

Hon'ble Justice Chitta Ranjan Dash
AND
Hon'ble Justice Partha Sarathi Sen

Monoj Prakash Lahiri

Mr. Sounak Bhattacharya, Adv.,
Mr. Sounak Mandal, Adv.,
Mr. Abhirup Halder, Adv.,
Mr. Anirban Saha Ray, Adv.

Judgment on. : **20.04.2023**

PARTHA SARATHI SEN, J. : –

1. The instant appeal arises out of the judgement and decree dated 31.08.2002 as passed by learned 8th Bench, City Civil Court at Calcutta in Title Suit no. 3021 of 1996 whereby and whereunder the said Court by the impugned judgement decreed the said suit for eviction of the defendant on contest and also passed a preliminary decree for mense profit in favour of the plaintiff at the rate of Rs.1350/- with effect from 1989 till the vacant possession is restored. By the self same judgement learned trial court also granted a liberty to the plaintiff to pray for final

decree of mense profit at the aforementioned rate on payment of requisite court fees. The defendant felt aggrieved and thus preferred the instant appeal.

2. For effective adjudication of the instant appeal, the facts leading to filing of Title Suit no. 3021/1996 before the learned trial court is required to be dealt with in a nutshell.

3. Before the learned trial court it is the plaint case that in respect of the suit property, particulars of which has been described in the schedule of the plaint, the plaintiff is the owner of the same and when the defendant in his distress approached the plaintiff to allow him temporarily to occupy the suit property as a licensee, the plaintiff granted leave and licence in favour of the defendant in respect of the suit property at a monthly licence fee of Rs.1050/- excluding the service charge of Rs.300/- per month with effect from 1st November, 1978 till September 1979. It is the further plaint case that thereafter the defendant started to occupy the suit property as a licensee by paying a monthly licence fee together with service charge, charges for fittings and fixtures, gas and electric connection, etc. and even after the expiry of period of 11 months as per request of the defendant, the plaintiff allowed the defendant to occupy the suit property as a licensee for some more months and at that time it was committed by the defendant that very soon he would make arrangement for his accommodation elsewhere and he would vacate the suit property as and when asked for by the plaintiff.

4. It is the further plaint case that thereafter the defendant inspite of repeated request made by the plaintiff did not vacate the suit property and even stopped paying licence fee and other charges as mentioned above and finding no other alternative the plaintiff revoked the licence of the defendant on April 15, 1988 and asked the defendant to vacate the suit property with the expiry of May 1988. It has also been averred by the plaintiff before the learned trial court in his plaint that even after receipt of the said notice the defendant failed and neglected to comply with the requisition of the said notice and remained in wrongful possession of the suit property without handing over the same to the plaintiff and thus, finding no other alternative the plaintiff approached the learned trial court with a prayer for decree for eviction of the defendant from the suit property and recovery of khas and vacant possession of the same, for damages, for mense profits, for costs and for other ancillary reliefs.

5. The said suit was duly contested by the defendant by filing his written statement. In the written statement, apart from denying each and every allegation as made by the plaintiff in his plaint, the defendant took the following defence:-

- i) He occupied the suit property as a monthly tenant and accordingly; his tenancy is governed by the provisions of the West Bengal Tenancy Act, 1956.
- ii) He had paid licence fee up to May 1991, by cheques and drafts along with covering letters.

- iii) He had paid all other charges including electrical bills standing in the names of the plaintiff till February 1997.
- iv) On account of refusal by the plaintiff to accept rent, he started depositing the monthly rent in respect of the suit property from June 1991 with the office of the Rent Controller and he is still depositing the same.
- v) No notice purporting to terminate the alleged leave and licence had ever been served upon him.
- vi) He became a tenant in respect of the suit property since November 1979 under the plaintiff immediately after the expiry of period of 11 months licence.

6. Based on the pleadings of the parties, learned trial court framed the following seven issues:-

- 1. Is the suit maintainable in law?
- 2. Is the defendant liable to be evicted?
- 3. Has the plaintiff any cause of action for the suit?
- 4. Is the defendant a licensee under the plaintiff?
- 5. Is the plaintiff entitled to get damages?
- 6. Is the plaintiff entitled to get a decree as prayed for?
- 7. To what relief or reliefs the plaintiff is entitled?

7. Before the learned trial court the plaintiff tendered himself as PW1 and in course of his examination-in-chief he has exhibited various documents. Similarly the defendant entered into the witness box as DW1 and in course of his examination-in-chief he also proved certain documents

which have been marked as Exhibits. Learned trial court on perusal of the pleadings of the parties and after considering the oral evidence as adduced by the PW1 and DW1 and the exhibited documents on their behalf decided all the issues in favour of the plaintiffs and thus decreed the said suit as aforesaid.

8. In course of his argument Mr. Sounak Bhattacharya, learned advocate for the defendant/appellant at the very outset draws attention of this court to the plaint and the written statement as filed before the learned trial court. Attention of this court is also drawn to the impugned judgement. It is argued by Mr. Bhattacharya that learned trial court while passing the impugned judgement has failed to consider that the status of the defendant in respect of the suit property is that of a tenant which is evident from the oral evidence of DW1 as well as from the documentary evidence being Exhibit 'A' (series) to 'D'. It is further argued by Mr. Bhattacharya that learned trial court has also miserably failed to appreciate that the tenancy of the defendant was never terminated and thus the suit as filed before the learned trial court by the plaintiff is a defective one. It is contended on behalf of the defendant/ appellant that while passing the impugned judgement the learned trial court ought to have come to a finding that immediately after the expiry of the leave and licence the defendant became a tenant by holding over and therefore the said court ought not to have decreed the suit in favour of the plaintiff.

9. It is pertinent to mention herein that inspite of due service, the presence of the plaintiff /respondent could not be secured and

accordingly this Court has got no other alternative but to proceed with the instant appeal in absence of the plaintiff.

10. Since the principle of licenses is governed by the Chapter VI of the Indian Easement Act, 1882, we propose to look to some of the provisions of the said Act of 1882, to get an idea as to what licence is, as to who can grant licence and as to how the licence can be revoked. Section 52, Section 53, Section 54 and Section 61 of the said Act of 1882 are quoted below in verbatim and those are as under:-

“Section 52 in The Indian Easements Act, 1882

52 "License" defined. -Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license.

Section 53 in The Indian Easements Act, 1882

53 Who may grant license. -A license may be granted by any one in the circumstances and to the extent in and to which he may transfer his interests in the property affected by the license.

Section 54 in The Indian Easements Act, 1882

54. Grant may be expressed or implied.-The grant of a license may be expressed or implied from the conduct of the grantor, and an agreement which purports to create an easement, but is ineffectual for that purpose, may operate to create a license.

Section 61 in The Indian Easements Act, 1882

61. Revocation express or implied.-The revocation of a license may be express or implied. Illustrations

(a) A, the owner of a field, grants a license to B, to use a path across it. A, with intent to revoke the license, locks a gate across the path. The license is revoked.

(b) A, the owner of a field, grants a license to B to stack hay on the field. A lets or sells the field to C. The license is revoked.”

11. In our considered view the reported decision of **C.M. Beena and Another vs. P.N Ramachandra Rao** reported in **(2004) 3 SCC 595** is

very much relevant since in the said reported decision the distinguishing features of leave and licence vis-à-vis that of lease and the tests of determination of lease and licence have been discussed by the Hon'ble Supreme Court in the following manner:-

“ 8.The crucial issue for determination is as to whether there is a lease or licence existing between the parties. Though a deed of licence may have been executed it is open for the parties to the document to show that the relationship which was agreed upon by the parties and was really intended to be brought into existence was that of a landlord and tenant though it was outwardly styled as a deed of licence to act as a camouflage on the Rent Control Legislation. 'Lease' is defined in Section 105 of the Transfer of Property Act 1882 while 'licence' is defined in Section 52 of the Indian Easements Act 1882. Generally speaking the difference between a '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, if any, executed between the parties and the surrounding circumstances. Only a right to use the property in a particular way or under certain terms given to the occupant while the owner retains the control or possession over the premises results in a licence being created; for the owner retains legal possession while all that the licensee gets is a permission to use the premises for a particular purpose or in a particular manner and but for the permission so given the occupation would have been unlawful (See Associated Hotels of India Ltd. v. R.N. Kapoor, AIR (1959) SC 1262). The decided cases on the point are legion. For our purpose it would suffice to refer to a recent decision of this court in Corporation of Calicut v; K Sreenivasan, [2002] 5 SCC 361.

9. A few principles are well settled. User of the terms like 'lease or 'licence', 'lessor', 'rent' or 'licence fee' are not by themselves decisive of the nature of the right created by the document. An effort should be made to find out whether the deed confers a right to possess exclusively coupled with transfer of a right to enjoy the property or what has been

parted with is merely a right to use the property while the possession is retained by the owner. The conduct of the parties before and after the creation of relationship is of relevance for finding out their intention.”

12. Keeping in mind the principles of the aforementioned legislative provisions and the reported decisions of **C.M Beena (supra)** it appears to us that the plaintiff in his plaint as well as in his deposition specifically contended that the defendant was inducted by him in respect of the suit property as a licensee initially for a period of 11 months and as per request of the defendant he allowed him to remain in possession in respect of the suit property as a licensee till April 1988. On perusal of the Exhibits 1 to 11(series) it appears to us that leave and licence agreement was executed by and between the plaintiff and the defendant on 08.11.1978 and in Clause 14 of such agreement it has been stated specifically that nothing in the said agreement should be construed as to create any right of easement or tenancy in favour of the licensee. It further reveals to us that inspite of putting various questions on behalf of the defendant, PW1 remained very much consistent in his cross-examination and nothing could be elicited from his mouth to draw an inference that after the expiry of the original period of licence, the plaintiff had accepted the defendant as a tenant in respect of the suit property within the meaning of West Bengal Premises Tenancy Act, 1956.

13. On perusal of the written statement as filed before the learned trial court it appears to us that the defendant had taken inconsistent pleas

therein. In paragraph 8 of the written statement though he denied that he was allowed to stay in the suit property as a licensee for 11 months but in paragraph 10 of the written statement he stated that he paid licence fee to the plaintiff till May 1991. It has been stated further in the written statement that the defendant tendered his rent for the month of June 1991 in respect of the suit property which the plaintiff refused to accept and thus finding no other alternative he started depositing rent with the office of the Rent Controller. It is settled position of law that mere deposit of any amount with the office of Rent Controller does not make a person a tenant in respect of the suit property unless the same is proved in accordance with law under the prevailing tenancy law. It is equally pertinent to mention herein that on perusal of the Exhibit 3 it reveals that immediately after receipt of notice from the office of Rent Controller, Calcutta, the plaintiff under cover of his advocate's letter dated March 19, 1997 objected to such deposit of rent by the defendant wherein at the earliest opportunity the plaintiff has categorically stated that those deposits are invalid deposits since the defendant was inducted in the suit property as a licensee. At this juncture if we peruse the cross-examination of DW1 we find that DW1 candidly admitted that he was inducted in the suit property as a licensee for 11 months and he possessed no document to substantiate that he had become a tenant in respect of the suit property after expiry of 11 months of his licence. He stated further that beside his oral evidence he has nothing to show that he was inducted as a tenant in respect of the suit property. At this juncture if we look to the

exhibited documents of the defendants namely; Exhibit 'C' series it would reveal that in all his correspondences with the plaintiff, he described himself as a licensee in respect of the suit property.

14. In view of such clinching evidence as discussed hereinabove we have no hesitation to hold that before the learned trial court the plaintiff was successful in proving that the defendant was a licensee under him and the agreement of licence being Exhibit 1 is not at all a camouflage.

15. It is contended by the learned advocate for the defendant/appellant that the suit filed before the learned trial court is not maintainable in view of the fact that the licence of the plaintiff was never revoked. In our considered view, such argument has got no force at all since the learned trial court has rightly held that for revocation of licence there is no need of any written document. Learned trial court further held that mere word of mouth or even filing of a suit is itself sufficient for revocation of licence. In our considered view, the view taken by the learned trial court with regard to the revocation of licence is perfectly justified and thus requires no interference from us.

16. In view of the discussion made hereinabove we thus hold that since before the learned trial court the plaintiff is successful in proving that the defendant was a licensee in respect of the suit property and since inspite of revocation of such licence he failed to vacate, quit and deliver the suit property and to hand over the khas and vacant possession of the same to the plaintiff, the learned trial court is very much justified in passing the impugned judgement and decree.

17. We thus find no merit in the instant appeal and accordingly the instant appeal is dismissed but without costs.

18. Consequently the impugned judgement and decree dated 31.08.2002 as passed by learned 8th Bench, City Civil Court at Calcutta in Title Suit no. 3021 of 1996 is hereby upheld.

19. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

I agree.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)