

Item-51. 23-03-2023

SAT 40 of 2015

sg Ct. 8

Aniruddha Dasgupta & Anr.
Versus
Atindra Kr. Bhattacharjee & Anr.

The matter initially appeared in the warning list on 29th November, 2022 and thereafter transferred to the regular list on 5th December, 2022. There was a clear indication in the list that the matter shall be transferred to the daily cause list on 5th December, 2022 and since then the appeal is appearing in the list. In spite of having due notice and knowledge that the matter is pending, the appellants are not represented. The appellants have also not taken any step to remove the defects as notified by the Stamp Reporter on 11th February, 2015. It is clear that the appellants are not interested to proceed with the matter.

We could have dismissed the appeal for non-removal of the defects. However, we propose to have a look at the judgments of both the courts in order to find out whether the second appeal involves any substantial question of law.

The appeal is arising out of a judgment and decree dated 6th December, 2014 passed by the learned Civil Judge (Senior Division), 4th Court, Alipore affirming the judgment and decree dated 21st December, 2013 passed by the learned Civil Judge (Junior Division), 4th Court at Alipore, in a suit for eviction of the appellants from the suit premises.

In the absence of the judgment and decree of the trial court, we are left with no option but to consider the judgment of the first appellate court and the grounds of appeal.

From the judgment it appears that originally one Debabrata Dasgupta was tenant under Satyendra Kr. Bhattacharjee and on his death, his wife Kshama Dasgupta became monthly tenant in respect of the suit premises as his son namely Aniruddha Dasgupta and two daughters namely, Nandini Dasgupta (Sen Sharma) and Nandita Majumder executed a letter of relinquishment in favour of landlord and surrendered their tenancy and as such, on death of Debabrata Dasgupta, Kshama Dasgupta became the sole tenant.

That said Kshama Dasgupta died on 01.02.2011 and on her death, notice was issued upon the present appellants and proforma defendant for vacating the suit premises and event upon issuance of such notice they did not quit and vacate the suit premises for which the present respondent who became owner of the suit premises on death of Satyendra Nath Bhattacharya had filed a suit before Ld. Civil Judge (Jr. Divn.), 4th Court, Alipore and the said suit has been numbered as Title Suit 1379 of 2011 was tried before Ld. Civil Judge (Jr. Divn.) 4th Court Alipore and the same was decreed on contest.

The appellants however, claimed that they never surrendered the tenancy in favour of the landlord although they were common tenant with their mother Kshama Dasgupta and they had contributed money towards payment of the monthly rent and they never issued any relinquishment letter or deed in favour of the landlord and the document filed by the landlord as relinquishment letter of the appellants was obtained by undue influence and coercion and as such, the same is not legally valid.

It appears from the evidence that the plaintiff was able to prove his ownership by virtue of a final decree of partition passed in

T.S. No. 2435 of 2008 and the certified copy of the final decree along with the sketch map has been proved by the plaintiff (Ext. 5). It also transpires from the evidence on record that the plaintiff's family consist of himself, his wife and his son and the plaintiff and his family members have been forced to live in a portion allotted to his younger brother in the second floor. To prove the total strength of his family members the plaintiff had proved the voter identity card of his family members (Ext. 8). While proceeding with the suit, the defendants therein could not bring any material on record from which it can be ascertained or even remotely suggested that the plaintiff has any other accommodation elsewhere. Therefore, the Trial Court observed that the point for reasonable requirement of the suit premises as claimed by the plaintiff has been proved and thus, the issue was decided in favour of the plaintiff.

The proforma respondent who was the defendant no.3 in the original suit did not contest the suit. The defendant no.3 neither entered appearance nor did contest the suit by filing written statement. In his evidence, the appellant no.1 as DW 1 has stated that his father Late Debabrata Dasgupta was a monthly tenant in respect of the suit premises under Satyendra Kr. Bhattacharya, the father of the plaintiff and on death of his father on 8th May, 1996, he, his sister appellant/defendant no.2 and their mother were residing with their father. His other sister the defendant no.3/proforma respondent herein used to reside in her matrimonial home. He submitted that after the demise of their father, he, his two sisters and his mother became joint monthly tenants in respect of the suit premises. The rent receipt was granted in favour of defendant no.1 as she was the eldest member of the family after

demise of their father. He and his two sisters i.e. defendant nos.2 and 3 had exercised their right of tenancy firstly, along with their mother and after the demise of their mother, by the defendants themselves as because they never surrendered their right of tenancy. The defendant contended that the letter of surrender was obtained by misrepresentation. The said document being Exhibits 3 and 4 were drafted and prepared by Satyendra Kr. Bhattacharjee and he managed to get the signature of his mother on the said letter and managed to get the signature of the defendant on the said declaration by undue influence as well as intimidation. The mother of the defendants was a was a school teacher. DW-1 is a government servant. His to sisters are both school teachers and all of them are highly qualified and educated persons.

The learned Trial Judge having regard to their academic background disbelieved that they signed the document being Exhibit 4 without knowing the contents therein. Moreover, the appellants failed to plead any prove of coercion and undue influence.

It is trite law that the onus lies on the appellant to prove the said fact. In fact, DW-1 had admitted that he did not lodged any complaint or diary before any authority against such alleged act and undue act of coercion. Once exhibits 3 and 4 are admitted, the appellants have no case to answer.

In view of the aforesaid observation, the appeal stands dismissed.

(Uday Kumar, J.)

(Soumen Sen, J.)