

Dl. September
2. 26, 2022

F.A. 437 of 2009

PanChanan Chowdhury
Vs,
Shabnti Chowdhury & ors.

Mr. Pritam Chaudhury,
Mr. Abhisek Addhya,
...for the appellant.

Mr. Rahul Karmakar,
Mr. Abir Lal Chakravorti,
...for the respondents.

We have heard the learned advocates appearing for the parties extensively. The issue revolves around the creation of thika tenancy in favour of the parties. The defendant, namely, Panchanan Chowdhury is the appellant herein. The plaintiffs/respondents claimed that Tulsi Chowdhury, the father of the defendant was the original thika tenant in respect of the suit property. The plaintiffs adduced two documents to substantiate such claim.

The defendant/appellant contested the suit by filing written statement. The defendant raised an issue that although his father was alive in 1958 and the periods on which the rival parties had produced documents to show their respective claims over the property, Panchanan was the thika tenant under the legal heirs of Hiralal. Panchanan produced some alleged rent receipts issued by Laxmi in 1962 and 1963 whereas two photostat copies were produced by the plaintiffs during the cross examination of Panchanan Chowdhury, who was confronted with the documents.

Before us an application has been filed by the plaintiffs for acceptance of the two photocopy of receipts produced by the plaintiffs during cross examination of defendant's witness on

August 1, 2008. Those are photocopies of receipts dated December 6, 1958 and July 17, 1960. According to the plaintiff, the said documents are essential for determination of the said issue. The learned trial judge marked those documents as 'X' and 'Y' respectively for identification but not marked as exhibits. Under Rule 6 of Order XIII of the Code of Civil Procedure, the learned Trial Judge did not reject the documents, considering the same as inadmissible. At the same time, we do not find any discussion about the said documents in the impugned judgment. The plaintiffs also have not made any endeavor to prove the said documents.

In view of the stand taken by the plaintiffs at this stage, we feel that the trial court shall decide the probative value of those documents marked as 'X' and 'Y' respectively subject to the plaintiffs being able to prove the said documents in accordance with law. Since we are remanding the matter for fresh consideration, we permit both the parties to disclose any further document that they want to rely upon during the trial by November 4, 2022. However, the parties shall be at liberty to produce any document during cross examination in terms of Order XIII Rule 3 of the Code of Civil Procedure.

The learned trial judge is requested to decide the admissibility of the photocopies of the receipts dated December 6, 1958 and July 17, 1960 provided those are proved in accordance with the provisions of the Evidence Act and in the event of any fresh evidence is being adduced by either of the parties, the learned trial judge shall take into consideration such evidence while re-writing the judgment.

The issue as to whether the thika tenancy is partible was decided in favour of the plaintiffs. We do not want to disturb the finding on that issue in view of the decision rendered by a co-ordinate bench of this court in the case of Musamat Afroz Begum & ors. vs. Abdul Quddus & ors. reported in 2003 SCC Online Cal 54. All other issues are required to be decided afresh taking into consideration any further evidence the parties wish to adduce in the course of trial.

The appeal and the application being CAN 1 of 2022 are, thus, disposed of.

There will be no order as to costs.

dns

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)