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Ct-08

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FAT 27 of 2018

with

I.A No. CAN 3 of 2022

Sri Shiv Kumar Gupta & Anr.

Vs.

Smt. Bimla Debi Dugar & Ors.

Mr. Dhiraj Trivedi
Mr. Bikash Kumar Singh
Mr. Sunil Gupta
Ms. Swapna Jha
... For the Appellants

Mr. Mainak Bose
Mr. Gautam Das
Mr. Sandeep Kumare Tiwari
Ms. Madhumita Patra
... For the Respondents.

The appeal is arising out of a judgment and decree dated 21st December, 2017 in a suit for eviction on expiry of the lease period.

Briefly stated that the father of the appellants was a lessee under an indenture of lease dated 9th January, 1963 at a monthly rent of Rs.151/- payable according to Hindi month beginning from Badi 1st of month and ending Sudi 15th of the same month. On the expiry of the period of lease the suit originally filed for eviction on the ground of forfeiture was amended to include determination of lease by effective of time. The service of notice determining the lease earlier is not in dispute. According to the plaintiffs, due to breach of lease conditions, initially, on 8th day of Sraban S.Y 2033 and thereafter on and from 12th

October, 1978 the lease dated 9th January, 1963 was determined and thereafter on expiry of 18th January, 1984 when the lease came to an end by efflux of time. The relationship of lessor and lessee stood determined.

It appears from the pleadings of the plaintiffs as well as from the evidence that the lease was determined by serving notice in the year 1978. Subsequently, the plaintiffs filed an application for amendment of the plaint during the pendency of the suit in order to introduce the factum of expiry of the lease as an additional ground for eviction.

Mr. Dhiraj Trivedi, learned counsel representing the appellants, has strenuously argued that the suit was filed in suppression of an earlier lease dated 3rd September, 1960 and if the two lease deeds are considered it can be easily ascertained that the schedule of the two lease deeds are different. It is the submission of Mr. Trivedi that the lease agreement of 1963 was never acted upon. These facts were relevant but not considered by the trial court.

Mr. Trivedi further has argued that since the lease deed was never acted upon, the relationship of the plaintiffs and the defendants

continued to remain as landlords and tenants and the tenancy is not determinable by effective of time serving of notice under the provisions of the Transfer of Property Act.

Mr. Mainak Bose, learned counsel representing the respondents, submits that it is a clear case of determination of lease by efflux of time and the appellants having accepted due execution of the lease deed cannot now resile from the same and make out a case of mere landlord and tenant relationship disregarding the terms of lease.

It is further submitted that the lease dated 9th January, 1963 is a registered document and the said document was acted upon. Mr. Bose submits that the essential terms of the lease deed were acted upon. Initially the suit was filed for breach of the lease term in the year 1979 but during the pendency of the suit, the lease term had expired and on expiry of the lease period the additional ground was taken for eviction by way of amendment.

Mr. Trivedi in reply has stated that the description of the two suits' schedules are vague and although the appellants may not have disputed the existence of the lease deed, it is a

clear evidence of the appellants that the said deeds were never acted upon.

We have heard the learned counsel appearing for the parties.

It is true that the deed of 1963 was preceded by a deed of 1960. However, the fact remains that the defendants have accepted the execution of the lease deed dated 9th January, 1963 and had paid rent and discharged all their duties and obligations as mentioned in the subsequent lease deed. Although, in the deed of 1963 there was no reference to the deed of 1960 but it was clearly discernible from the conduct of the parties that they have accepted the deed of 1963 as final and acted upon on the basis thereof. It is not in dispute that the defendants have paid rent at the rate of Rs.151/- and was in possession properties described in schedule in terms of the deed i.e. 9th January, 1963.

The appellants were under no misconception about the nature, character and extent of the present tenancy. The appellants have accepted that the areas mentioned in the subsequent lease deed of 1963 is the area under this occupation. This fact clearly established that the parties have acted upon on the basis of

subsequent lease deed dated 9th January, 1963. The notice of forfeiture was issued on 12th October, 1978 clearly mentioning the breach of the lease term and condition mentioned in the lease dated 9th January, 1963. There is no contemporaneous document or evidence to show that the defendants ever had raised any objection that the relationship is not to be governed by the 1963 document or there is no existence of any lease by and between the parties. Moreover, the arguments made by Mr. Trivedi that the terms and conditions mentioned in the registered instrument were never acted upon does not come within any of the proviso of Section 92 of the Indian Evidence Act. When the terms are reduced in writing and it is a registered document enforceable in law parole evidence to contradict, the terms are clearly excluded unless it falls within any of the proviso of Section 92 of the Indian Evidence Act, meaning thereby that oral evidence for the purpose of contradicting, varying, adding to or subtracting from the agreed terms would be limited to the circumstances mentioned in the six proviso of Section 92 and it has to establish by the appellants.

There was no evidence before the trial court to establish that the parties have abandoned the agreed terms and had agreed to continue with the relationship as landlord and tenant. The onus heavily lies upon the appellants to lead evidence with regard to any separate oral agreement to bring their case under the proviso of Section 92 of the Indian Evidence Act and in absence of any such evidence being led or established during the trial the court would be extremely reluctant to accept a case or a term contrary to the written terms agreed by and between the parties reduced in writing and duly registered in accordance with law.

Mr. Trivedi has placed few additional grounds for consideration of this court. The principal ground taken was that in absence of any surrender of tenancy in compliance of Section 19(2) of the West Bengal Premises Tenancy Act, 1956, which was mandatory, then even assuming that the predecessor of the appellant executed alleged lease deed voluntarily said lease deed was not lawful and is inoperative in the eye of law.

In the instant case, the provision of the West Bengal Premises Tenancy Act, 1956 is not attracted by reason of Section 3 of the West Bengal Premises Tenancy Act, 1956. It was a lease admittedly entered into after 1st December, 1948 and for a period more than 20 years. If we accept the submission of Mr. Trivedi that 1960 lease was in operation, it was for a period of 21 years and if the relationship of the parties are to be governed by the lease of 1960 even then it is excluded from the purview of the West Bengal Premises Tenancy Act, 1956 by reason of Section 3 of the said Act.

Under such circumstances, we are unable to accept the submission of Mr. Trivedi and affirm the decree under appeal.

The appeal accordingly fails and is hereby dismissed along with CAN 3 of 2022.

There will be no order as to costs.

(Uday Kumar,J.)

(Soumen Sen, J.)

