

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Supratim Bhattacharya

S.A. 140 of 2019

with

IA No. CAN 3 of 2022

Smt. Supriya Chandra & Anr.

-Vs.

Sri Shashanka Gupta

For the Appellant : Mr. Gopal Chandra Ghosh,
Mr. Subrata Dutt.

For the Respondent (in-person) : Mr. Shashanka Gupta

Heard On : 08.06.2023

Judgement Delivered On : 06.09.2023

Supratim Bhattacharya, J.:

1. The instant appeal has been preferred by the husband and father of the present appellants respectively, being aggrieved by and dissatisfied with the Judgment and decree passed, in Title Appeal being Title Appeal No. 1 of 2015 dated 18.01.2017, by the Ld. Judge of the City Civil Court Bench III.

2. Through the said judgement the First Appellate Court has been pleased to dismiss on contest the prayer for recovery of the suit property from the possession of the respondent tenant by way of eviction in Title Appeal No. 01 of 2015 by holding that the appellant/landlord has not been able to prove the actual and genuine need in getting the suit property from the possession of the respondent/defendant/tenant.
3. The original landlord namely Sushanta Chandra, since deceased, had filed the Ejectment suit being No. 556 of 2006 before the Presidency Small Causes Court at Calcutta and thereafter had preferred the Title Appeal being No. 01 of 2015 before the City Civil Court Calcutta. The said Sushanta Chandra, since deceased, thereafter filed the second appeal and during the pendency of the second appeal he expired. On his expiry the present appellants namely Smt. Supriya Chandra and Sri Suman Chandra being the wife and the son of the deceased have been substituted.

The respondent/tenant herein was the defendant in the aforementioned Ejectment suit and the respondent in the 1st Appellate Court.

4. The fact of the lis is that the original plaintiff namely Sushanta Chandra being the landlord, by way of purchase, of the suit premises being 15/1A Jugal kishore Das Lane, Kolkata-700006, Police Station-

Amherst Street, inducted the respondent/defendant/tenant in respect of one road side room in the ground floor of the said suit premises at a rental of Rs. 100/- per month payable according to English calendar month.

Thereafter the appellant/landlord instituted an ejectment suit being Ejectment suit No. 556C of 2006 before the Ld. Small Causes Court 3rd Bench praying for recovery of possession of the room on the road side in the ground floor of the suit premises on the ground of reasonable requirement.

The Ld. Trial Court has been pleased to reject the prayer of the appellant/landlord and being aggrieved by the said Judgment and decree the appellant/landlord preferred the first appeal before the Ld. Judge of the City Civil Court, 3rd Bench Calcutta. The first appeal has also been dismissed on contest as such the instant second appeal has arisen.

- 5.** The Ld. Counsel appearing on behalf of the appellant/landlord during his exhaustive argument has submitted that originally the family of the appellant/landlord consisted of the landlord himself his spouse, son and daughter-in-law. He has further submitted that during the proceedings of this lis the original plaintiff expired and his legal heirs have been substituted, who are his wife and son. He has further submitted that at this specific moment the family of the landlord

consist of the wife of the original landlord who is an aged lady suffering from various ailments, her son and daughter-in-law. He has further submitted that the family also consists of a grand-son and a grand-daughter. He has further submitted that the wife of the original plaintiff is suffering from cerebral problem and osteoarthritis and she has been advised not to use stair case.

He has further submitted that the wife of the original landlord is running a boutique selling sarees in the name and style of "Priya Boutique".

The Ld. Counsel has further submitted that the plaintiffs are presently occupying two bedrooms on the first floor one bathroom-cum- privy on the first floor and one kitchen and one bathroom-cum- privy in the ground floor. He has further submitted that during the pendency of the lis one room has been constructed on the second floor.

The Ld. Counsel has further submitted that the appellants require one bedroom in the ground floor for the elderly people one bedroom for the original plaintiff's son and daughter-in-law. He has further submitted that one room is required as drawing room and for guest room and another room is required for a full time domestic help.

The Ld. Counsel banking upon the aforesaid facts has stressed for allowing the instant appeal on the ground that there is reasonable requirement of rooms by the appellants /landlords. In support of his

contention the Ld. Counsel has relied upon the following judgments which are as follows:

- i) (2001) 3 SCC 179
 - ii) (2002) 2 SCC 440
 - iii) (2010) 13 SCC 487
 - iv) (2000) 3 SCC 528
 - v) (2018) 4 SCC 369
 - vi) (2000) 1 SCC 679
 - vii) (1996) 5 SCC 353
 - viii) (2001) 2 SCC 355
 - ix) (1998) 8 SCC 222
- 6.** The respondent/tenant has appeared in person and has argued at length. He has submitted that the original landlord has expired during the pendency of the lis. He has further submitted that the wife of the original landlord has not renewed the trade licence in respect of the said boutique as such at present there is no boutique being run by the spouse of the original appellant/ original plaintiff. He has further submitted that the appellants have constructed rooms during the pendency of the lis on the second floor. The respondent has further submitted that in the south eastern corner of the ground floor there is a room which is being used as kitchen and on the northern side of the kitchen there is space which is partly open and partly covered. He has further submitted that there are separate entrance

for the landlord and the tenant. Banking upon the aforesaid facts the respondent has submitted that the appellants/landlords have sufficient space and room for themselves and there is no reasonable requirement of the suit room as such he has prayed for dismissal of the instant appeal.

- 7.** At the time of admission of the instant appeal one substantial question of law has been framed which is as follows:

“Whether a landlord citing medical grounds to reclaim a ground floor tenancy ought to be declined merely on the ground that suitable accommodation on the first floor was available to the landlord ?”

Two ancillary questions of equal importance have also been framed those are as follows:

“1. To what extent does a landlord have to prove reasonable requirement so that it can be said that the requirement is not fanciful but is necessary ?

2. Whether the availability of accommodation at a different locality would affect the rights of a plaintiff claiming eviction on the ground of reasonable requirement if the remainder of the plaintiff's family lives on the upper floors of the decretal premises ?”

- 8.** In this lis several developments have taken place since the filing of the Ejectment suit. In this context Paragraphs 13 and 18 of the Judgment passed

by the Hon'ble Apex Court in the case between P.V. Papanna Vs. K. Padmanabhaiah published in (1994) 2 SCC 316 is referred to. Paragraph 13 and 18 reads as follows:

“13. From the various observations made in the cases referred to above, it is patently clear that this Court, while laying down that in a suit for eviction on the ground of bona fide requirement of premises by landlord the subsequent events ought to be taken into account for the purpose of finding out whether the landlord still required the premises in possession of the tenant, has also laid down that such an enquiry can be made so long as the decree for eviction does not become final. In other words, once the matter has become final in the sense that the order of eviction has been upheld by the Highest Court in which it was sought to be challenged, it would not be open to further challenge, which necessarily can be in the execution stage. This conclusion inevitably follows from the well-settled principle that a court executing the decree cannot go behind the decree for it is binding and conclusive between the parties to the suit. Therefore, the executing court is required to execute the decree as it finds; save in exceptional cases where the decree on the face of it may be found to be without jurisdiction. To put it differently, the executing court cannot enquire as to why the decree was passed but for the purpose of finding out whether the decree is a valid one or a nullity it can go into the question as to whether the court which passed the decree was competent to do so. Besides, the executing court may if need be, look into the pleadings of the parties and the proceedings of the trial, for the limited purpose of construing the decree or the meaning of the words used therein.

18. For the foregoing discussion, we must hold that events which take place subsequent to the filing of an eviction petition under any Rent Act can be taken into consideration for the purpose of adjudication until a decree is made by the final court determining the rights of the parties but any event that takes place after the decree becomes final cannot be made a ground for reopening the decree. The finality to the dispute culminating in the decree cannot be reopened by the executing court for readjudication on the ground that some event or the other has altered the situation. As a corollary thereto it must also be held that once the decree became final it became a part of the estate of the landlord and therefore

the appellants as legal representatives of the deceased landlord are entitled to execute the same.”

So it is apparent that subsequent events are to be taken into consideration.

9. After consideration of the submission made on behalf of the appellants/landlords and by the respondent tenant himself it is apparent that the original plaintiff namely Sushanta Chandra has expired during the pendency of this lis. One grand-son and one grand-daughter have entered into the arena of the family of the landlord during the pendency of the proceeding. So it is fact that at this present moment the family of the appellant/landlord consists of the widow of the original landlord, the son and the daughter-in-law along with two grand-children. In total the family members of the appellant consists of 5 members.

On going through the evidence on record it reveals that medical documents reflecting illness of either the original landlord or his spouse have not been proved instead they have been marked X for identification.

10. From the first final report of the Advocate Commissioner it is apparent that in the ground floor there is a kitchen-cum-dining, covered space from the entrance to the small partly open and partly covered space where there is landing of stair case, one bathroom- cum -privy and there is separate entrance for the landlord. On the first floor there are two rooms an open space, dining space and one bathroom. On the second floor there is one room, one thakur ghar, an open space and a bath-cum-privy. So there are in total 3 bedrooms, 3 bath- cum- privy,

one kitchen- cum- dining, one dining space and in each of the floors there are covered space.

From the Deed Plan which is part of the exhibit-5 that is the certified copy of the purchase deed of the landlord, which reflects the ground floor and the first floor it reveals that in the ground floor there is one drawing room one kitchen /dining one bath and two toilets and on the first floor there are two rooms oen living/dining one toilet and one store room and from the Commissioner's report it reveals that on the second floor there is one bedroom one bath-cum-privy one Thakur Ghar and passage. From the deed plan it reveals that the measurement of the room in the ground floor which is in possession of the appellants is of the same measurement as that of the bedroom situated just above on the first floor. There is no fact raised by the appellants that the said room in the ground floor has been demolished or renovated. So, altogether the appellants have four (4) rooms, one (1) kitchen/dining, one (1) living/dining, one (1) store room, five (5) bath/toilet and there are covered space available in the ground floor and the first floor.

So there is sufficient room and space for the appellants/landlords which will suffice the reasonable requirement of the appellants.

The deed plan annexed to the deed of purchase reveal that there is one room, one kitchen cum dining one bath and two toilets are present in the ground floor, so an aged person can reside in the ground floor.

11. The appellants/landlords have exhibited one trade licence for the financial year 2009-10 and have provided one trade licence for the financial year 2016-2017 in respect of Priya's boutique reflecting that Supriya Chandra is the proprietor of the same. No further trade licence has been produced proving the renewal of the same since the financial year 2017. On the one hand the appellants are claiming that Supriya Chandara is an aged ailing woman while on the other hand the appellants are claiming room for the boutique being run by the said Supriya Chandra. Both the contentions stated above cannot go hand in hand and it is hard to believe that an aged ailing person is running a boutique. As no recent trade licence has been produced so the fact of running a boutique in the said house does not have any leg to stand upon.

12. Before the Trial Court the defendant had raised a point that the plaintiff has an alternative accommodation at 52/A Baburam Ghosh Lane but the defendant could not prove the same as such that is not taken into consideration.

13. Another point had cropped up before the Trial Court that an ancestral property of the appellants/landlords are existing but to that effect the appellants/landlords had denied the fact that the said property is presently owned by the appellants/landlords instead had submitted that the said property is being owned by the elder brother

of the original landlord but the landlord had not been able to produce any documentary evidence to prove the same at that time.

On going through the Judgment of the First Appellate Court it has come to the notice that the First Appellate Court has rejected the prayer of the appellants/landlords for allowing to produce the additional evidence that is the copy of the probate in respect of the ancestral property under Order XLI Rule 27 of the Code Civil Procedure Code on the ground that there is no necessity to produce the same.

There being rejection and non-consideration of the prayer for filing copy of the probate by either the Trial Court and the First Appellate Court without any cogent ground this Court is inclined to accept the said document that is the copy of the probate on the ground of arriving at the just conclusion. From the probate it reveals that a property situated at 59 Nimu Gossain Lane, Calcutta belonged to Pannalal Chandra, who was the father of Sushanta Chandra. From the copy of the probate it reveals that the aforementioned property has not reached Sushanta Chandra instead it has been probated in favour of Netai Chandra, the eldest brother of Sushanta Chandra. So there is no alternative accommodation of the appellants/plaintiffs. Thus the application under Order XLI Rule 27 read with Section 151 of the Code of Civil Procedure being CAN 3 of 2022 is disposed of.

- 14.** Neither any prescription nor any medical document has been proved on behalf of the appellants/ landlords proving the illness of the spouse of the original landlord namely Supriya Chandra who is alive now.
- 15.** As regards to the presence of a full time domestic help nothing has been proved on behalf of the appellants/landlords as such this aspect is also not taken into consideration.
- 16.** The citations forwarded on behalf of the appellants are involving Order XLI Rule 27 of the Code of Civil Procedure which has been considered and allowed. Citations also relates to alternative accommodation of the landlord which has been settled that the landlord has no alternative accommodation. As regards to reasonable requirement the exhibited document which has been exhibited on behalf of the appellants that is the deed plan which is annexed with the deed of purchase has been taken into consideration along with the Commissioner's report.
- 17.** Thus From the deed plan annexed to the deed of purchase of the landlords and the two Commissioner's report it is reflected that the appellants have altogether four (4) rooms, one (1) kitchen/dining, one (1) living/dining, one (1) store room, one (1) bath, four(4) toilets and there are covered space available in the ground floor and the first floor.

Overall there being altogether 5 persons which includes the aged spouse of the original landlord the son and the daughter-in-law of the landlord and two grand-children of the landlord, considering the number of members and the accommodation available this Court is of the view that the appellants/landlords do not have reasonable requirement for accommodation for which the respondent/tenant is required to be evicted.

In addition in the ground floor there is one (1) room which is measuring the same as that of the bedroom situated on the first floor just above this room. There is also one (1) Kitchen/dining, one (1) bath and two (2) toilets in the ground floor. As such an aged person can reside in the ground floor.

18. In the backdrop of the above discussion, this Court finds no reason to interfere with the Judgment and Order passed by the Ld. First Appellate Court. **S.A. 140 of 2019** is **dismissed on contest** and the Judgment passed in the **Title Appeal No. 01 of 2015** is **affirmed** and **IA No CAN 3 of 2022** is **disposed of**.

19. Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

20. Urgent Xerox certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Supratim Bhattacharya, J.)

Later

After the declaration of the Judgment, the Ld. Counsel appearing on behalf of the appellants submits that one of the appellants namely Supriya Chandra has expired on 24.08.2023.

The said Ld. Counsel is directed to file an application which he intends to file in this regard, after serving copy of the same, upon the respondent.

(Supratim Bhattacharya, J.)