

IN THE HIGH COURT AT CALCUTTA
(CIVIL APPELLATE JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

S.A. 97 of 2016

PRATIMA RANI GHOSH @ DURGA RANI GHOSH
VS.
HAREKRISHNA MONDAL

For the Appellant : Mr. Shyamal Chakraborty, Adv.
Mr. Prasanta Banerjee, Adv.

For the O.P. : Mr. Tarak Nath Halder, Adv.

Hearing concluded on : 19th July, 2023

Judgement on : 24th July, 2023

Siddhartha Roy Chowdhury, J.:

1. Challenge in this appeal is to the judgement and decree passed by learned Additional District and Sessions Judge, Fast Track Court-II, Sealdah in Title Appeal No. 6 of 2003, affirming the judgement and decree passed by learned Civil Judge, Junior Division, 2nd Court, Sealdah in Title Suit No. 607 of 1992. Learned Trial Court in a suit for eviction of a premises tenant passed the decree despite the specific finding that there was no relationship of landlord and tenant between the parties. The defendant made an unsuccessful attempt to get the judgement of learned Trial Court reversed. Learned First Appellate Court accepted the view of learned Trial Court. Hence this appeal.
2. For the sake of convenience the parties will be referred to as they were arrayed before the learned Trial Court.

3. Briefly stated, the plaintiff filed the suit for eviction, stating, *inter alia*, that by virtue of a solenama in Title Execution Case No. 129 of 1979 and 130 of 1979 executed by and between Harekrishna Mondal, the decree holder and Prafulla Kumar Ghosh since deceased, the judgement debtor, in the said execution proceeding, the defendant was given possession of half of the shop room and two bed rooms with verandah and at premises no. 43A Ultodanga Road, P.S. Ultodanga, Kolkata-700004 at a monthly rental of Rs. 140/- payable according to Bengali Calendar Month. The defendant failed to pay such rent and thus became a defaulter. It is alleged that the defendant parted with possession of the shop room by sub-letting the same to one Dilip Sarkar without written consent of the landlord. A notice terminating the tenancy was served upon the defendant through the advocate of the plaintiff calling upon her to quit and vacate the suit property on the expiry of month of Shrabana, 1399 B.S. but the defendant failed to act in terms of the said notice. Hence the suit.
4. Pratima Rani Ghosh, the defendant contested the suit by filing written statement denying all material allegations. Admitting the factum of solenama, the defendant stated that her father was given right to use and occupy the suit properties and half of the shop room and it was agreed by and between the parties to the said solenama, that Prafulla Kumar Ghosh and his wife during their life time would occupy one room free of cost. The married daughter of Prafulla (the appellant herein) was given right to occupy the two bed rooms. It was contended that there was no relationship of landlord and tenant between the parties for all practical purposes. The father of the defendant was the maternal uncle of

the plaintiff. In the additional written statement it was pleaded that the defendant had no reason to receive rent receipt as Durga Rani Ghosh. She was never introduced herself as Durga Rani Ghosh. After considering the pleadings as well as evidence on record learned Trial Court observed that though the plaintiff has failed to prove that the defendant is a tenant under him, but according to learned Trial Court it has been proved that the defendant has been possessing the property in suit as licensee under the plaintiff. Learned First Appellate Court also did not find any reason to disagree with the view expressed by learned Trial Court.

5. Assailing the judgement Mr. Shaymal Chakraborty, learned Counsel for the appellant submits that the plaintiff filed the suit with specific pleading that the appellant was a tenant under him. He terminated the tenancy by a notice under Section 13 (6) of the West Bengal Premises Tenancy Act, 1956, even he filed an application under Section 17 (3) of the West Bengal Premises Tenancy Act but failed to prove the case he pleaded. The appellant in her written statement categorically stated that pursuant to a solenama the parties were given right to enjoy the property in suit till their life time and the defendant was also given permission to occupy the property without any licence fee.
6. According to Mr. Chakraborty, in absence of any alternative pleading, learned Trial Court could not have pronounced the judgement, directing the defendant to quit and vacate the suit property. Learned Trial Court did not follow the fundamental rule that pleadings form the foundation of a case. Learned First Appellate Court failed to appreciate the infraction caused by learned Trial Court to such basic rule, while passing judgement, granting relief which has not been pleaded or

prayed for. It is adverted by Mr. Chakraborty that the importance of pleadings cannot be ignored for the simple reason that it is the pleading that led to the framing of issues in the suit. The whole object of framing of issue would be compromised if the parties are allowed to travel beyond pleading and thereby beyond any issue framed or where the parties are not at issue. To buttress his point Mr. Chakraborty relies upon the decision of Hon'ble Apex Court in **STATE OF UTTARAKHAND & ORS. MANDIR SRI LAXMAN SIDH MAHARAJ** reported in **AIR 2017 SC 4472**, wherein it is held :-

“The Courts below also should have seen that Courts can grant only that relief which is claimed by the plaintiff in the plaint and such relief can be granted only on the pleadings but not beyond it. In other words, Courts cannot travel beyond the pleadings for granting any relief.”

7. It is further adverted that object and purpose of pleadings is to ensure that each side is fully alive to the question that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the Court for its consideration. Court cannot make out a case which is not pleaded. To buttress his point Mr. Chakraborty relies upon the judgement of Hon'ble Apex Court in **BACHHAJ NAHAR VS. NILIMA MANDAL & ORS.** reported in **AIR 2009 SC 1103** wherein it is held :-

“9.The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant

evidence appropriate to the issues before the court for its consideration. This Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take.”

8. It is further contended by Mr. Chakraborty when the plaintiff failed to prove the relationship of landlord and tenant between the parties to the proceeding, learned Trial Court had no other option but to dismiss the suit. The learned Appellate Court endorsed the view of learned Trial Court without taking into consideration the provision of Order 6 Rule 1 of the Code of Civil Procedure. The judgement impugned according to learned Counsel should be set aside. Had there been any alternative pleading for eviction of licence learned Trial Court could have passed the decree but in the given facts and circumstances there was no scope to pass the decree for eviction of the defendant which learned Appellate Court failed to appreciate.

9. Refuting such contention Mr. Tarak Nath Halder, learned Counsel for the respondent submits that the plaintiff filed the suit for recovery of possession by evicting the defendant, who according to the plaintiff was a tenant under him. The defendant contested the suit by filing written statement and in her written statement she took the specific plea that she was allowed to possess the suit property pursuant to the compromise arrived at by and between Prafulla Kumar Ghosh, her father and the plaintiff. After considering the pleading of the parties learned Trial Court framed the following issues :-

1. Is the suit maintainable in its present form?

2. Is the notice to quit legal, valid and sufficient and duly served on defendant?
3. Is the defendant a defaulter in payment of rent?
4. Has the defendant sublet the suit premises to 3rd party without knowledge and written consent of the plaintiff?
5. Is the plaintiff entitled to the decree as prayed for?
6. To what other relief is plaintiff entitled?

10. Therefore, issue no. 5 is sufficient to indicate that suit was filed for recovery of possession and in such a situation the learned Trial Court had the jurisdiction to pass the decree, despite the fact that the plaintiff failed to prove the status of the defendant as tenant in respect of suit premises.

11. It cannot be said that the defendant was taken by surprise. In support of his contention learned Counsel relied upon the decision of Hon'ble Apex Court in **BHAGWATI PRASAD VS. CHANDRAMAUL** reported in **AIR 1966 SC 735** wherein it is held :-

“12. Turning then to the pleadings and evidence in this case, there can be little doubt that the defendant knew what he was specifically pleading. He had admitted the title of the plaintiff in regard to the plot and set up a case as to the manner in which he spent his own money in constructing the house. The plaintiff led evidence about the tenancy set up by him and the defendant led evidence about the agreement on which he relied. Both the pleas are clear and specific and the common basis of both the pleas was that the plaintiff was the owner and the defendant was in possession by his permission. In such a

case the relationship between the parties would be either that of a landlord and tenant, or that of an owner of property and a person put into possession of it by the owner's licence. No other alternative is logically or legitimately possible. When parties led evidence in this case, clearly they were conscious of this position, and so, when the High Court came to the conclusion that the tenancy had not been proved, but the defendant's agreement also had not been established, it clearly followed that the defendant was in possession of the suit premises by the leave and licence of the plaintiff. Once this conclusion was reached, the question as to whether any relief can be granted to the plaintiff or not was a mere matter of law, and in deciding this point in favour of the plaintiff, it cannot be said that any prejudice has been caused to the defendant."

12. It is no more res-integra that a case not specifically pleaded can be considered by the Court only where the pleading in substance though not in specific terms, contains the necessary averment to make out a case and the issue framed also generally covers the question involved in the suit and parties proceed consciously keeping the facts in the form of pleadings in mind, where they are at issue and lead evidence thereon.
13. Here in this case the plaintiff filed the suit seeking eviction of a premises tenant. The defence taken by the defendant is that she has been possessing the property as licensee in terms of the settlement arrived at by and between her father and the plaintiff in Title Execution Case No. 1296 of 1979 and 130 of 1979, Exhibit-6. True it is learned Trial Court ought to have framed an issue as to whether the defendant is a licensee under the plaintiff as on the said fact, the parties were at issue. But

absence of such issue makes no qualitative difference. The defendant was aware that suit was filed for her eviction. She was served with a statutory notice terminating the tenancy. During trial her pleading was found to be correct. She was never inducted as tenant. The question that calls for consideration is whether the parties were conscious about their respective pleadings and led evidence on the foundation of such pleading in the Trial Court.

14. In this regard, the decision of Hon'ble Apex Court in **V. PRABHAKARA VS. BASAVARAJ K. (DEAD) BY LEGAL REPRESENTATIVES & ANR.** reported in **(2022) 1 SCC 115**, may be relied upon wherein it is held :-

“21. A relief can only be on the basis of the pleadings alone. Evidence is also to be based on such pleadings. The only exception would be when the parties know each other's case very well and such a pleading is implicit in an issue.”

15. In **BHAGWATI PRASAD VS. CHANDRAMAUL** reported in **AIR 1966 SC 739**, the Hon'ble Supreme Court held :-

“12. Turning then to the pleadings and evidence in this case, there can be little doubt that the defendant knew what he was specifically pleading. He had admitted the title of the plaintiff in regard to the plot and set up a case as to the manner in which he spent his own money in constructing the house. The plaintiff led evidence about the tenancy set up by him and the defendant led evidence about the agreement on which he relied. Both the pleas are clear and specific and the common basis of both the pleas was that the plaintiff was the owner and the defendant was in possession by his permission. In such a case the relationship between the

parties would be either that of a landlord and tenant, or that of an owner of property and a person put into possession if it by the owner's licence. No other alternative is logically or legitimately possible. When parties led evidence in this case, clearly they were conscious of this position, and so, when the High Court came to the conclusion that the tenancy had not been proved, but the defendant's argument also had not been established, it clearly followed that the defendant was in possession of the suit premises by the leave and licence of the plaintiff. Once this conclusion was reached, the question as to whether any relief can be granted to the plaintiff or not was a mere matter of law, and in deciding this point in favour of the plaintiff, it cannot be said that any prejudice had been caused to the defendant.”

16. As I have pointed out the defendant depicted herself as a licensee under the plaintiff and Exhibit-6 supports her contention. A licensee, unlike a tenant does not deserve any notice. Mere filing of the suit is sufficient to hold that licence has been revoked. When the defendant herself admitted to have been possessing the suit property by the leave and licence of the plaintiff, though she is contesting the prayer of the plaintiff for her eviction as tenant from the suit property, after considering the evidence on record as a whole, when learned Trial Court passes a decree, same cannot be reversed merely on the ground that defendant is not found to be a tenant but a licensee.

17. A person can occupy a property either as owner or as tenant or as licensee or trespasser. When it is established that defendant is not a tenant and admittedly she is not the owner of the property as well, learned Trial Court was absolutely justified in passing the decree.

Learned First Appellate Court had every reason not to interfere with such judgement and decree. In my humble opinion the impugned judgement passed by learned Appellate Court does not warrant any interference. Consequently the appeal fails.

18. Let a copy of this judgement along with lower Court record be sent down to the learned Trial Court immediately.
19. Urgent photostat certified copy of this judgement, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.