

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE PRASENJIT BISWAS

S.A.T 18 of 2023
CAN No. 1 of 2023

Smt. Usha Barua
Vs.
Amarendra Chakraborty & Anr.

Appearance:

For the Appellant	:	Mr. Tanmoy Mukherjee, Adv. Mr. Souvik Das, Adv. Mr. K. R. Ahmed, Adv. Mr. Rudranil Das, Adv.
For the Respondent	:	Mr. Sandip Ghosh, Adv. Mr. Debayan Ghosh, Adv.

Judgment On : **12.9.2023**

PRASENJIT BISWAS, J.:

1. Both the courts below have decided the case against the appellant/tenant.
2. Plaintiff filed the suit against the original tenant Kishore Chatterjee for eviction from the tenanted premises who died on 13.06.2011 and

thereafter his wife Smt. Maitrayee Chatterjee also died on 17.01.2012 leaving no heirs/legal representatives. The said Kishore Chatterjee allowed this appellant to reside in the suit flat on oral permission although she is nothing but an outsider and stranger. The appellant had been using the same for commercial and non-commercial purposes by setting up office of one Nari Nirjatan Pratirodh Mancha ignoring the objection of the respondents.

3. The appellant denied all the allegations as made out against her and claimed to be the foster daughter of the original tenant Kishore Chatterjee (since deceased) and claimed that on the demise of the original tenant and his wife the tenancy has been devolved upon her and her occupation in the tenanted premises is not unlawful rather she is a tenant under the respondents/landlords.
4. Although this appellant claimed herself to be tenant under the respondents but she failed to show any scrap of paper that she was tenant being foster daughter of the original tenant Kishore Chatterjee. During trial some civil deposit challans have been marked as exhibit A in favour of the appellant but mere deposit of challans do not qualify this appellant as tenant under the respondents.
5. Let us now consider as to whether this appellant could have inherited the said tenancy by virtue of the provision of Section 2(g) of the West Bengal Premises Tenancy Act, 1997.
6. Section 2(g) of the West Bengal Premises Tenancy Act, 1997 is set out hereunder:

"2(g) 'tenant' means any person by whom or on whose account or behalf the rent of any premises is or, but for a special contract, would be payable, and includes any person continuing in possession after termination of his tenancy and, in the event of death of any tenant, also includes, for a period not exceeding five years from the date of death of such tenant or from the date of coming into force of this Act, whichever is later, his spouse, son, daughter, parent and the widow of his predeceased son, who were ordinarily living with the tenant up to the date of death of the tenant as the members of his family and were dependent on him and who do not own or occupy any residential premises, and in respect of premises let out for non-residential purpose his spouse, son, daughter and parent who were ordinarily living with the tenant up to the date of his death as members of his family, and were dependant on him or a person authorised by the tenant who is in possession of such premises] but shall not include any person against whom any decree or order for eviction has been made by a Court of competent jurisdiction."

7. Section 2(g) clearly states in no uncertain term that in the event of death of any tenant, the heirs who were ordinarily living with the tenant up to his death as a member of his family could get the benefit of 5 years to remain in possession of the property in question as heirs of the deceased tenant and not thereafter. We are of the opinion that learned trial judge has rightly referred to section 2(g) of the West Bengal Premises Tenancy Act, 1997 in order to ascertain the right of the appellant. Apart from the disability of claiming any interest as tenant and the period of five years from the date of death of original tenant appellant is also required to establish that she was ordinarily

residing with the original tenant. So, the initial onus is upon the appellant to prove that she is eligible to continue as tenant.

8. Original tenant Kishore Chatterjee was died on 13.06.2011 and his wife Maitrayee Chatterjee was expired on 17.01.2012 and there is no dispute about their death. It is also undisputed that Kishore and Maitrayee Chatterjee left no heirs but the appellant allegedly remained in the suit premises in the status of trespasser. If we pause for a moment and take the defendant No. 2 to be the foster daughter of the original tenant, even in such case the defendant cannot claim to be tenant after expiry of five years of death of original tenant as per provision of section 2(g) of the West Bengal Premises Tenancy Act.
9. It is the specific case of the plaintiff that the said original tenant Kishore Chatterjee and his wife illegally allowed this appellant to live in the suit flat on oral permission and she is using the suit premises as outsider and stranger. This appellant has failed to discharge the burden of proving the existence of relationship of tenant and landlord in between them. The appellant claimed tenancy right through the original tenant Kishore Chatterjee being his foster daughter and if she would have been the foster daughter of the original tenant then this fact certainly would have been well within their knowledge. The said tenant Kishore Chatterjee never claimed this appellant as his foster daughter. After the death of Kishore Chatterjee his wife Maitrayee Chatterjee entered into the suit but she also never claimed this appellant to be their foster daughter. The claim of this appellant to continue as a tenant in the suit premises is solely based being the

foster daughter of the original tenant. Surprisingly enough when Maitrayee Chatterjee was substituted in place of her husband/the original tenant she never claimed that this appellant is also required to be substituted along with her and this appellant claimed to be the tenant in respect of the suit premises only when she was added as a party after the death of wife of the original tenant.

10. In this case plaintiff/respondent had filed suit praying for eviction against the original tenant Kishore Chatterjee and after his death his wife was substituted in the suit. Subsequently, wife of the original tenant died and as they have no heirs/legal representatives, the Administrator General was impleaded for representing the State of the respondent. When the title of the plaintiff/respondent is not disputed then the appellant cannot account to her remaining in the property when she does not claim any independent title over it. We have already held that the appellant has been failed to prove her tenancy right over the suit property then only thing is left that she is either a trespasser or a licensee. When the appellant tried to establish herself as a tenant but failed to prove so then logical inference would be that she is a trespasser. So, the courts below have rightly come to the conclusion that the appellant is not a tenant under the respondents/plaintiffs but she is a trespasser. When the appellant tried to establish as the tenant in respect of the suit premises but failed to establish so, then the courts below is right to hold her as a trespasser and accordingly the respondent/plaintiff is entitled to decree for khas possession.

11. We, thus, do not find any merit in the instant appeal nor any involvement of substantial question of law. The appeal is dismissed.
12. The appellant is given six weeks time to vacate the suit premises and/or to give up and deliver the vacant and khas possession of the suit premises to the plaintiffs/respondents, in default, the plaintiffs/respondents will be entitled to recover the vacant and khas possession of the suit premises by evicting the appellant from the respective suit premises through execution in accordance with law.
13. Consequently, connecting applications if any are hereby dismissed as disposed of.
14. There shall, however, be no order as to costs.
15. Urgent Photostat certified copies of this order, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)