

11 11.07.23

Ct. No. 04

akd

S.A.T. 62 of 2021

CAN 1 of 2021

CAN 2 of 2022

Sri Ram Awatar Shaw

Vs.

Smt. Phulhari Roy @ Fulhari Roy

Mr. Siva Prasad Ghose.

... for the petitioner.

Mr. Ayan Banerjee,

Mr. Arindam Chatterjee,

Mr. Suman Banerjee.

... for the respondent.

Both the Courts below held that the appellant is neither a tenant nor a licensee in respect of the suit property and is a mere permissive occupant in respect thereof. The suit filed by the plaintiff/respondent stood decreed by the Trial Court and such decree is affirmed by the first Appellate Court.

The plaintiff/respondent acquired the right, title and interest in respect of the suit property on the basis of the deed of sale executed by the admitted owner. The suit was filed for recovery of possession on the ground of revocation of licence. The plaint proceeds that the defendant/appellant was permitted to occupy the suit premises for a limited period as licensee, but later on refused to hand over the possession. The defendant/appellant took a defence that he is a tenant of the suit premises and relied upon the *rent control challan* showing the deposit of rent with the rent controller, but he could not produce the rent receipts in support of his contention that he is a tenant in respect of the suit property as a licensee.

The Trial Court did not find any corroborative evidence in support of the defence taken by the

appellant in absence of any rent receipt produced by him in respect of the suit premises. However, an application under Order XLI Rule 27 of the Code of Civil Procedure was taken out by the appellant before the first Appellate Court intending to adduce additional evidence annexing a copy of the purported rent receipt issued by the vendor of the plaintiff/respondent. The first Appellate Court rejected the said application applying the principle of *res judicata*. It is indicated in the said order that the identical application was filed earlier, which was dismissed on merit. The said order dismissing the application seeking permission to produce additional evidence was not challenged before the higher forum and, therefore, attained finality so far as the said proceeding is concerned.

It is no longer *res-integra* that the principle of *res judicata* not only applies between the two proceedings but has its equal applicability at the different stages of the said proceeding. In the event the earlier application was dismissed on merit, further application on the self-same ground cannot be maintained and, therefore, we do not find any infirmity and/or illegality in the order of the first Appellate Court in dismissing the second application filed under Order XLI Rule 27 of the Code. The moment the appellant has failed to prove that he is a tenant in respect of the suit property and not a mere licensee, there is no infirmity or illegality on the part of both the Courts below in decreeing the suit in favour of the plaintiff having title in respect of the suit premises. A person, who could not prove that his possession is otherwise than the licensee, is not entitled to protect the possession which according to the plaintiff/respondent was in lieu of permissive occupation.

We thus do not find any involvement of substantial question of law in the instant appeal.

The appeal is thus dismissed.

There will be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)