

IN THE HIGH COURT AT CALCUTTA  
Civil Appellate Jurisdiction  
Appellate Side

Present:

The Hon'ble Justice Siddhartha Roy Chowdhury

S.A. 49 of 2017  
CAN 2 of 2019  
CAN 3 of 2022  
CAN 4 of 2022

Sandip Kumar Dey  
Vs.  
Kalyan Basu & Ors.

|                    |   |                                 |
|--------------------|---|---------------------------------|
| For the Appellant  | : | Mr. Kushal Chatterjee           |
|                    |   | Mr. Tarak Nath Halder           |
| For the Defendants | : | Mr. Partha Pratim Roy           |
|                    |   | Mr. Kallol Mondal               |
|                    |   | Mr. Sagnik Chatterjee           |
|                    |   | Mr. Souvik Das                  |
| Heard on           | : | 18 <sup>th</sup> December, 2023 |
| Judgment on :      | : | 18 <sup>th</sup> December, 2023 |

The Court:

1. Challenge in this appeal is to the judgement and decree passed by the learned Additional District & Sessions Judge, Second Court at Sealdah in Title Appeal No. 23 of 2014 affirming thereby the judgement and decree passed by learned Civil Judge ( Junior Division), Second Court at Sealdah in Title Suit No. 117 of 2007.
2. For the sake of convenience the parties will be referred to as they have been arrayed in the suit.

3. Briefly stated, the father of the plaintiff since deceased, inducted Allahabad Merchandise Company Private Limited as a monthly tenant in respect of a flat in the ground floor of the suit house at a monthly rental of Rs.400/- payable according to English Calendar month. The tenancy was taken by the company for the purpose of residence of one Sunit Kr. Dey since deceased. Rent receipts used to be granted in the name of proforma defendant the company. It is adverted by the plaintiff in the plaint that after the demise of Sunit Kr. Dey tenancy got terminated automatically. The defendant at that point of time requested the plaintiff to allow him to occupy in the suit property as a licensee with occupational charge @Rs.400 per month till he could find out an alternative accommodation for himself.
4. Though the property was taken for the purpose of residence but the same is being used for commercial purpose. The defendant is running a car hiring agency and thus causing nuisance and inconvenience to the plaintiff and the family members. The plaintiff on 18.8.2006 by a notice asked the defendant to quit and vacate the property in suit on the expiry of October 2006. But the request was not acceded to by the defendant. Hence the suit.
5. The defendant contested the suit by denying the averments of the plaintiff made in the plaint without making any specific defence case. The defendant, however, challenged the legality of the notice to quit.
6. Learned Trial Court after considering the evidence on record both oral and documentary answered the issues in favour of the plaintiff and was pleased to pass the decree for eviction. The defendant was directed to quit and vacate the suit property within sixty days from the date of judgement.

7. The defendant thereafter made an unsuccessful attempt to reverse the judgement of the Trial Court in Title Appeal No. 23 of 2014 before the learned first Appellate Court. Hence the second appeal, which was admitted on the following substantial question of law;

- i) Whether both the courts below committed substantial error of law in passing decree for eviction holding the suit maintainable notwithstanding the fact that without determination of relationship of landlord and tenant between plaintiffs / respondents and proforma defendant / proforma respondent herein, instant eviction suit has been initiated against the son of the deceased Sunit Kumar Dey who has actual employee of the Company?
- ii) Whether both the courts below committed substantial error of law in passing decree for eviction holding the suit maintainable only on the pleading of plaintiffs/ respondents that on the death of Sunit Kumar Dey on August 8, 2005 the tenancy occupied by him got automatically terminated though there is no pleading to the effect that company surrendered his tenancy and defendant / appellant herein entered into a fresh agreement?
- iii) Whether both the courts below committed substantial error of law in passing decree for eviction notwithstanding the fact that the flat was let out to the Company for use and occupation of Sunit Kumar Dey, predecessor-in-interest of defendant / appellant and tenancy does not get automatically terminated upon death of father of defendant / appellant and plaintiffs/ respondents have no right to create any fresh agreement of licence with defendant / appellant since rent was being paid by the Company / Proforma respondent ?

8. Drawing my attention to the impugned judgement of the first Appellate Court, Mr. Kushal Chatterjee, learned counsel submits quite rightly that both the Trial Courts and the learned first Appellate Court made out a third case, without taking into consideration the pleadings of the parties. It is neither the case of the plaintiff that after implied surrender of tenancy by the company, the proforma defendant, the defendant or his predecessor in interest was allowed to occupy the property. But the judgements of the learned Courts below would show that both the Courts proceeded with notion of implied surrender of tenancy by the company, the proforma defendant in favour of the plaintiff.
9. It is submitted by Mr. Chatterjee, that the learned Courts below failed to follow the fundamental principle of law that no relief can be granted going beyond the pleadings of the parties or in other words Courts cannot travel beyond the pleadings to grant any relief.
10. To buttress his point Mr. Chatterjee relies upon the decision in the case of State of ***Uttarakhand and Another vs. Mandir Sri Laxman Sidh Maharaj*** reported in (2017) 9 SCC 579. Paragraph 24 of the said case enunciates;

*“24. By no stretch of imagination, in our view, such a declaration of ownership over the suit property and right of easement over a well could be granted by the Trial Court in plaintiff's favour because even the plaintiff did not claim title in the suit property on the strength of "adverse possession". Neither there were any pleadings nor any issue much less evidence to prove the adverse possession on land and for grant of any easementary right over the well. The Courts below should have seen that no declaration of ownership rights over the suit property could be granted to the plaintiff on the strength of "adverse possession" (see Gurdwara Sahib vs. Gram Panchayat Village Sirthala & Anr., (2014) 1 SCC 669. 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. This principle is fully applied to the facts of this case against the plaintiff."*

11. Mr. Chatterjee further relies upon the judgements in the case of Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd. reported in (2005) 1 SCC 705; Shah Mathuradas Maganlal & Co. vs. Nagappa Shankarappa Malage and Others reported in (1976) 3 SCC 660; V. Dhanapal Chettiar vs. Yesodai Ammal reported in (1979) 4 SCC 214; Sarla Narula vs. Raghbir Kaur Rehal and Another reported in (1987) 4 SCC 668; Amar Nath Pramanick vs. Sanjib Das Gupta & Others reported in (2008)3 CHN 962 and submits that no evidence is available with the record, demonstrating the relationship of landlord-tenant between the father of the defendant and the plaintiffs. Creation of new relationship or relinquishment of possession can only be a pointer towards implied surrender of tenancy.
12. From the attending facts of the case it is admitted that father of the plaintiffs being the owner of the property inducted proforma defendant Allhabad Merchandise Co. Pvt. Ltd. as tenant and the company allotted the suit premises to Sunit Kumar Dey, since deceased who was one of the directors of the company. The company used to pay rent.
13. It is rightly argued by Mr. Chatterjee that no jural relationship whatsoever was there or was created by and between the predecessor-in-interest in the plaintiffs and Sunit Kumar Dey, therefore, the plaintiffs could not have taken any step for eviction of the defendant without seeking eviction of proforma defendant the original tenant.

14. Mr. Roy, learned counsel appearing on behalf of the respondents submits that the defendant is not a tenant. He is not the owner as well. But he is possessing the property, because he was allowed to possess. There is no denial of his status in his written statement.

15. Mr. Roy further relies on a decision in the case of Bhagwati Prasad vs Chandramaul reported in (1966) 2 SCR 286 which says:-

*“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. Though unpleasantly drafted plaint was presented before the learned Court for adjudication but from paragraph 3 of the plaint it appears that the

defendant was allowed to occupy the suit premises as licensee against licence fee of Rs.400/-. In his written statement the defendant dealt with such assertion of the plaintiff in paragraph 12 of the written Statement in the following manner :-

*“12. That the contents of paragraph 3 of the Plaint are similarly misconceived and ridiculous. It is ridiculous to say that the father of the Defendant passed away (written “way” in the Plaint) on 8<sup>th</sup> August, 2005 and the tenancy occupied by him became “automatically terminated”. A tenancy created in favour of a company does not get terminated in this way. Moreover, the story of the Plaintiffs regarding allowing the Defendant No. 1 to stay in the suit property “at licence fee of Rs.400/- per month”. Contradict their own story that had been told in their notice dated 18.08.2006.”*

17. At this juncture we may take a look at the provision laid down under Order VIII Rule 5 of the Code of Civil Procedure which says:-

*“Specific denial- “Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability:*

*Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.”*

18. The Rule of pleading does not encourage evasive denial. The denial must be specific as laid down under Order VIII Rules 3 and 4 of the Code of Civil Procedure.

19. Order XIV Rule 1 of the Code of Civil Procedure enunciates that issues arise when a material proposition of fact or law is affirmed by the one party and

denied by the other. The issues are framed on the material proposition, denied by another party.

20. Learned Trial Court framed the issues in a mechanical manner and there is no reflection of application of judicial mind in framing such issues. The plaintiff never acknowledges the status of the defendant or his father as tenant nor the defendant claimed to be a tenant under the plaintiff. But issue no. 3 was framed in the following manner;-

*“3. Does the landlord tenant relationship exist in between the plaintiffs and the defendant.?”*

21. For the sake of argument if this Court accepts the proposition of Mr. Chatterjee that the plaintiff is not entitled to seek any relief by evicting the defendant as there was no jural relationship between his father and the plaintiff and, if it is assumed that the plaintiff by allowing the defendant to occupy the property, let out to the company, the proforma defendant acted in utter illegality, the defendant cannot take the advantage of such unlawful action of the plaintiff, for the simple reason that he derived the benefit of such unlawful act. The proforma defendant - the original tenant may initiate proceeding for restoration of possession but the defendant cannot take the plea that without evicting the original tenant possession of the defendant cannot be disturbed, particularly when the property was in occupation of the father of the defendant and his family members and the defendant being the family members of his father is entitled to continue with the possession. The fact that the company was a tenant cannot extend any protection to the defendant from being evicted.

22. As I have already pointed out that the property was let out to the company and not to the father of the defendant. The defendant did not deny the assertion of the plaintiff that he was allowed to occupy the suit premises as licensee with licence fee of Rs. 400 per month. Rather, by not traversing the assertion of the plaintiff, the defendant has admitted his status as the licensee under the plaintiff and the plaintiff had no any statutory obligation to terminate such licence by giving any notice to quit. Such statutory protection is available to a tenant. Therefore, the content of notice can and should be ignored. The suit itself is sufficient to terminate the licence.
23. I have carefully perused the pleadings as well as judgement passed by the learned Trial Court, and I feel no hesitation to be in agreement with Mr. Kushal Chatterjee that both the Courts below traversed beyond pleadings and impugned judgement was pronounced upon making a third case.
24. There is no reason to disagree with Mr. Chatterjee that such an action on the part of the learned Trial Court, duly endorsed by the learned First Appellate Court is not acceptable.
25. Since there is no denial that the plaintiffs are the owners of the suit property and the defendant has admitted his status to be the licensee under the plaintiff not denying the assertion made in the plaint, I feel no hesitation to uphold the order and decree of eviction, but on a different ground altogether.
26. The appeal is devoid of merits and is dismissed. The impugned judgement stands affirmed. Pending applications, if any, stand disposed of. The defendant is to quit and vacate the suit property within sixty days from the date failing which the decree shall be put into execution.

27. Let a copy of the judgement along with lower court record be sent down immediately to the learned Court below.
28. Urgent photostat certified copy of this judgement, if applied for, be supplied to the parties, upon completion of requisite formalities.

(Siddhartha Roy Chowdhury, J.)