

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION**

**SAT 392 of 2019
With
CAN 1 of 2019(Old No. CAN 10820 of 2019)
With
CAN 2 of 2020(Old No. CAN 494 of 2020)**

**Nirmal Kumar Roy
Vs.
Mukul Chandra Roy And Ors.**

**Mr. Kumar Jyoti Tewari
Mr. Rajlakshmi Ghatak
Mr. Aniruddha Tewari** **For the Appellant.**

**Mr. Partha Sarathi Bhattacharyya, Sr. Advocate
Mr. Raju Bhattacharyya** **For the Respondent Nos. 1 to 3.**

Re: CAN 2 of 2020(Old No. CAN 494 of 2020)

The application CAN 2 of 2020(Old No. CAN 494 of 2020) be struck off from the list as it is already disposed of.

Receiving very fair assistance from Mr. Partha Sarathi Bhattacharyya, learned senior advocate appearing for the respondent nos. 1 to 3/plaintiff, we are able to dispose of this second appeal today, after dispensing with all formalities.

S.D. Mr. Kumar Jyoti Tewari, learned advocate for the appellant took us through the finding of the learned trial judge that his client, the defendant in the suit was a co-sharer defendant no. 1 of the subject property and thus could not be treated as a licensee under the respondents.

The relationship being such, the appellant could

not be evicted by the respondents in the same way licensee can be evicted.

However, on appeal the appellate court made an observation that the parties were co-sharers but proceeded to make a finding that the respondents were the exclusive owners of the said property. Being such, the appellant was residing in the property as a licensee and could be evicted by revocation of the licence. The appellate court reversed the decree of the learned trial judge.

We find that the appellate court has not given adequate reasons in support of its finding that the respondents became the absolute owner of the subject property and that the appellant was residing in that property as a licensee.

In such circumstances, it would be just and proper if the entire matter was remanded to the 1st Appellate Court, by setting aside the judgement and decree dated 29th July, 2019 by directing that the said court decides the appeal afresh on the available evidence by hearing the parties, by a reasoned order within three months of communication of this order.

We order accordingly.

We also clarify that we have not gone into the merits of the matter and all points are kept open before the said court.

Furthermore, it would be open to the Court to exercise all powers available to it under Order XLI, of the Code of Civil Procedure including the power to receive additional evidence.

The appeal SAT 392 of 2019 is disposed of accordingly.

Since the judgement and decree under appeal has been set aside the execution of the same does not and cannot arise. Hence the connected application CAN 1 of 2019(Old No. CAN 10820 of 2019) praying for stay of execution is disposed of accordingly.

(I.P. Mukerji, J.)

(Subhendu Samanta,J.)

