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Ct. No. 04

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S.A.T. 27 of 2023
CAN 1 of 2023

Sri Subrata Mukherjee
Vs.
Smt. Gouri Dutta

Mr. Aniruddha Chatterjee,
Mr. Rahul Karmakar,
Mr. Sounak Mukherjee.
... for the appellant.

Mr. Debajyoti Basu,
Mr. Subhojit Seal,
Mr. Subhankar Ghosh,
Mr. Dibyendu Ghosh.
... for the respondent.

A point is taken in the instant Second Appeal by Mr. Chatterjee, learned Advocate appearing for the appellant, that the stand taken by the plaintiff/landlord in the suit being inconsistent and mutually destructive, the Court of Appeal below ought not to have interfered with the judgement and decree passed by the Trial Court.

The facts are undisputed that the plaintiff/respondent inducted the predecessor-in-interest of the present appellant in respect of the suit premises as a monthly tenant and accepted the rent from him. In the year 2000 the original tenant died leaving behind the appellant as heir and legal representative, who succeeded to the estate left by him.

A notice under Section 6(4) of the West Bengal Premises Tenancy Act, 1997 was issued by the plaintiff/respondent upon the present appellant seeking recovery of possession of the suit premises. Subsequently the suit was filed on the grounds enumerated under Section 6 of the West Bengal Premises Tenancy Act, 1997 for eviction of the appellant from the suit premises.

It is also not in dispute that the appellant

complied the mandates of Section 7(1) of the said Act and also filed an application under Section 7(2) of the Act, which was disposed of by the Trial Court. However, during the pendency of the suit an application for amendment was taken out by the plaintiff/respondent incorporating the facts that by virtue of the definition of “tenant” engrafted under Section 2(g) of the said Act, the appellant became disentitled from any protection under the said Act and their status is nothing but a trespasser or at best tenant at sufferance. Such amendment was allowed by the Trial Court and the parties adduced evidence in support of their respective pleadings.

For the purpose of record it is hereby made clear that the defence taken by the appellant in the written statement was restricted to the allegations made in the plaint more particularly on the grounds on which the eviction was sought and there was no denial of relationship of *landlord and tenant* between the original tenant and the plaintiff/respondent.

The first witness of the plaintiff in the cross-examination deposed that he had accepted the appellant as tenant in common; issued notice of eviction and instituted a suit against him. The aforesaid deposition of the first witness of the plaintiff/respondent is sought to be taken as counter productive for the decree to be passed in favour of the plaintiff/respondent. In other words, it is sought to be contended that the moment the plaintiff/respondent accepted the appellant as tenant, it cannot take a rebound and treat the appellant as trespasser or tenant at sufferance invoking the provisions contained under Section 2(g) of the said Act.

A point is sought to be taken that if such deposition came after the amendment having allowed

by the Court below the same has to be construed in such perspective and the intention has to be gathered therefrom in support of the stand of the appellant that he should be regarded as tenant and, therefore, cannot lose their status that of a tenant under Section 2(g) of the said Act.

A judgement of the Apex Court rendered in case of *Tribhuvanshankar vs. Amrutlal* reported in (2014) 2 SCC 788 is relied upon by the appellant to buttress the contention that the right, which accrued subsequent to the institution of the suit, cannot be taken into account, as such right must originate on the date of institution of the suit and not subsequent thereto.

We have given anxious consideration on the point, which according to the learned Advocate for the appellant is an interesting point involved in the instant appeal but does not find that it would involve substantial question of law.

The definition of “tenant” engrafted under Section 2(g) of the said Act is required to be recapitulated before we proceed to return the findings on the aforesaid point, which runs as follows:

“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:

Provided that the time-limit of five years shall not apply to the spouse of the tenant who was ordinarily living with the tenant up to his death as a member of his family and was dependant on him and who does not own or occupy any residential premises:

Provided further that the son, daughter, parent or the widow of the predeceased son of the tenant who was ordinarily residing with the tenant in the said premises up to the date of death of the tenant as a member of his family and was dependant on him and who does not own or occupy any residential premises, shall have a right of preference for tenancy in a fresh agreement in respect of such premises on condition of payment of fair rent. This proviso shall apply mutatis mutandis to premises let out for non-residential purpose.”

From the reading of the aforesaid definition it appears that it had undergone a radical change from the definition of “tenant” given in West Bengal Premises Tenancy Act, 1956, so far as it relates to heritability of the tenancy right governed by the provisions of the said Act. The definition of “tenant” under the repealed Act, i.e. the Act of 1956 does not contain any restriction on

heritability nor any restricted heritability as the tenancy was regarded as an estate capable of being devolved upon the heir and legal representatives, who would enjoy the same status that of the original tenant and amenable to be evicted on the grounds enumerated therein for eviction of a tenant and having equal protection against such eviction provided in the said Act. The present Act, i.e. the Act of 1997 restricts the succession of the tenancy right into the heirs who ordinarily come within the purview of Class-I heirs under the Hindu Succession Act, which is further restricted by imposing the conditions relating to the period engrafted therein. The 'tenant' would mean any person 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.

The aforesaid language used in the said definition indicates that it not only includes and imbibe within itself folds the contractual tenant, but also a statutory tenant; meaning thereby against whom a notice for eviction has been issued by the landlord. The next sentences in the said definition have to be construed in a more pragmatic manner in order to uphold the legislative intent and avoidance must be given to such construction which would render it otiose or redundant.

The expression "In the event of death of any tenant" has to be construed in the perspective of both the contractual as well as statutory tenant; otherwise the word "any" if restricted to contractual tenant would frustrate the very intendment of the legislatures. Such tenant is to be construed having reference to contractual as well as statutory tenant and the restriction relating to heritability is also to be considered in the same tune. If the segregation is

permissible, then the definition or the portion relating to restrictive heritability would be meaningless and the very object and purpose sublime the incorporation thereof shall be totally frustrated. There is no contrary view, which has been taken by this Court in this regard that the restriction on the succession of tenancy right is only applicable to the contractual tenants and not applicable to statutory tenants.

Our attention is drawn to the cross-examination of the first witness of the plaintiff, wherein it is admitted that the plaintiff/respondent accepted and acknowledged the appellant as tenant in common and also instituted a suit for their eviction as tenant under Section 6 of the Act. The intention has to be gathered from the language used while deposing in the suit. Such intention is laudable, as first witness of the plaintiff explicitly and lucidly indicated that since the notice for eviction was issued within one year or on the eve of one year, in view of the definition of “tenant” under the said Act, the appellant is to be regarded as tenant up to the period of five years from the date of death and, therefore, we do not find any incongruity or inconsistency in the aforesaid deposition. Secondly, it is further said that the plaintiff/landlord instituted a suit against the tenants which according to the appellant would be construed to mean creation of a fresh tenancy, which, in our opinion, is not acceptable for the simple reason that the suit for eviction was filed in the year 2011, i.e. within five years from the death of the original tenant and at best an inference can be drawn from the aforesaid submission that the other conditions attached to the said definition for being treated as a tenant for a period of five years have been satisfied and accepted by the tenant.

It is no longer res-integra that upon the death of the original tenant the successors as named in Section 2(g) of the Act cannot continue to enjoy the protection as a tenant for a period of five years, as a further condition enumerated therein viz. they were ordinarily living with the tenant up to the date of death as a member of his family and were depended upon him and did not own or occupy any residential premises must be satisfied. At best the admission of those conditions or in other words waiver of those conditions can be visualized from the aforesaid stand of the plaintiff/respondent, but the restriction on heritability of a tenancy right beyond the period of five years cannot be presumed from the aforesaid stand.

We do not find any fetter on the part of the landlord to institute a suit for eviction on any of the grounds enumerated under Section 6 against the person, who comes within the peripheral of Section 2(g) of the said Act provided such suit is instituted within five years from the date of death of the original tenant. The right accrued upon a person under the statute if recognized by the landlord at the time of institution of the suit, such suit cannot be defeated solely on the ground of losing such status by operation of law. The only exception under Section 2(g) of the Act is in relation to spouse of the original tenant, who died either before or after the commencement of Act, 1997, subject to the condition that he/she was ordinarily living with the deceased tenant as a member of his or her family and was dependant upon him/her and does not own or occupy any residential premises.

Admittedly the present appellant is not coming under the aforesaid exception carved out by the first proviso inserted thereto. We thus do not find the contention of the appellant that there was a categorical

admission on the part of the plaintiff in creating a new tenancy in favour of the appellant emerged during the cross-examination and even if the aforesaid statements are made, that has to be construed in a more pragmatic manner.

The second point, which emerged in the instant case, is whether the relief for eviction on the grounds enumerated under Section 6 of the Act is mutually destructive or inconsistent with the relief in the form of eviction taking aid to Section 2(g) of the Act.

The case of *Tribhuvanshankar (supra)* is required to be understood applying the principle of inconsistency or mutually destructive pleadings. In the said Report a suit for recovery of possession against the plaintiff after the notice was issued by the appellant therein and in reply to a statutory notice a plea was taken by the respondent therein that the appellant is neither the owner nor the landlord and claimed the rival title in respect of the suit premises. The Trial Court came to the findings that the sale deed on the basis whereof the appellant was claiming ownership in respect of the property was without any sale consideration and there is no establishment of the relationship between the landlord and tenant and the respondent became the owner in respect of the suit premises on the basis of adverse possession. The first Appellate Court reversed the judgement and decree of the Trial Court and the matter thereafter travelled to the High Court in Second Appeal. After framing the substantial questions of law the Single Bench held that the judgement of the first Appellate Court is not proper and ultimately upheld the judgement of the Trial Court. The contention was raised that when the relationship between the landlord and tenant is not proved, the possession cannot be delivered solely on the bedrock of the right, title and interest.

In the said case a plea of perfecting the title by way of adverse possession was taken by the respondent while claiming the ownership of the suit property and the Apex Court held that the moment a suit for possession from a person is filed, the limitation or the period for claiming adverse possession stops and if such right is perfected subsequent thereto, such eviction is not permissible; which runs thus:

“44. Coming to the case at hand the appellant had filed the suit for eviction. The relief sought in the plaint was for delivery of possession. It was not a forum that lacked inherent jurisdiction to pass a decree for delivery of possession. It showed the intention of the plaintiff to act and to take back the possession. Under these circumstances, after the institution of the suit, the time for acquiring title by adverse possession has been arrested or remained in a state of suspension till the entire proceedings arising out of suit are terminated. Be it ingeminated that if by the date of present suit the defendant had already perfected title by adverse possession that would stand on a different footing.”

Obviously a person claiming title by way of adverse possession must establish such right before the institution of the suit for possession and because of the pendency of the suit for a longer period, if 12 years period has elapsed or expired, it does not accrue any right into a person. The principle has to be seen in this regard that the possession must be open, hostile, continuous, uninterrupted and even there is no interdiction by the institution of the suit before such right fructify into an absolute right. It would not be open for such person to take a plea during the pendency of the suit.

We are unable to comprehend the principles and ratio laid down in the above Report to have any applicability in the instant case. Admittedly on the date of the institution of the suit the appellant satisfied the conditions and the ingredients of “tenant” under Section 2(g) of the Act. The law does not stand in the way nor act as deterrent in recognizing the subsequent events happened during the pendency of the suit. If any event happened subsequent to the institution of the suit either by act of the parties or by operation of law, we do not find any hurdle or obstacle on the part of the plaintiff in bringing those events in the suit provided they have some amount of impact on the relief claimed therein.

We do not find any obstacle in taking into all the consequences germinated from the statutory provision and the right, which was recognized at the time of institution of the suit, if diminishes by operation of law, the applicability of such provision or the circumstances cannot be termed as mutually destructive or inconsistent thereto; for example, a demise premises governed by a lease of 21 years of duration is forfeited on the ground of breach of one or more terms and conditions incorporated therein. Section 111 of the Act recognize the determination of lease on the ground of forfeiture and a suit is filed for recovery of possession. During the pendency of the suit the period reserved in the lease deed expires and an amendment is brought to recover the possession on the said ground alone as the expiration of lease by efflux of time is one of the incidents of determination of lease under Section 111 of the Act. What is to be seen is whether the events would add or supplement to the main relief claimed in the plaint or would require a new relief to be granted to the plaintiff. The main relief of the suit is to achieve eviction

of a tenant from the suit premises. It is immaterial that initially it was sought on satisfaction of the grounds enumerated under Section 6 of the said Act. Later on it is sought by taking aid of Section 2(g) of the said Act, but it does not alter the basic fabric or the foundation relief claimed in the said suit as both the grounds aimed against the eviction of the defendant taking a different route which in our opinion cannot be said to impermissible.

The tenancy is an independent contract; unless the parties to the contract agree to create such relationship, it can neither be presumed nor a right is created, as neither the appellant has succeeded in proving that any rent was paid to the plaintiff/landlord after the death of the original tenant nor any rent receipt was issued. Though it is contended that the rent was demanded but it does not appear that, in fact, it is paid, not a single document has been produced by the appellant touching upon the payment of rent to the landlord. Furthermore mere deposit of the rent in the Rent Controller or in terms of the order of the Court under Section 7(1) and 7(2) of the said Act cannot be a factor for creation of a new tenancy and, therefore, the plea that the new tenancy was created is unfounded and unsubstantiated.

We thus do not find that the point taken by the appellant before us involves substantial questions of law. The appeal is thus dismissed.

The execution proceeding shall be expedited immediately.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

