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2023**

Ct. No. 04

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**SAT 17 of 2023
IA No. CAN 1 of 2023
IA No. CAN 2 of 2023
IA No. CAN 3 of 2023**

**Ahmed Hussain and others
Vs.
Md. Muslim and others.**

**Mr. Partha Pratim Roy,
Mr. Shaunak Ghosh,
Ms. Soumita Ghosh.**

... for the appellants.

**Mr. Ayan Banerjee,
Mr. Suman Banerjee.**

... for the respondent no. 1.

Both the Courts have concurrently held that the plaintiff/respondent has acquired an exclusive right, title and interest in respect of the suit premises and directed eviction of the defendant/appellant no. 1 from the suit premises both on the ground of default in payment of rent.

It was a suit simplicitor for eviction of a tenant, which became complex on addition of certain persons as defendants, who raised a rival title in respect of the suit premises. Such a suit should not have been converted into a complex suit of title and the issue, which originally involved in the suit, takes a back seat and the issue relating to title was projected affront as the said added defendants raised rival title.

Be that as it may, the plaintiff/respondent did not challenge the order passed by the trial Court by which such addition was allowed. The tenant sought to challenge the derivative title not only of the plaintiff/respondent but also of his vendor.

It is sought to be contended that the father of the appellant no. 1 was inducted by one Samsuddin Ali and upon expiration of the original tenant, the appellant no. 1 is regularly paying rent to the said Samsuddin Ali.

However, the added defendants took a plea that originally the suit plot comprising of 64 decimals of land belonged to one Roza Mia and upon his death it devolved upon his two sons, namely, Osman Goni and Sarfuddin and two daughters, namely, Mazidan Bibi and Nabihan Bibi. According to the said added defendants, said two sons acquired $1/3^{\text{rd}}$ share each in respect of the suit plot and two daughters acquired $1/6^{\text{th}}$ share each. It is also not in dispute that the said Sarfuddin claimed to have acquired 34 decimals of land and during his lifetime settled the same in favour of his wife, namely, Amena Khatun. The said Amena Khatun sold, transferred and conveyed the property to the respondent.

Firstly, it was contended by the added defendants that apart from two sons there were two daughters, who also inherited the right, title and interest in respect of the suit plot owned by the father but could not produce any document that there was an existence of the aforesaid two daughters.

Both the Courts relied upon the evidence of the second witness of the defendants where he admitted in the cross-examination that the said 64 decimals of land was recorded in equal half in the name of Osman Goni and Sarfuddin, which ruled out the existence of any daughters as claimed therein. The said witness further admitted that Sarfuddin settled his property in favour of his wife and further admitted that his wife sold the same to the respondent.

Interestingly, the second witness of the defendants categorically asserted that Samsuddin never took any rent from the appellant no. 1 nor issued any rent receipt at any point of time. Both the Courts below held that there appears to be a contradiction in the stand of the defendant/appellant no. 1 and the added defendants.

The question that felt for consideration whether Samsuddin had any subsisting right to induct the tenant or to receive the rent. In view of the categorical stand of

the added defendants, Samsuddin never collected the rent nor issued any rent receipt, the story set up by the appellant no. 1 that he was inducted by Samsuddin and rent receipt was issued by him could not be proved. The next question, which fell for consideration whether tenancy is situated in a portion occupied by Osman Goni or his heirs.

The DW1 categorically deposed that the suit premises is situated in the southern side of the suit plot and the heirs of the Osman Goni resides on the northern side. The second witness of the defendants deposed that there is no tenant inducted in the northern side of the suit premises where admittedly they are in possession thereof.

As a natural corollary, the suit premises situated in the southern side admittedly falls within the portion of Sarfuddin. Both the Courts have held that there has been a demarcation of the entire 64 decimals of land and, in fact, Sarfuddin owned and possessed 34 decimals, which is southern side of the larger plot and it leads no ambiguity that the suit premises is situated within the said side. Both the Courts have found that the added defendants have miserably failed to prove that Amena Khatun acquired 1/24 share in the suit plot. Both the Courts have held that being aware that the Sarfuddin has settled the property in favour of his wife as appears from the evidence, there was no attempt made at their behest to challenge the deed of settlement.

Furthermore, the sale by Amena Khatun in favour of the respondent has also not been challenged and, therefore, the story set up by the added defendants was held by both the Courts to have not been proved. Furthermore, all the record of rights indicate that the larger premises was separated since long ago and the name of the respective occupants are reflected therein. We do not find that the stand of added defendants that the Amena Khatun had a fraction of right and not in its

entirety has been proved and, therefore, such concurrent finding of fact does not warrant any interference in the instant appeal.

So far as the eviction is concerned, the moment the claim of the added defendants failed in the said suit and it is an admitted position that the suit premises is situated in the southern portion of the larger plot, which was owned and possessed by the Sarfuddin, the claim of the appellant no. 1 that he is inducted by somebody else cannot be accepted. Furthermore, the story set up by the appellant no.1 that the Samsuddin, in fact, inducted him and received rent is denied by the second witness of the defendants, who is claiming a rival title in respect of the said premises. Having failed to establish the same, we do not find that the instant appeal involves substantial question of law.

The appeal and the connected applications are dismissed.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)