

IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)

ORIGINAL SIDE

Present:

The Hon'ble Justice Krishna Rao

CS 34 of 2021

Molina Dey

Versus

Gargi Dey & Anr.

Mr. Meghnad Dutta, Adv.

Mr. Arindam Paul, Adv.

Ms. Parna Mukherjee, Adv.

.....For the Plaintiff

Heard on : 24.06.2022

Judgment on : 13.07.2022

Krishna Rao, J.: The plaintiff has filed the instant suit praying for a decree for eviction and recovery of khas possession of the suit property, decree for Rs. 11,50,000/- as damage and mesne profits at the rate of Rs. 10,000/- per diem from 03.02.2021 till 07.02.2021 for further mesne profits at the rate of Rs. 10,000/- per diem until the suit property is not handed over to the plaintiff.

The facts of the case is that the plaintiff along with her husband Late Gobinda Prasad Dey have purchased a flat comprising of two rooms, one, kitchen covered marble floored verandah together with attached bath room

with privy and one small room having a total area of about 1050 sq. ft. situated on the first floor of Municipal Premises No. 103B, Bidhan Sarani, P.S. Shyampukur, Kolkata – 700 004 by way of registered deed.

On 05.06.2008, the husband of the plaintiff died leaving behind the plaintiff as his only legal heir and accordingly by way of inheritance, the plaintiff has inherited the share of the property left behind by her husband and the plaintiff has become sole and absolute owner of the entire property.

One Nirmal Kumar Dey, who was the father of the defendants, was the tenant under the plaintiff in respect of the suit property at a monthly rent of Rs. 1300/- per month. The said Nirmal Kumar Dey died on 30.05.2015 leaving behind the defendants as his legal heirs. The wife of Nirmal Kumar Dey predeceased him.

The defendants being the legal heirs of the Nirmal Kumar Dey were living with their father upto till the date of his death and after the death of their father, they were continued under occupation of the said premises. On expiry of the period of 5 years from the date of death of Nirmal Kumar Dey, the defendants have no right over the suit property on and from 01.06.2020 and as such the plaintiff has never accepted any amount on account of occupational charges or otherwise from the defendants.

On 13.01.2021, the plaintiff being the landlady had issued notice to the defendants calling upon the defendant to handover the vacant and peaceful possession of the suit property but the defendants have refused to accept the notice and also failed to vacate the suit property.

The writ of summons were served upon the defendants but have not entered appearance in the suit and accordingly *vide* Order dt. 08.12.2021, the suit was placed under the heading of “Undefended Suit”.

The plaintiff had examined herself on 20.06.2022 before this Court and during her examination the following documents were exhibited:-

- “1. Certified copy of the Deed being Serial No. 819 dt. 16.02.2022 vide BK No. 1, Vol. No. 140, Pages to Being No. 5940 of 1993 – Exhibit 1.*
- 2. Certified copy of the Deed being Serial No. 821 dt.16.02.2022, BK No. , Vol. No. 140 Pages to Being No. 5941 of 1993 – Exhibit 2.*
- 3. Copy of the Death Certificate of Gobinda Prasad Deydt.05.06.2008 – Exhibit 3.*
- 4. Rent Receipt issued to Nirmal Kumar Dey for the month of March, 2015 dt.12.03.2015 for an amount of Rs. 1300/- Exhibit 4.*
- 5. Copy of Death Registration Details dt.30.05.2015 – Exhibit 5.*
- 6. Copy of the legal notice sent to the defendants by the plaintiff through the Ld. Advocate dt. 13.01.2020 along with Speed Post Receipts and the Original Speed Post Letter returned with the endorsement refused – Exhibit 6 collectively.”*

The plaintiff during her evidence has categorically stated that the plaintiff and her husband have jointly purchased the property by way of Registered Deed and after the death of her husband, the property has been inherited by the plaintiff. It is also proved that the father of the defendants was the tenant and during the lifetime of the father, the defendants were residing along with their father. After the death of the father, the defendants have neither paid the rent nor have vacated the premises. The plaintiff had sent a notice to the defendants but the defendants have refused to accept the notice and as such the refusal of notice amounts to acceptance and thus

it can be said that the defendants have the knowledge that the plaintiff had sent the notice for their eviction from the suit property.

As per Exhibit-4, the father of the defendants paid Rs.1300/- as last rent to the plaintiff on 12.03.2015 and thereafter no rent is paid by the defendants.

The father of the defendants died on 30.05.2015 which is duly proved from Exhibit-5.

Section 2 (g) of the West Bengal Premises Tenancy Act, 1997 which reads as follows:-

“(g) “tenant” means any person by whom or on whose account or behalf the rent of any premises is or, but for a special contract, would be payable, and includes any person continuing in possession after termination of his tenancy and, in the event of death of any tenant, also includes, for a period not exceeding five years from the date of death of such tenant or from the date of coming into force of this Act, whichever is later, his spouse, son, daughter, parent and the widow of his predeceased son, who were ordinarily living with the tenant up to the date of death of the tenant as the members of his family and were dependent on him and who do not own or occupy any residential premises, and [in respect of premises let out for non-residential purpose his spouse, son, daughter and parent who were ordinarily living with the tenant up to the date of his death as members of his family and were dependant on him or a person authorised by the tenant who is in possession of such premises,] but shall not include any person against whom any decree or order for eviction has been made by a court of competent jurisdiction :

Provided that the time limit of five years shall not apply to the spouse of the tenant who was a ordinarily living with the tenant up to his death as a member of his family and was dependent on him and who does not own or occupy any residential premises :

Provided further that the son, daughter, parent or the widow of the predeceased son of the tenant who was ordinarily residing with the tenant in the said premises up to the date of death of the tenant as a member of his family and was dependent on him and who does not own or occupy any residential premises, shall have a right of preference

for tenancy in a fresh agreement in respect of such premises [on condition of payment of fair rent]. This proviso shall apply mutatis mutandis to premises let out for non-residential purpose.”

As per the said Act, the defendants have no right over the suit property after period of 5 years. The father of the defendants died on 30.05.2015 and as such from 01.06.2020, the defendants have become illegal occupier of the suit property.

The father of the defendants used to pay rent Rs. 1300/- per month being the monthly rent but the defendants failed to pay the said amount. From the evidence of the plaintiff and the documents relied by the plaintiff it is proved that during the life time the father of the defendants has paid last rent on 12.03.2015 and thereafter no rent was paid and in the meantime the father of the defendants died on 30th May 2015 and after the death of the death of the father, the defendant have not paid any rent and on completion of the period of 5 years of the death of their father, the defendants have lost their right over suit property.

The plaintiff has claimed mesne profit @ Rs.10,000/- per diem on the ground that if plaintiff genuinely and bonafidely believes that the reasonable letting out value of the suit property is Rs. 10,000/- per day but it would be proper to calculate the mesne profit @ 10,000/- per month on and from 3rd February, 2021.

The defendants are directed to vacate the suit property and to deliver possession of the suit property to the plaintiff within 60 (Sixty Days) from date. The defendants are further directed to pay the mesne profit @ Rs.

10,000/- per month from 3rd February, 2021 till the date of handing over possession of the suit property to the plaintiff. Decree be drawn up accordingly.

C.S. No. 34 of 2021 is disposed of.

(Krishna Rao, J.)