

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Partha Sarathi Chatterjee

FA 24 of 2019

Dhananjay Paul
versus
Sri Mohan Kedia

For the Appellant : *Mr. Nirmalya Ray.*

For the Respondent : *Mr. Jahar Chakrabarti,*
Ms. Sabita Mukherjee (Roy Choudhury),
Mr. Subhojeet Mookherjee.

Hearing is concluded on : *14th March, 2023.*

Judgment On : **3rd April, 2023.**

Partha Sarathi Chatterjee, J.

1. Whether the respondent is a tenant or licensee is the main question centered around in the present appeal in which the judgment and decree dated 21.5.2016 passed by the learned Judge, Bench-X, City Civil Court, Calcutta in T.S. no. 1793 of 2012, whereby the suit for recovery of possession instituted by the plaintiff/appellant (in short, the appellant) against the defendant/respondent (in short, the respondent) has been dismissed on contest, has been impugned.

2. The appellant filed the suit contending, *inter alia*, that by virtue of the final decree passed in a suit for partition *vide* T.S. no. 3370 of 1996, appellant was allotted the Lot-C in the premises no. 7, Kripanath Lane, Kolkata-5 and in Lot-C, there is a garage and/or car parking space measuring about 257 sq.ft., in the suit property herein and the respondent is occupying the garage as a licensee.

3. Appellant claimed therein that license to occupy the garage was granted to the defendant by the appellant's father, who has passed away in 1985 and consequently, the license stood revoked and by giving a lawyer's notice dated 10.10.2012, the appellant asked the respondent to hand over possession of the suit property but in spite of receipt of that letter and despite lapse of the time stipulated in the letter, the respondent did not hand over the vacant possession of the suit property. Hence, the suit.

4. Defendant/respondent resisted the suit by filing written statement. Crux of the defense taken in written statement is that the respondent was inducted in the suit property as a tenant by the appellant's father in 1982 at a monthly rental of Rs.150/- and appellant's father would collect rent by making endorsement in a 'Rent Collection Exercise Book' and ultimately, rent was enhanced to Rs.500/- p.m. and even appellant himself used to collect rent from the respondent in the same manner. Defendant/respondent claimed that he carried out repair work of the suit premises till 1990 and thereafter he was prevented from carrying out any nature of repair work.

5. Upon pleadings of the respective parties, the learned Court below framed as many as 6(six) issues and in corroboration of the fact depicted in the plaint, appellant produced two witnesses on dock including himself and one Partha Sarathi Paul who were examined as PW-1 and 2 respectively. Appellant tendered some documents, namely, certified copy of the decree passed in Partition Suit being T.S. no. 3370 of 1996, lawyer's notice dated 10.10.2012 along with postal receipts and A/D cards, Tax Bill and two notices issued by KMC which were marked as Ext.1 to 5. On the other hand, to ramp up the averments made in written statement, respondent adduced his oral testimony but he did not tender any document.

6. Learned Court below while dismissing the suit observed the respondent was inducted in the suit premises as a tenant and notice dated 10.10.2012 was not valid. Aggrieved thereby, appellant has preferred the present appeal contending, *inter alia*, that learned Court has failed to understand the true purport of the terms, the '*tenant*' and the '*licensee*' and failed to appreciate the evidence in proper manner and arrived at an erroneous conclusion.

7. Mr. Ray, learned advocate representing the appellant argues that the appellant was not aware of the fact whether his father granted a license to the respondent to occupy the suit premises. He asserts that appellant's father has expired and in consequence, the license, if at all granted, stood revoked and he argues that the respondent has not been able to produce any scrap of paper to justify his possession over the suit premises and consequently, respondent should have been declared as rank trespasser or

forceful occupier having no right to possess the suit premises. He further argues that even if it is assumed but not admitted that appellant's father granted license, the same was required to be held to have been revoked by his lawyer's notice dated 10.10.2012 and Court should have decreed the suit.

8. In response, Mr. Chakrabarti, learned advocate appearing for the respondent argues that suit was required to be decreed on admission taking recourse to the provision of Order 12 Rule 6 of Code of Civil Procedure, 1908 (in short, the Code). He drew out attention to the cross-examination of PW-1 wherein PW-1 deposed that *'it is true that information relating to the occupiers of the suit premises was given to Partition Commissioner.'* PW-1 further deposed that *'it is true that I have disclosed before the Partition Commissioner that there are Low-paying tenants in the suit building. The Partition Commissioner wrote the said information in his report, which he got from oral submission of the co-sharers'.*

9. Mr. Chakrabarti drew our attention to a specific portion of the Partition Commissioner's report wherein it was stated that *'Garage at the south-eastern side has been let out/or licensed to use and occupy to one Sri Madan Kedia @ 150/- p.m.'* He asserts that conjoint reading of these statements would lead any prudent man to hold that the defendant was a tenant. He submits that learned Court below has correctly held that the defendant is a tenant in respect of the suit premises and the notice dated 10.10.12 is bad and accordingly, there is no scope to interfere with the judgment impugned.

10. '*Lease*' is defined in Section 105 of the Transfer of Property Act, 1882 while '*licence*' is defined in Section 52 of the Indian Easement Act, 1882. Difference between '*lease*' and '*licence*' is to be determined by finding out the real intention of the parties as decipherable from a complete reading of the document and surrounding circumstances. It is trite of law that conduct of the parties before and after creation of relationship is of relevance for finding out their intention. In case of a lease an interest in the immovable property is created but if permission to use the land without exclusive possession is given, a licence is the legal result. In other words, if right to use the property in a particular way or under certain terms is given to the occupant but the owner retains the control or possession over the premises, then it would be licence but although exclusive possession is not conclusive proof of tenancy but if interest is created and exclusive possession is given subject to payment of rent, tenancy may be presumed.

11. Admittedly, parties did not produce any deed or agreement or rent receipt. Appellant claimed that his father granted license to the respondent and his father has expired and hence, license stood revoked. The respondent rebuffed the claim saying that he was inducted as tenant. When there is no formal document created between the parties, the intention of the parties must be gathered from the surrounding circumstances as well as from the conduct of the parties.

12. In the case at hand, from the oral evidence of the parties and report of partition commissioner, answer to this query is to be traced out. PW-1 and PW-2 conjointly voiced in their deposition that two rooms are

occupied by two political parties and there are some '*low-paying tenants*' in the suit building and particulars of such tenants were disclosed to partition commissioner and those particulars have found their reference in the report of partition commissioner. PW-2 deposed that respondent is occupying the suit premises since the time of his father and then said since 1984 and father of PW-1 and PW-2 passed away in 1985.

13. PW-2 deposed that his father used to collect rent from the tenants and after 1985, his sister used to collect rent from the tenants till 1994 and even after 1994 also, rents were collected from the tenants and PW-2 deposed that his elder brother also used to collect rent from the tenants and income deriving the from rent was included in income tax return by his father.

14. Partition commissioner reported that Ground floor is occupied by three old low-paying tenants and two different trespassing political parties. Garage at the south-eastern side has been let out/or licensed to respondent at a monthly rental of Rs.150/-.

15. From a conjoint reading of evidence of PW-1 and PW-2 and report of partition commissioner, it can be inferred that the respondent herein is one out of three low-paying tenants and father of appellant inducted the respondent as a tenant in the suit premises and rents were collected from the respondent initially by appellant's father, then by sister of PW-1 and PW-2 and even, their elder brother also collected rent from the respondent and hence, it can be argued that interest in the suit premises was created and exclusive possession was given subject to payment of rent. Even

though exclusive possession is not decisive of the issue but if it is found that the a person is given exclusive possession and he pays certain amount of money every month and if he is given authority to make repairs of the suit premises then it is a case of tenancy. In the given case, considering evidence and pleadings of the parties, we have no qualm to hold that the respondent is a tenant in respect of the suit premises and to get rid of the rigors of rent control legislation, appellant has instituted the suit claiming the respondent as licensee.

16. In view of above discussion, we do not find any infirmity, perversity and illegality in the judgment and decree impugned.

17. Accordingly, the appeal fails. Judgment and decree impugned are affirmed. Let a decree be drawn up, accordingly.

18. However, it is clarified that this judgment shall not preclude the appellant to seek redressal of his grievance in rent control legislation, if he is so entitled and so advised.

19. Let a copy of this judgment along with LCR be sent down to the learned Court below forthwith.

20. Urgent Photostat copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)