leaving her only son Shri Rajat Kumar Das . Accordingly defendant is not the only tenant in respect

of the suit property but also aforesaid Rajat Kumar Das is a tenant- in-common and without terminating his tenancy and without making him party to the suit, said suit is not maintainable. Defendant is not at all a defaulter but paid rent, month by month and has not done anything contrary to (m) (o) (p) of section 108 of Transfer of Property Act .The suit property does not require for plaintiffs' personal use and occupation, as plaintiffs have other building within close vicinity with sufficient accommodation and as such defendant prayed for dismissal of the suit.

4. On the basis of the pleading the learned Trial Court has framed as many as nine issues. Plaintiff No. 4 and Plaintiff No. 1 adduced evidence in support of their case as PW1 and PW3 and learned commissioner who had conducted commission work in connection with the suit property had proved his report as PW2. The defendant No. 3 and defendant No. 1 were examined as DW1 and DW2 respectively and documents filed by the defendants are marked as exhibit 'A' to 'D'. On the contrary the document filed by the plaintiff marked as exhibit '1' to '14'.

5. Learned Trial Court after considering the oral and documentary evidence held that Defendants are not defaulter in payment of rent since ground of default has not been pressed by the plaintiff during the course of argument. However, learned Trial Court after considering the facts and circumstances of the case and evidence and documents available in the record, including commissioner's report came to the conclusion that plaintiff has successfully established that all the members of the family are permanent residents of the

suit premises and there is dire requirement of accommodation for which they reasonably require suit property. Regarding notice point learned Trial Court held that the notice was legal, valid and it was duly served upon the defendant. Accordingly decreed the suit in favour of the plaintiff.

6. Feeling aggrieved by the aforesaid judgment passed by the learned Trial Court in Ejectment Suit No. 2/2012 , Defendant /Appellant preferred first appeal, being Ejectment Appeal No.2/2019 which came up for hearing before the first court of Additional District Judge, Sealdah. It was argued before the First Appellate Court that learned Trial Court did not construe the signature of plaintiff No.3 properly which apparently proved as false signature and plaintiff No. 3 did not come forward to prove the genuineness of his signature and later on the name of plaintiff No. 3 was expunged by the other plaintiffs from the cause title to the plaint. As such learned Trial Court wrongly decided issue No.1 in favour of plaintiffs , holding that the suit is maintainable. Trial Court's judgment was further attacked by the appellant, before First Appellate Court on the ground that the suit is bad for non-joinder of necessary parties and that from the cross-examination of the plaintiffs, it clearly appears that there is no case of reasonable requirement of the plaintiffs in the suit property. Learned First Appellate Court came to a conclusion that plaintiff has proved reasonableness of their requirement and First Appellate Court also did not find any substance in the agitation made by the Appellants that the suit is barred due to non-joinder of necessary party. Learned First Appellate Court concluded that the plaintiff has successfully proved his case of reasonable

requirement and as such he did not find any reason to interfere with the observation made by the learned Trial Court and as such he dismissed the appeal with cost of Rs. 20,000/-.

7. Being aggrieved and dissatisfied with the aforesaid judgment and decree dated 10th July, 2019, Defendant /Appellant preferred the second appeal before us. During hearing learned counsel for the appellant argued **(i)** the notice under section 6(1) of the West Bengal Premises Tenancy Act, 1997 is not valid notice as it was issued by the plaintiffs/ respondents herein along with Laxmi Narayan Singh but he was fictitiously represented in the suit, since original Laxmi Narayan Singh died previously and the 16 anas interest in the suit property have not been represented in the instant suit as the name of Laxmi Narayan Singh , being plaintiff No.3 was expunged on the prayer and at the risk of plaintiffs/ respondents and **(ii)** notice to quit is also not legal and valid as all the legal heirs of the contractual tenant have not been included in the notice as well as in the suit and in the absence of all the legal heirs of contractual tenant, the suit is not competent and decree is not sustainable. In this context learned counsel for the appellant relied upon a co-ordinate bench judgment of this court reported in ***Jaharlal Saha & Ors. v. Pradip Saha & Ors.***, reported at **2006 (1) CHN 513**.

8. During pendency of the aforesaid Ejectment Suit No. 2/2012, a civil revision was preferred before High Court by the Defendants/petitioners wherein they had prayed for personal appearance of plaintiff No.3 and also prayed for cross-examining Plaintiff No.3 Laxmi Narayan Singh. A Single Bench

of this court disposed of said C.O. No. 2654/2018, directing the name of plaintiff No. 3 Laxmi Narayan Singh to be expunged from the record of Ejectment Suit 2/2012 as prayed by plaintiff No.1, 2 and 4. Accordingly the name of plaintiff No. 3 Laxmi Narayan Singh was expunged, though he might be a co-sharer in respect of the suit property. In this context it can be said that if the suit is filed by any one of the co-sharer of the suit property and if the other co-sharer does not have any conflicting interest with the co-sharer who has filed the suit, then there is hardly scope to say that the suit is not maintainable. In the present case plaintiff before the Single Bench contended that said Laxmi Narayan Singh who was the plaintiff No. 3 actually a vagabond and cannot be readily traceable for the purpose of production in court. Accordingly Single Bench issued notice upon said Laxmi Narayan Singh and ultimately as per the prayer made by the plaintiffs No. 1, 2, and 4, learned Single Bench expunged the name of plaintiff No. 3 from the cause title of the plaint. Apparently there is nothing to show that said plaintiff No. 3 has any conflicting interest with plaintiff No. 1, 2 and 4 and as such argument advanced by the learned counsel for the appellant that the suit is not maintainable for expunging the plaintiff No.3 who is co-sharer, from the cause title of the plaint, does not find any substance. This is also because from the fact and circumstances of the case and in the absence of contrary evidence or document, it is not in dispute that Plaintiffs/co-sharers are acting for the benefit of all the co-sharers and there is nothing to show that after getting

possession they would not hold the same as trustee for the benefit of other co-sharer whose name has been expunged by the court.

9. Learned counsel for the Defendant /Appellant has strenuously argued before us that from the written statement it is quite clear that the father of the present defendant was the original tenant and after his death on 23.11.1947 his wife, defendant and late Sova Rani Das became tenants as heirs of original tenant Rabindra Nath Dutta. Subsequently widow of Rabindra Nath Dutta died and Sova Rani Das also died in the year 2007, leaving her son Rajat Kumar Das but plaintiff filed the suit only against defendant and neither said Rajat Kumar Das has been impleaded in the suit nor any notice to suit under section 6(4) was served upon him and as such suit itself became non-maintainable. In this context he quoted certain paragraphs from **Jaharlal Saha (supra) case** and submitted that in view of the paragraph 27 of the said judgment, if the notice is not addressed to all the heirs of original tenant, the notice of threat of suit in terms of Section 6(4) of West Bengal Premises Tenancy Act 1997 must be held to be invalid and the suit is not maintainable in the absence of the other tenant who has been left out in the notice as well as in the suit.

10. We have considered submission made by the counsel appearing on behalf of Defendant /Appellant and have given anxious thought over the issue. Needles to say that the issue dealt with in **Jaharlal Saha and others case (supra)** was in respect of a tenant against whom a suit for eviction was filed under the provisions of West Bengal Premises Tenancy Act 1956. The definition

of “tenant” has undergone sea change by the West Bengal Premises Tenancy Act 1997 by which the present suit namely Ejectment Suit No. 2/2012 is guided.

11. For better appreciation of the issue let us reproduce the definition of tenant as given in the said two acts. Under the act of 1956, the term “tenant” has been defined in section 2 (h) of the Act of 1956 which runs as follows:-

“ “tenant” means any person by whom or on whose account or behalf, the rent of any premises is, or but for a special contract would be, payable and (includes any person continuing in possession after the termination of his tenancy or in the event of such person’s death, such of his heirs as were ordinarily residing with him at the time of his death) but shall not include any person against whom any decree or order for eviction has been made by a Court of competent jurisdiction.)”

Now under the Act of 1997 the terms tenant has been defined in section 2(g) of the said Act which is as follows:-

“ “tenant” means any person by whom or on whose account or behalf the rent of any premises is or, but for a special contract, would be payable, and includes any person continuing in possession after termination of his tenancy and, in the event of death of any tenant, also includes, for a period not exceeding five years from the date of death of such tenant or from the date of coming into force of this Act, whichever is later, his spouse, son, daughter, parent and the widow of his predeceased son, who were ordinarily living with the tenant up to the date of death of the tenant as the members of his family and were dependent on him and who do not own or occupy any residential premises, and (in respect of premises let out for non-residential purpose his spouse, son, daughter and parent who were ordinarily living with the tenant up to the date of his death as members of his family and were dependent on him or a person authorized by the tenant who is in possession of such premises) but shall not include any person against whom any decree or order for eviction has been made by a court of competent jurisdiction.”

No case has been made out by the defendant /appellant that Sova Rani Das used to reside in the suit property, as a co-tenant till her death in 2007, nor there is anything to say that her son Rajat Kumar Das ordinarily resided with

said Sova Rani Das at the time of her death in the suit premises. In this context a co-ordinate bench of this court in a recent judgment in **Chandra Nath Chandra v. Buddhadev Halder**, reported at **2020 (2) RCR (Rent) 385** has observed in paragraph 27:-

“The definition of tenant in Clause 2(g) of the West Bengal Premises Tenancy Act 1997 is new and it specifically mentions who will be statutory tenants after the death of the contractual tenant, whose tenancy has already been determined. A time limit (not exceeding 5 years and in case of deceased’s spouse, up to his or her lifetime) is provided, beyond which they cannot continue as statutory tenants. It is thus clear from the scheme of the present Act that the statutory tenants will continue to possess as joint tenants and not as tenants-in-common. It appears from the decision of the Apex Court that the heirs of the deceased contractual co-tenants will have no interest in the tenancy. It appears to us that the tenancy vis-à-vis the landlord are joint tenants but as regards their inter se relationship the tenants are just like tenants-in-common.”

In the present case, there is no evidence on record to say that upon the death of Sova Rani Das, his son Rajat Kumar Das tendered any rent to the landlord or asserted his tenancy right in respect of suit property. Learned counsel for the appellant did not argue in connection with the reasonableness of plaintiffs requirement in respect of the suit property nor there is anything to say that plaintiffs have any other accommodation either in the said house or elsewhere within the vicinity, so that plaintiffs’ requirement can be met even by partial eviction.

In view of above we do not find any substance in the argument made by learned counsel for the appellant/defendant nor we find any perversity in the observation made by the learned courts below and as such we do not find any reason to interfere with the ultimate findings of the learned courts below.

12. SAT 391/2019 along with CAN 1/2019 stands dismissed.

There will be no 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.

Let the copy of the order be send to the Civil Judge (Senior Division), Sealdah.

I agree

(Soumen Sen, J.)

(Ajoy Kumar Mukherjee, J.)