

DL. February
17. 21, 2022

S.A. 81 of 2020

Balai Chowdhury

Vs.

Sudhirranjan Biswas

The appellant is not represented, nor any accommodation is prayed for. The appellant was also not represented on the earlier occasion, when we make it clear that in the event the appellant goes unrepresented on the adjourned date, the admission of the second appeal would be decided on the basis of the materials available on record.

Being aggrieved and dissatisfied with the judgment and decree dated March 29, 2019 passed by the learned Civil Judge (Senior Division), Bishnupur, Bankura in Title Appeal No.3 of 2018 the present appeal has been filed.

The plaintiff's case in brief is that the father of the plaintiff inducted the defendant as a tenant at a monthly rent of Rs.20/- and after the death of plaintiff's father, the defendant continued to remain as a tenant in the suit premises and the rate of rent was enhanced at Rs.50/- according to Bengali calendar month.

In the meantime, the plaintiff developed the suit premises and the defendant continued to remain as a tenant over the suit premises at a monthly rent of Rs.200/- according to Bengali calendar month. The defendant paid rent up to Chaitra 1415 B.S. in respect of the suit premises and failed to make payment of rent afterwards. Accordingly, he became habitual defaulter in payment of rent. The plaintiff sent

eviction notice under Section 106 of the Transfer of Property Act on May 19, 2011 with a direction to vacate the suit premises within 15 days from the date of receipt of the notice and the defendant received the said notice. However, he did not vacate the suit premises. The defendant contested the suit contending that the suit is not maintainable and the claim of the plaintiff is barred by limitation. Moreover, the suit property is not identifiable and also the notice under Section 106 of the Transfer of Property Act sent by the plaintiff is illegal, invalid and insufficient and therefore, the plaintiff's suit is liable to be dismissed *in limine*.

The learned trial court framed as many as seven issues and three witnesses were examined on behalf of the plaintiffs and the plaintiff has also filed registered sale deed for the year 1952 and the entry in record of rights which are marked as Exhibits 2 & 3, copy of the postal receipt and A/D card in support of service of notice has been marked as Exhibit 1. The deed of gift for the year 1992 was also marked as Exhibit 4. Defendant did not produce any documents before the Court and after hearing both the parties the learned trial court was pleased to decree the suit.

Being aggrieved by the said judgment and decree, the defendant-tenant preferred an appeal before the First Appellate Court being T.A. No.3 of 2018 and the learned Appellate Court after hearing both the parties observed that where a tenant is governed by the Transfer of Property Act landlord is required to prove only service of notice in terms of Section 106 of the Transfer of Property Act which in the present case has been duly served upon the tenant. Once it is established that the notice under Section 106 of the Transfer of

Property Act was duly served upon the tenant, there is no necessity to consider whether the grounds mentioned in the plaint has really exists or not and in view of such discussion, learned Appellate Court was pleased to dismiss the appeal on contest.

The defendant/appellant has preferred the second appeal before us contending that both the courts below were too biased upon the appellant in passing the decree of eviction and practically there was no reason as to why the courts below disbelieved the evidence of D.W.2 that the lease agreed in favour of the defendant was a long term lease and the plaintiff/respondent miserably failed to prove that the defendant/appellant is a monthly tenant and as such, he is not governed under the Transfer of Property Act. Both the courts below ignored the evidence of DW2 who during cross-examination affirmed that he was present at the time of oral agreement between the father of the plaintiff and the defendant regarding grant of long term lease and payment of Rs.30,000/- in respect of the suit premises. Both the courts below ignored that the suit property is not identifiable due to its defectiveness.

From the materials available in the record, there is nothing to show that the lease in question was a long term lease. Even if the defendant pleaded the case of long-term lease then in that case also he was under obligation to prove that the document relating to long term lease is a registered document in compliance with Section 107 of the Transfer of Property Act.

In the present case, the notice to quit in terms of Section 106 of the Transfer of Property Act has been well-proved and the schedule property is also distinctly identifiable and as such, we are not

convinced that any question of law involved in the present case for admission of second appeal.

The second appeal is, therefore, summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

There will be no order as to costs.

(Soumen Sen, J.)

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(Ajoy Kumar Mukherjee, J.)