

28.03.2023
KC(12)

S.A.T. 29 of 2022
Sashi Prova Agarwal
-versus-
Debasish Paul and Ors.
With
CAN 1 of 2022
With
CAN 2 of 2023

Mr. Sukanto Chakraborty,
Mr. Sunny Nandy,
Mr. Tamal Singha Roy,
Mr. Zuber Ahmed.....For the appellant.

Mr. Souradipta Banerjee,
Mr. Sounak Bhattacharya,
Mr. Anirban Saha Roy,
Mr. Sounak Mandal,
Ms. Fatima Hassan.....For the respondents.

This intended second appeal raises some interesting legal issues.

Admittedly in the demised premises the daughter's family of the original tenant is residing. The case of the respondents/plaintiffs was that the suit premises had been wrongfully sub-let by the appellant/defendant.

Three situations are possible:

The first, as the appellant/defendant alleges that the original defendant's family was living under leave and licence. The second possibility is that the premises had been sub-let by the original tenant to his daughter's family, wrongfully. The third is that the tenant terminated the relationship of landlord and

tenant, abandoned the premises where his family members were found to be in occupation. This if proved is nothing but trespass by the family members for which the respondents/plaintiffs were entitled to immediate possession of the suit premises.

Both Mr. Sukanto Chakraborty, learned advocate for the appellant and Mr. Souradipta Banerjee, learned advocate for the respondents have taken us through the facts of the case and also the evidence which is on record.

Mr. Banerjee has also cited Joginder Singh Sodhi –vs- Amar Kaur, reported in (2005) 1 SCC 31 and Smt. Padmabati Devi –vs- Chittaranjan Dasgupta and Anr., reported in (2005) 3 CAL LT 516 (HC).

The Calcutta decision categorically lays down that handing over of possession of the suit premises by the tenant to his brother amounts to sub-letting following Bhairab Chandra –vs- Ranadhir Chandra, reported in AIR 1988 SC 396 (paragraph 50) and S.A. Vengadamma and Ors. –vs- Jitendra P. Vora and Anr., reported in (1997) SCC 334 (paragraph 49).

If we have to decide this issue we have to embark upon some fact finding by evaluating the evidence adduced by the parties.

We are of the view that although reasons have been advanced by the learned judge of the first appellate court in coming to his conclusion, specific

findings ought to have been entered on the three situations enumerated by us earlier in this judgment.

For complete and proper determination of the question involved, we are of the view that a limited remand should be made to the first appellate court to decide the issue afresh on the basis of our observations made, within ten weeks of communication of this order so that this long pending litigation between the parties finally comes to rest.

We order accordingly.

The appeal is formally admitted treating the above issue as a substantial question of law and disposed of by this order, dispensing with all formalities. Connected applications are also disposed of.

(I.P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)