

21.02.2022
SL No.15
Court No.8
(gc)

SA 69 of 2020

**Uttam Koley
Vs.
Smt. Bidyyalata Santra & Ors.**

(Via Video Conference)

The appellant is not represented nor any accommodation is prayed for on behalf of the appellant.

On the earlier occasion, the matter was adjourned on the prayer of the learned Counsel appearing on behalf of the appellant.

This second appeal is directed against the judgment and order dated 18th May, 2017 passed by the learned Civil Judge (Senior Division) 2nd Court, Howrah in Title Appeal No.50 of 2013, affirming the judgment and decree dated 28th February, 2013 passed by the learned Civil Judge (Junior Division), 1st Court, Howrah in Title Suit No.96 of 2011.

We have perused the grounds of second appeal and we do not find that there is any substantial question of law is involved on which the second appeal can be admitted.

The plaintiffs/respondents filed the suit for eviction, khas possession and mesne profits. One Mohanta Kumar Modak @ Santra was the original owner and occupier of the suit properties. After his demise, it devolved upon the plaintiffs as legal heirs and the plaintiffs became the

absolute owners and occupiers of the suit property mentioned in the schedule of the plaint. The plaintiffs alleged that the defendant/appellant is a monthly tenant in respect of the suit property. The defendant was a habitual defaulter in payment of rent since the month of Falgun, 1409, B.S. The defendant was also guilty of committing various acts of wastes and damages resulting in material deterioration to the condition of the scheduled property under his occupation and those acts are all contrary to the provisions of clauses (m), (o) and (p) of Section 108 of the Transfer of Property Act. The plaintiffs also claimed reasonable requirement. The defendant contested the said suit and relied upon one agreement of 8th February, 2003 and contended that after the demise of Mohanta Kumar Modak @ Santra, his wife used to collect rent from the defendant. Thereafter the plaintiff claiming to be the legal heirs of said Mohanta Kumar Modak @ Santra, entered into one development agreement thereby wishing to demolish the building including the suit property and to let out the same to new tenant as such the dispute arose between the plaintiff and defendant and also with the other tenants. The plaintiffs created inconvenience to the enjoyment of the suit property by the defendant as tenant with a view to evict the defendant without due process of law. The defendant also made a complaint to several authorities as a result whereof a meeting was held between the parties and one agreement

dated 8th February, 2003 was entered into by the defendant with Swapan Kumar Santra and Ashok Kumar Santra. But the plaintiffs refused to act in terms of the said agreement. The defendant and other tenants were compelled to construct the suit property out of their own fund. The defendant has incurred expenses to the tune of Rs.4,800/- for such construction. Moreover, the plaintiff No.2 initiated a criminal case against the defendants and other tenants. The defendant demanded the reimbursement of the expenses as well as called upon the plaintiffs to act in terms of the agreement dated 8th February, 2003. However, the plaintiffs did not pay any heed to such request. The defendant after surrendering the old tenancy entered into an agreement on 8th February, 2003 with Swapan Kumar Santra and by the said agreement the defendant was given a fresh tenancy in respect of the suit shop room at a monthly rental of Rs.76/- payable according to Bengali calendar month. It was on such agreement, the notice of eviction was contended to be invalid. The parties adduced both oral and documentary evidence before the Trial Court.

It is nobody's case that the provisions of the West Bengal Premises Tenancy Act, 1997 would not apply in the present context and the notice under Section 106 of the Transfer of Property Act would suffice for filing the suit. In the instant case, the plaintiffs had relied upon service of notice of ejectment being Exhibit No.5 (series), the notice

is dated 21st July, 2010. The defendant has signed on the A/D card, i.e., Exhibit No.5(a). In his cross-examination dated 14th June, 2012, the defendant admitted the service of notice of eviction. However, in the written statement, he has denied the service of notice upon him. There is nothing on record to show that the defendant was misled by the said notice. Accordingly, the question of illegality of the notice does not arise. It clearly conveys intention of the landlord to terminate the tenancy. The learned Trial Judge has correctly relied upon that the twin requirements of Section 106 of the Transfer of Property Act were fulfilled in the instant case, namely, (i) it should give 15 days' notice, (ii) expiring with the end of the month of tenancy. In the instant suit the notice was sent on 21st July, 2010 corresponding to 4th Shrabon, 1417 B.S and it also expired with the end of the month of tenancy, i.e., last day of Bhadra, 1417 B.S. So, it also gave more than 15 days notice to vacate. Though it is now not required to give notice expiring with the month of tenancy under the Transfer of Property Act, however, the plaintiffs have complied with all the formalities. Moreover, the Trial Court has correctly relied upon a Coordinate Bench decision of this Court in ***Prasanta Ghosh & Another Vs. Pushkar Kumar Ash & Others*** reported in ***2006(2) CHN 277*** while disposal of the appeal observed:-

“It is now well-settled that in a case where tenancy is governed by the Transfer of Property Act, all that the

landlord is required to prove is that notice in terms of Section 106 of the Transfer of Property Act has been duly served upon the tenant/defendant.

Once, it is established that prior to institution of the suit a valid notice in terms of Section 106 of the Act was duly served upon the tenant/defendant, there was no necessity for the Ld. Courts below to consider whether the grounds mentioned in the plaint had really existed. Therefore, all those findings on the grounds mentioned in the plaint were superfluous.”

In view of the clear finding by both the Courts and the notice under Section 106 of the Transfer of Property Act has been duly served upon the appellant/defendant clearly conveying the intention that the tenancy would come to an end and having fulfilled the twin requirements of the said Section, we are of the opinion that no substantial question of law is involved for which the second appeal can be admitted.

Under such circumstances, the second appeal being SA 69 of 2020 stands dismissed.

However, there shall be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)