

IN THE HIGH COURT AT CALCUTTA
(CIVIL APPELLATE JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

S.A. 27 of 2016
CAN 3 of 2015
CAN 4 of 2016
CAN 5 of 2018
CAN 9 of 2023

Rabindra Nath Bera since deceased Nisha Bera & Anr.
VS.

Duryodhan Das since deceased Smt. Menoka Das & Ors.

For the Appellants : Mr. Tarak Nath Halder, Adv.
Mr. Sagnik Chatterjee Adv.

For the Respondents. : Mr. Siddheswar Chandra, Adv.
Mr. Sandip Dutta

Hearing concluded on : 6th December, 2023

Judgement on : 6th December, 2023

Siddhartha Roy Chowdhury, J (Oral):

1. Challenge in this appeal is to the judgement and decree passed by learned Judge, Small Causes Court at Sealdah, District-24 Parganas South in Title Appeal No. 38 of 2010, affirming thereby the judgment and decree passed by learned Civil Judge (Junior Division), 1st Court at Sealdah on 15th June, 2010 in Title Suit No. 256 of 2000.
2. For the sake of convenience the parties will be referred to as they have been arrayed in the suit.
3. Briefly stated that the plaintiff-Duryodhan Das since deceased, acquired the property in suit by purchase, which was occupied by tenants and the present defendant is one of the tenants in respect of the

property described in schedule of the plaint at a monthly rental of Rs. 40/- payable according to the English calendar month.

4. It is further contended that the defendant did not pay any rent since November, 1993, he acted in the breach of provision of Section 108 Clause (m),(o) and (p) of the Transfer of Property Act. That apart the suit property is reasonably required by the plaintiff for his own use and occupation along with the family members.
5. A statutory notice to quit was issued to the defendant tenant terminating the tenancy. The tenant since failed to adhere to the terms of the notice, the suit was filed for his eviction.
6. The defendant contested the suit by filing written statement denying all materials averments of the plaintiff. The defendant challenged the status of the plaintiff as owner of the property. According to the defendant the suit property is not reasonably required by the plaintiff as he has suitable accommodation. The defendant prayed for dismissal of the suit.
7. Learned trial court after considering the pleadings of the parties framed issues and after taking into consideration the testimony of witnesses as well as other documentary evidence was pleased to answer the issue no. 4 touching upon the reasonable requirement of the plaintiff, in the affirmative. Consequently the suit was decreed.
8. The defendant made an unsuccessful attempt to get the decree of the learned Trial Court reversed in the first appeal.
9. Hence, the second appeal which was admitted on the following substantial questions of law on 5th May, 2015:-

“(1) Whether the Judgments and decree passed by the learned Judges of the Courts below can be declared to be a nullity in view of the provisions laid down in Section 8 read with Section 12 read with Section 21 of the West Bengal Thika Tenancy (Acquisition & Regulation) Act?

(2) Whether the learned Judges of both the courts below lacked jurisdiction to hear out the suit for eviction filed by the Thika Tenant/Plaintiff against the Bharatia/Defendant in view of the provisions laid down in Section 8 read with Section 12 read with Section 21 of the West Bengal Thika Tenancy (Acquisition & Regulation) Act, 2001?

(3) In view of the specific admission of the P.W.1 in cross-examination that six tenants have already left their tenanted accommodation, whether the learned Judges of both the courts below substantially erred in law by not holding that the plaintiffs’ requirement of 3 additional rooms have already been satisfied?

(4) Whether the learned Judge of the Trial Court substantially erred in law by making out a third case that the plaintiffs might have inducted other tenants in their place”?

10. Mr. Tarak Nath Halder, learned counsel for the appellants at the outset submits that this court is required to take into consideration subsequent development that occurred during the pendency of the second appeal when one Benay Bera, a co-tenant delivered vacant possession of the room occupied by him in favour of the plaintiff.

Assailing the impugned judgment Mr. Halder submits that the suit as framed is not maintainable in law in view of Sub-Section 3 Section 8 read with Section 21 of the West Bengal Thika Tenancy (Acquisition & Regulation) Act, 2001.

11. It is submitted further that learned Trial Court as well as First Appellate Court decided the suit ignoring the fact that there was ouster of jurisdiction.

12. Sub-Section 3 of Section 8 and Section 21 of the West Bengal Thika Tenancy (Acquisition & Regulation) Act, 2001 is reproduced herein below:-

“8(1) XXXXXX

(2) XXXXXX

(3) Any dispute regarding payment of rent by the thika tenant to the State Government or by a bharatia to a thika tenant, or any case of eviction of bharatia, shall be disposed of by the Controller in such manner as may be prescribed”.

(4) XXXXXX

“Section 21. Bar to jurisdiction.-No civil court shall have jurisdiction to decide, or to deal with, any question, or to determine any matter, which, by or under this Act is required to be, or has been, decided or dealt with, or which is to be, or has been, determined, by the Controller or the appellate or other authority specified in the provisions of this Act, and no order or judgment passed, or proceedings including

execution proceedings commenced, under the provisions of this Act shall be called in question in any civil court”.

13. But Mr. Halder, learned counsel fails to refer to the provision of Section 27 of the said Act which is reads as below :-

“Section 27. Repeal and savings.-(1) With effect from the date of commencement of this Act, the Kolkata Thika and other Tenancies and Lands (Acquisition and Regulation) Act, 1981 (West Ben.Act XXXVII of 1981), shall stand repealed.

(2) Notwithstanding the repeal of the said Act, such repeal shall not-

(a) affect the previous operation of the said Act or anything duly done or suffered thereunder; or

(b) affect any right, privilege, obligation or liability acquired, accrued or incurred under the said Act; or

(c) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against the said Act; or

(d) affect any investigation, legal proceeding or remedy, in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed”.

- 14) The suit was filed in the year 2000 precisely on 28th July, 2000 and this Act West Bengal Thika Tenancy (Acquisition & Regulation) Act, 2001 came into force subsequent thereto.

15) The Repeal and Savings Clause as laid down under Sub-Section 2(d) of Section 27 is the answer to the issue of ouster of jurisdiction as raised by learned Counsel for the appellants.

16) Thus the substantial question nos. 1 and 2 cannot be answered in the affirmative to the benefit of the appellant.

17) Mr. Halder, learned counsel further makes me go through the testimony of PW precisely to the cross-examination wherein the witness admitted that out of nine tenants, six tenants vacated their rooms. Total six rooms were under their occupation and none of them gave any possession letter. According to Mr. Halder at the time of filing of the suit the plaintiff was in need of four rooms. During pendency of the suit six tenants left the suit premises. On the other hand the original plaintiff and one of his sons passed away during the pendency of the lis. Therefore, as on date, the plaintiffs cannot be said to have any requirement of room and for that the eviction of this appellant is unwarranted.

18) Though, on the question of fact there is concurrent findings by the courts below, yet taking into consideration the admitted position that during pendency of the appeal one of the tenants Benoy Bera left the suit property and there was change in number so far the family members of the plaintiffs are concerned. This court consider it apt to revisit this factual aspect.

19) Mr. Halder is allowed to give his narrative as to the requirement of the landlord, though he is representing the tenant who cannot dictate the landlord how to use the property, only for the purpose of understanding

the issue from the point of view of common cause of events and human probability.

19) According to Mr. Halder the widow of the original plaintiff and widowed daughter-in-law of the original plaintiff should have one room each for their use and occupation. The son and his wife should require one room, the grand son and grand daughter of the original plaintiff should be allowed to occupy one room each, the drawing room can be occupied by guests and the said room can be used as drawing cum guest room and kitchen is already there.

20) Admittedly at the time of filing of the suit there were eleven members in the family of the plaintiff, with the demise of two including the original plaintiff and marriage of the daughter, the said number has come down to eight. If we go by the suggestion of Mr. Halder though he is representing the defendant, at least eight rooms should be the bare minimum requirement of the plaintiffs. We cannot ignore the fact that the children of the family of the plaintiffs should require separate rooms for the purpose of their living and separate rooms for the purpose of their study.

21) While going through the judgment passed by learned trial court, I find that the plaintiff is in occupation of four rooms out of which two rooms are measuring about 24 Sq. Ft. And 46 square fit. Those two rooms cannot be said to be fit for human habitation.

22) The kitchen being used as bed room therefore, even if we look to the factual aspects it cannot be said that the requirement of the plaintiffs has been satisfied, without disturbing the possession of the defendant.

23) Though the learned trial court while passing the judgment observed that the plaintiff might have inducted some persons as tenants after the tenants in occupation of the suit property left the suit house, there is neither pleading nor evidence to that effect. Therefore, the learned trial court had no reason to make such observation. However, such observation of learned trial court is not affecting the requirement of the plaintiffs to have more rooms for decent living. The concurrent findings of learned courts below do not warrant any interference.

24) The appeal in my view is devoid of merit and should be dismissed which I accordingly do. The impugned judgment and decree stand affirmed. Thus the appeal is disposed of with connected applications, if any.

25) The defendant is directed to quit and vacate the suit property within three months from date, failing which the plaintiff will be at liberty to put the decree in execution.

26) Let a copy of this order along with lower court records be sent down forthwith.

27) Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)

