

05.12.2023
Court No. 19
Item no.17
CP/GB

C.O. No. 400 of 2023

Sri Subimal Kundu

Vs.

Mr. J.R. Agarwal & Ors.

Mr. Tanmoy Mukherjee

Ms. A. Panja

.....for the petitioner.

Mr. K. J. Yusuf

Mr. Gour Baran Sau

Mr. Arshad Hussain

.....for the opposite party no. 1.

The revisional application arises out of an order dated September 21, 2022, passed by the learned Civil Judge (Junior Division), 3rd Court at Howrah in Title Suit No. 40 of 1989.

By the order impugned, the learned court allowed the application dated January 18, 2019 under Section 11 of the West Bengal Court Fees Act, 1970 (hereinafter referred to as the said Act), filed by the defendant. The District Registrar, Howrah was directed to submit a report in respect of the valuation of the suit property after appropriate enquiry, without being influenced by the parties in the suit.

Mr. Mukherjee, learned advocate appearing on behalf of the plaintiff/owner, submits that the suit was filed in 1989. The defendant had been consistently trying to drag the suit by filing improper

applications under Section 17(1) and 17(2) of the West Bengal Premises Tenancy Act. Thereafter, those applications were dismissed. Suddenly in 2019, the plaintiff once again decided to delay the progress of the suit by filing a frivolous application under Section 11 of the said Act.

It is contended by Mr. Mukherjee that the said application was initially rejected by the learned court below. The court held that the court fees payable would be computed according to the amount of rent that the immovable property would fetch. The plaintiff had rightly valued the suit property at Rs.7200/-, i.e., monthly rent @ Rs.600/- for a period of 12 months and Rs.600/- for damages. At that stage, the court was of the opinion that the suit had been properly valued under Section 7(xiii)(d) of the said Act.

Such order was challenged before this Court in C.O. 870 of 2019. The learned coordinate Bench was of the view that as the defendant was a trespasser, the suit should be valued in terms of Section 7(vi)(a) of the 1970 Act and not as per Section 7(xiii)(d) of the said Act. On such observation and upon specifically holding that Section 7(vi)(a) would be squarely applicable in the present case and not Section 7(xiii)(d) of the said Act, the trial court was directed

to make an enquiry under Section 11 as to whether the suit had been properly valued or not.

The relevant portion of the decision of the learned coordinate Bench is set out herein for convenience.

“Considering the scope and ambit of the suit, the same is one for eviction of a person who was initially a lessee, but subsequently was rendered a tenant at sufferance on termination of the lease, which is similar to being a trespasser.

Section 7(xiii)(d) of the 1970 Act says that, in a suit between the landlord and the tenant for the recovery of immovable property from a tenant, including a tenant holding over after the determination of a tenancy, the suit should be valued according to the amount of the rent or the immovable property to which the suit refers, payable for the year next before the date of presenting the plaint.

However, the present suit is not one between a landlord and a tenant, pleading the continuance of the tenancy, contractual or statutory, as for example, would be a suit under Section 6 of the West Bengal Premises Tenancy Act, 1997.

In the present case, the defendant/petitioner was categorically described to be a lessee at inception, later on rendered a tenant at sufferance, without expressly saying so, thereby giving the defendant the status of a trespasser.

Section 7(vi)(a) of the 1970 Act stipulates that in a suit for recovery of possession of immovable property from a trespasser, where no declaration of title to property is either prayed for or necessary for disposal of the suit, courts fees are payable according to the amount at which the reliefs sought is valued in the plaint, subject to the provisions of Section 11 of the 1970 Act.

The inception of the phrase “subject to the provisions of Section 11”, which is not there in all the other provisions of Section 7, ipso facto is an indicator of the fact that the whims of the plaintiff in evaluating the suit could be the sole determination of the valuation of the suit and consequentially the court-fees.”

Thus, according to Mr. Mukherjee, the fact that the suit should be valued as per Section 7(vi)(a) of the said Act had already been decided by the learned coordinate Bench and on the basis of such provision, the learned court below was directed to make an enquiry to ascertain whether the valuation was made in terms of Section 7(vi)(a) of the said Act.

The learned advocate for the opposite party no.1, the contesting defendant submits that the learned court did not commit any error. The order was passed in compliance with the order of the High Court. It is further stated that if the petitioner is aggrieved in any way, he ought to have challenged the order passed by the learned coordinate Bench. That the plaint had not been properly valued. Apart from a decree for eviction and recovery of khas possession, decree of damages, mesne profit, arrear rent, etc. was also being sought for.

Having heard the learned advocates for the respective parties, certain factual aspects are required to be taken into account.

The suit has been filed by the owner of the property against the defendant for the following reliefs:-

“a) Decree for eviction of the defdt. his men, agents on removal of goods and khas possession in favour of the plttf.

- b) Decree for arrear rent;
- c) Decree for damages and/or mesne profits.
- d) Decree for all costs of suit;
- e) Decree for any other relief/reliefs to which the plttf. Is otherwise found entitled both in law and in equity.”

There is no relief for declaration or cancellation of any deed or instrument. It is only a decree simpliciter for eviction of the defendant and his men and agents upon removing their goods and for recovery of khas possession. Other prayers are for arrear rents, damages and mesne profits. The valuation of the suit for the purpose of court fees is as follows:-

“9) For the purpose of court fees and jurisdiction, the suit is valued at Rs.7200/- on account of recovery of possession on the basis of annual rent and Rs.600/- for recovery of arrear rent for January, 1989 and Rs.600/- tentatively by way of damages and/or mesne profits and advalorem court fees are paid thereon.”

The learned advocate for the defendant has not been able to show from the plaint, that any relief claim had either not been valued or undervalued. Next, the learned coordinate Bench had held that the suit should be valued as per the provisions of Section 7(vi)(a) of the Court Fees Act, as the defendant was nothing more than a trespasser. Whether the order of His Lordship should be interpreted to mean that the

direction of the Court upon the learned trial judge was to make an enquiry with regard to the market value of the suit property is answered in the negative. In this case, the plaintiff could put his own valuation.

The issue before His Lordship in CO 870 of 2018 was, whether the learned trial judge had rightly rejected the application under Section 11 of the said Act by holding that the suit was correctly valued in terms of Section 7(xiii)(d) of the 1970 Act or not.

Upon coming to a finding that the suit was wrongly classified by the learned trial judge to be one between the landlord and tenant, the learned coordinate Bench had held, on the facts of the case and the pleadings, that the defendant should be treated as a trespasser as the suit was for recovery of possession upon evicting a trespasser. On such finding, His Lordship had further held that Section 7(vi)(a) of the said Act would be applicable while determining the valuation of the suit.

Upon coming to a specific finding, His Lordship then relegated the matter to the learned court below, to decide the issue of valuation by making an enquiry under Section 11 of the said Act vis a vis the provisions of Section 7(vi)(a).

Section 7(vi)(a) provides that in a suit for recovery of possession of immovable property from a trespasser, where no declaration of title to the

property is either prayed for or necessary for disposal of the suit, the valuation would be according to the amount at which the relief sought was valued in the plaint subject to the provisions of Section 11.

In the facts of this case, the expression “subject to the provisions of Section 11” would not mean that an enquiry can be made with regard to the market value of the entire suit property by directing the District Registry to file a report on such valuation.

The direction of his Lordship would mean that if the plaintiff had either not valued all the reliefs claimed or undervalued the reliefs, the court could revise such valuation. The valuation as per the reliefs sought, was to be considered on the basis of the averments in the plaint. Here, the valuation, as per reliefs sought, has been elaborately stated in paragraph 9 of the plaint.

It is also clear from a plain reading of Section 7(vi)(a) of the said Act that no objective standard or determinant factor has been prescribed by law in such a situation, to determine the valuation of the suit for recovery of immovable property, from a trespasser unlike Section 7(vi)(b)(i) and (b)(ii). In a suit for recovery of immovable property from a licensee upon termination of license, the license fee payable for a year before the date of presenting the

plaint or the license fee payable by the licensee according to the amount at which the relief sought for, was to be considered for the valuation.

In this case, there is no objective standard. The plaintiff has valued the suit on the annual rent that was paid when the defendant was a lessee under the plaintiff, that is monthly rent of Rs.600/- multiplied by 12 months. One month's arrear rent of Rs.600/- and one month's rent as damages/mesne profit has been claimed. Thus, a meaningful reading of the plaint does not indicate that any of the reliefs were either not valued or undervalued. Each and every relief sought, has been given a valuation and the plaint case is restricted to such reliefs.

Before parting with this order, the decision of a coordinate Bench in the matter of ***Man Mohan Khemka versus Dr. Kailash Kumar Sharma*** reported in ***(1984) 1 CHN 121*** is referred to, where the issue was settled. It was held as follows:-

“7. Section 7(vi) includes the case of recovery of possession against trespassers where no declaration of title is either asked for or necessary for the lie and these provisions also govern the cases where recovery of possession is asked from a licensee upon revocation or termination of the licence. These provisions are thus appropriate for suits for recovery of possession of immovable property from a trespasser where no prayer for declaration is either prayed for is necessary. Section 7(v) governs other classes of suits from trespassers. There may also be classes of suits for possession which are not governed by the provision of S. 7(vi) viz. in some suits for possession, possession is the main and real

relief and the prayer for declaration, an ancillary to the prayer for possession while in other suits declaration of title is the real relief and possession is asked for as a consequence of such prayer. The first class of suits would not be governed by S. 7(v) but they would be guided by S. 7(iv)(b). Section 7(v) govern the suits and proceedings for possession of land, buildings and gardens subject to exceptions and of such exception in S. 7(vi), which as indicated above, apply to cases where no declaration of title of property is either prayed for or necessary for the disposal of the suit viz., to eject a trespasser; or when the defendant, who is in illegal possession was a licensee. The suits in both the cases under consideration where for recovery of possession from trespassers and without any prayer for declaration of title and it cannot also be doubted or disputed that in view of the case of Baidyanath Karmakar v. Golak Nath Karmakar, reported in ILR 1971 Cal 306 and the determinations in the case of Sri Ruhnnavaramia v. Smt. Vimala, AIR 1961 SC 1299, if there is no objective standard of valuation then the plaintiff can put his own valuation and furthermore, since the matter of Court fees is a question purely between the plaintiff and the State, the defendant can neither question nor have any say in the matter of valuation. It has been observed in the Calcutta decision as indicated above that apart from the above, the defendant even though acting honestly, cannot agitate the matter before the superior Court by way of appeal or in revision though in that case the defendants were given a hearing. In fact such were also the contentions of Mr. Mukherjee and Mr. Ukil.

8. As indicated earlier, the question of Court fee for recovery of possession against a licensee on revocation or termination of licences will be governed by S. 7(vi)(b). There may be a licence fee payable by the licensee to the lessor and in that case ad valorem Court fee would be required to be paid on the amount of licence fee, which is payable for the whole year preceding the institution of the suit. When no such licence fee is payable, subject to the provisions of S. 11 of the West Bengal Court Fees Act, 1970, which is the verbatim reproduction of S. 8C of the Court Fees Act 1870 as inserted by Act, VII of 1935 in Bengal, the plaintiff may put his own valuation, which again under S. 8 of the Suits Valuation Act,

should be the value for the purpose of jurisdiction Section 8C as mentioned above, which is the equivalent provision like S. 11 of the present Act, has enlarged the power of the Court to revise the plaintiff's valuation and determine the correct valuation. The whole idea behind such incorporation is to revise a wrong valuation and to authorise the Court to determine the correct valuation and for that purpose, to make such enquiry as the Court thinks fit and proper and such authority, can only be exercised if the valuation as made or given is wrong. As observed in the case of *Amritalal Chatterjee v. Hiralal Chatterjee* (supra), even without the section, the principle of the same or underlying the same, would apply and whether S. 11 of the present Act is there or not, the Court has always the power to revise valuation and S. 11 has been mentioned in S. 7(vi) of the Act *ex abundanti cautelo viz.*, as a measure of abundant caution. Such should also be the intention behind S. 7(vi)(b)(ii).

9. Where there is no basis for valuation, the plaintiff may even make an imaginary valuation subject to the limitation that proper Court fees should be paid if the Court so directs on enquiry. But, one thing is certain that the valuation initially rests with the plaintiff and not the Court. On the interpretation of the words "subject to provisions of S. 11", the difficulty in exercising the power would appear in the absence of any objective standard and such power can be availed of or resorted to only when there is an objective standard. Thus, when an objective standard for valuing the relief would be available, Court will be empowered to amend the valuation. But if there is no such objective standard, the valuation as put forward by the plaintiff should prevail. Thus, no such objective standards being available in those case under consideration, the judgments and orders as impeached, cannot be interfered with and so, the concerned Rules are discharged."

Under such circumstances, the order impugned is set aside. The learned court below is directed to proceed with the suit in accordance with law. In this suit, there was no objective standard and

the court could not direct an enquiry into the market value of the property. The reliefs claimed were eviction of trespasser and mesne profits and the plaintiff put his own valuation. A tentative value has been given to the relief for mesne profit and damages. The court can direct payment of deficit court fees after determination of the quantum of mesne profit and damages, at the appropriate stage, if required.

Accordingly, the revisional application is disposed of.

However, there shall be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)