

ORDER SHEET
APD/209/2018
WITH
CS/223/2013
IA NO. GA/3/2022
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

RAJEEV LOCHAN
VERSUS
SHIVANI PROPERTIES PRIVATE LIMITED

BEFORE:

The Hon'ble JUSTICE I. P. MUKERJI

The Hon'ble JUSTICE SUBHENDU SAMANTA

Date : 16TH AUGUST, 2022.

Appearance:
Mr. Arindam Banerjee, Adv.
Ms. M. Bose, Adv.
Mrs. T. Das (Singh), Adv.
Mr. R. Singh, Adv.
Ms. P. Sett, Adv.
Ms. S. Chowdhury, Adv.
For the appellant

Mrs. A. Lala Sengupta, Adv.
Mr. S. Majumdar, Adv.
For the respondent

The Court : The suit is of 2013.

It was for the eviction of the appellant/defendant from shop room No.2, shop room at the northern gate and one room on the terrace (three rooms) and another room on the ground floor (together the suit premises) of premises No. 5, Kiran Shankar Roy Road, Kolkata – 700001. The suit premises has been described in schedules W, X, Y and Z in a sketch plan marked as annexures “B” and “C” to the plaint.

The case run by the respondent/plaintiff was as follows.

One Sumitra Devi Poddar was a monthly tenant of the three rooms under the respondent/plaintiff at a monthly rental of Rs.115/- per month. The tenancy was under the West Bengal Premises Tenancy Act, 1997. Sumitra Devi Poddar had left the suit premises in May, 2013 after

which the appellant/defendant was in illegal occupation thereof together with another room on the ground floor (suit premises).

Hence, the suit as framed was for eviction of a trespasser and for recovery of possession of the suit premises by the owner of the property.

In the written statement filed by the appellant, the following contentions were made :

- (a) The mother of the appellant was one of the three daughters of Sumitra Devi Poddar.
- (b) On 27th May, 2012, Sumitra Devi Poddar died.
- (c) After the death of the appellant's father, Usha Devi started residing in the suit premises with Sumitra Devi Poddar as her dependent, with the appellant, upto the time of Sumitra Devi Poddar's death.
- (d) Usha Devi is in occupation of the said premises.
- (e) The appellant has the right of user of the said premises under Usha Devi, as a permissive user under her.

Subsequently, documents were disclosed and the suit became ready for hearing.

The issues settled on 18th November, 2016 were as follows :

- 1. Is the suit maintainable in its present form and/or in law ?
- 2. Is the defendant 'a tenant' within the meaning of 'tenant' as envisaged under the West Bengal Premises Tenancy Act, 1997, if so, is the defendant entitled to the protection as available to the tenant under the provisions of the said Act ?
- 3. Whether the defendant is a trespasser in respect of the premises particularly mentioned in the Schedule 'W', 'X', 'Y' and 'Z' ?
- 4. Whether the plaintiff is entitled to decree for eviction and recovery of possession against the defendant in respect of the suit premises as mentioned in the said schedule ?
- 5. To what relief or reliefs, if any, the plaintiff is entitled ?

The suit went to trial. Both the parties adduced oral and documentary evidence.

On 25th January, 2018, the suit was decreed in favour of the respondent by declaring the appellant to be a trespasser. It was also held that Usha Devi was not a tenant under Section 2(g) of the West Bengal Premises Tenancy Act, 1997.

Mr. Arindam Banerjee, learned advocate arguing the appeal for the appellant has raised many points.

He contended that since the appellant was claiming as a permissive user under Usha Devi, it was the duty of the respondent to implead Usha Devi as a party, plead the tenancy of Sumitra Devi Poddar, challenge the alleged devolution of tenancy after Sumitra Devi Poddar's death and so on. Thus, this suit was not maintainable for non joinder of necessary parties and causes of action and ought to have been dismissed. He took us through the evidence to show that Usha Devi was residing in the suit premises as a dependent of Sumitra Devi Poddar, her mother and that the appellant lived with them.

The respondent has run their case very skillfully, in our opinion. They did not run it on tenancy or the consequence of determination of tenancy and so on.

The appellant has not been able to show any independent right to reside in the premises. He neither made an application for Usha Devi to be made a party nor produced Usha Devi as a witness.

Even if we assume that Usha Devi was dependent on Sumitra Devi Poddar, lived with her and that the appellant lived with Usha Devi and Sumitra Devi Poddar, the protection of Usha Devi under Section 2(g) of the said Act ended five years after the death of Sumitra Devi Poddar on 27th May, 2012. As a grandson dependent on Sumitra Devi Poddar, the appellant had no independent right.

The above observations by this Court regarding Usha Devi have to be taken as tentative because Usha Devi was neither a party nor a

witness in this proceeding. Some findings regarding her may have been made in the issues framed between the appellant and the respondent in this proceeding.

In those circumstances, we dispose of this appeal with the observation that there is no flaw in the impugned decree. We affirm the same as long as it binds the respondent/plaintiff and the appellant/defendant and is restricted to eviction of the appellant from the suit premises and for other consequential reliefs like mesne profit etc. as granted therein.

Other rights, if any, are not touched by the decree.

The application being GA No.3 of 2022 is disposed of accordingly.

(I. P. MUKERJI, J.)

(SUBHENDU SAMANTA, J.)