

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

SA 80 of 2020

Sri Madan Lal Shaw
Vs.
Kartick Kumar Gupta

Order dated: 21st March, 2022

Ajoy Kumar Mukherjee, J. (oral):

1. This second appeal has come up for admission. However the appellant is not represented nor any accommodation is prayed on his behalf.
2. On the basis of the judgments of both the courts below and the materials available on record we propose to examine, if there is any substantial question of law involved in the second appeal.
3. The second appeal is arising out of the appellate judgment and decree dated 16th September, 2017 passed by the learned Additional District Judge, Fast Track Court-II, Howrah, in Title Appeal No. 106 of 2016 affirming the judgment and decree dated 28th June, 2016 passed by the learned Civil Judge (Junior Division), 4th Court, Howrah, in Title Suit No. 138 of 2012.

4. It appears that plaintiff filed Title Suit No. 138/2012 contending that plaintiff is the absolute and exclusive owner of the two storied pakka building of residential accommodation on the first floor and shop rooms in the ground floor. Plaintiffs father inducted defendant as a tenant in respect of one shop room in the front side and one godown of the back side, on the ground floor of the said building at a monthly rental of Rs. 150/- without electricity. The tenancy of the defendant is guided under the provisions of Transfer of Property Act. Defendant is defaulter in payment of rent since January, 2005 and the suit property is also required by the plaintiff for his personal use and occupation. Defendant has willfully caused damages and material deterioration in the suit property and thereby creating nuisance and annoyance to the plaintiff and other members of the family. As such plaintiff sent a notice to quit dated 05.01.2012 to the defendant by registered post with A/D card and requested the defendant to quit and vacate the suit property. The defendant received the said notice to quit and also gave reply to the said notice through his advocate on 09.01.2012, but failed to vacate the same. Hence the suit. Defendant contested the suit by filing written statement and denied all material allegations made in the plaint. The defence contention is that originally maternal aunt of plaintiff's father Saraswati Gupta inducted defendant as tenant in respect of one shop room and one godown at a monthly rent of Rs. 50/- about 40 years ago. The defendant had never defaulted in payment of rent and rate of rent subsequently enhanced to Rs.150/- per month payable according to English Calendar month. Actually plaintiff paid rent from

November 2011 hand to hand. Plaintiff never issued rent receipt to the defendant, inspite of several requests. Plaintiff have no cause of action to file the suit and accordingly defendant has prayed for dismissal of the suit.

5. Learned Trial Court framed as many as eight issues. Plaintiff in support of his case adduced himself as PW1 and proved deed of settlement in support of chain of title which is marked as exhibit 1 and deed of gift in his name marked as exhibit 3. Notice to quite dated 05.01.2012 marked as exhibit 4 and postal receipt is marked as exhibit 5. Reply given by the defendant to that notice to quit dated 09.01.2012 is marked as exhibit 6. Defendant in support of his case adduced himself as sole witness and he filed and proved 7 rent receipts ranging from 1995 to 2005 which are marked as exhibit 'A' and three money receipts which are collectively marked as exhibit 'B' and trade license for running business marked as exhibit 'C'. Professional tax receipt is marked as exhibit 'D'.

6. On behalf of the defendant /appellant, it was argued that ownership of plaintiff has not been proved and there is no averment as to how ownership devolved upon plaintiff. Moreover plaintiff admits that he is a co-owner and no suit can be filed by only one co-owner. Description of the suit property is also vague and as such even if decree is passed that would become inexecutable. However, it was argued on behalf of the plaintiff that both the courts held that under Order VI Rule 1, C.P.C., only facts are required to be stated and how the ownership of the suit property acquired is not necessary to be stated .Exhibit 'A' and 'B' and other documents reveal that plaintiff is the owner of the

property and defendant has no authority to challenge the title of the landlord and in the written statement also the plea of non-joinder of the parties has not been taken. Furthermore the defendant has not denied relationship of landlord and tenant and defendant acknowledges the suit property also. In view of the fact that defendant admitted the relationship of landlord and tenant and that notice to quit was admittedly served upon defendant. Learned trial Court decreed the suit in favour of the plaintiff and directed the defendant to quit and vacate the suit premises within 60 days from the date of order vide judgment dated 28.06.2016.

7. Being aggrieved with the aforesaid judgment and decree the defendant preferred First Appeal which came up for hearing before the Additional District Judge First Track Court-II, Howrah, and learned First Appellate Court dismissed the said title appeal No. 106/2016, with the observation that from the available documents, it appears that plaintiff is the owner of the suit property on the strength of deed of gift executed by his mother and sister, which is marked as exhibit 3. Father of plaintiff got the suit property on the strength of deed of settlement is marked as exhibit 1. Learned First Appellate Court, further held that there is nothing to show that the notice to quit is illegal or invalid and admittedly notice to quit was served upon the defendant because after receiving the same he had given reply to the plaintiff.

8. Being aggrieved and dissatisfied with the aforesaid judgment and decree dated 16.09.2017 passed by the Learned First Appellate Court defendant is sought for admission of the second appeal before us on the ground that there

does not exist landlord tenant relationship between the parties in the absence of specific averments and as such the suit is hit by the mischief of Order VI Rule 2 C.P.C. Notice to quit is not legal and valid and the relationship of tenancy has not been determined by any valid notice to quit.

9. If the tenancy is not governed under the provision of rent control act i.e. West Bengal Premises Tenancy Act then the admission on behalf of the defendant /tenant that plaintiff is the landlord in respect of the suit property and that notice to quit under section 106 of the Transfer of Property Act was duly served upon him , the court trying the suit is empowered to deliver judgment on the basis of aforesaid admissions and said two admissions are sufficient to grant eviction decree against the plaintiff. Here in the pleading and evidence defendant has admitted plaintiff as landlord and he has further admitted by giving reply to the notice to quit that the notice has been duly served upon him. In the above backdrop the plaintiff is entitled for recovery of possession of the suit property against the defendant even on the basis of aforesaid two admissions without proving any other issue. In this context reliance can be placed on the Apex Court judgment, in ***Payal vision ltd. v.***

Radhika Choudhary., reported at **2013 (1) CHN (SC) 77. (para-6)**

“6..In a suit for recovery of possession from a tenant whose tenancy is not protected under the provisions of the Rent Control Act, all that is required to be established by the plaintiff landlord is the existence of the jural relationship of landlord and tenant between the parties and the termination of the tenancy either by lapse of time or by notice served by the landlord under section 106 of the Transfer of Property Act. So long as these two aspects are not in dispute the Court can pass a decree in terms of order 12 Rule 6 of the CPC, which reads as under:

“Judgment an admissions-(1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn upon in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.”

10. SA 80 of 2020 is 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 learned Civil Judge (Junior Division),
4th Court, Howrah.

I agree

(Soumen Sen, J.)

(Ajoy Kumar Mukherjee, J.)