

Item-4. 20-01-2023

FA 178 of 2022
CAN 1 of 2022

^{sg} Ct. 8

Utpal Ghosh, since deceased,
represented by his legal heirs and representatives,
Aparna Ghosh & Anr.
Versus
Manas Kumar Mukherjee

Mr. Sanjay Saha, Adv. ...for the appellants
Mr. Uttam Kumar De, Adv.
Ms. Writi De, Adv.
Ms. Riya De, Adv. ...for the respondent

A very short point arises in this appeal is to be decided and accordingly, we invite the parties to make submissions.

We have heard the learned counsel for the parties.

It is submitted on behalf of the appellants that the plaintiff has failed to establish its title and the trial court has made out a third case by the parties in decreeing the suit in favour of the plaintiff. It is undeniable that the defendant admitted that his father was tenant under the plaintiff and paid rent to the plaintiff and he has been depositing rent to the credit of the plaintiff. This clearly establishes the relationship with the landlord and tenant and he cannot deny the title of the plaintiff in terms of Section 116 of the Indian Evidence Act [See. *Rita Lal v. Raj Kumar Singh; (2002) 7 SCC 614*].

The learned trial judge has also construed the expression ‘entitled to receive’ in deciding the landlord tenant relationship governed by the Rent Control Legislation and in this regard, the learned trial judge has relied upon the decision of the Hon’ble

Supreme Court in ***Sheela & Ors. v. Firm Prahlad Rai Prem Prakash*** reported in (2002) 3 SCC 375.

The rule of estoppels between landlord and tenant enacted in Section 116 of the Evidence Act has been clearly elucidated in ***Vashu Deo v. Balkishan*** reported in 2002 (2) SCC 50. In the said decision the law as to estoppel of a tenant was summarized in paragraph 6 of the judgment which reads:

“6. The rule of estoppel between landlord and tenant enacted in Section 116 of the Evidence Act has three main features: (i) the tenant is estopped from disputing the title of his landlord over the tenancy premises at the beginning of the tenancy; (ii) such estoppel continues to operate so long as the tenancy continues and unless the tenant has surrendered possession to the land lord; and (iii) Section 116 of the Evidence Act is not the whole law of estoppel between the landlord and tenant. The principles emerging from Section 116 can be extended in their application and also suitably adapted to suit the requirement of an individual case....the rule of estoppel ceases to have applicability once the tenant has been evicted. His obligation to restore possession to his landlord is fulfilled either by actually fulfilling the obligation or by proving his landlord's title having been extinguished by a paramount title-holder.”(emphasis supplied)

This view was reiterated in **Ritalal** (supra). As pointed out in ***Shila & Ors. v. Firm Prahlad Rai Prem Prakash*** reported at 2002 (3) SCC 375 ownership is a relative term, the import whereof depends in the context in which it is used. In Rent Control Legislation, the landlord can be said to be the owner if he is entitled in his own legal right, as distinguished from for and on behalf of someone else, to evict the tenant and then to retain, control, hold and use the premises for himself. The right to receive the rent on his own right is an important factor.

The evidence on record clearly suggests that the defendant

has clearly acknowledged that the plaintiff is the landlord and at this stage, it is not open for the defendant to take a contrary stand and the same is clearly barred under Section 116 of the Indian Evidence Act. The reason for setting up the aforesaid defence is clearly discernible as having regard to the amended definition of tenant in section 2(g) of the West Bengal Premises Tenancy Act, 1997, the defendant would not be entitled to continue in the tenanted premises after expiry of five years from the date of death of the original tenant. Moreover, the defendant was unable to establish that he was dependent upon his father.

The trial court, in our view, has rightly decided the issue by relying upon the judgment in *Utpal Roy & Anr. vs. Ratul Krishna Bajerjee & Anr.* reported in **2016 (4) CHN (Cal) 687**. This view is reiterated in subsequent decision in *Satyanarayan More and Ors. Vs. Milagrina Rose Correia* reported at **2020 (3) CLT 501**. However, there was no evidence with regard to the assessment of the mesne profit determined at Rs.3000/- per month.

Accordingly, we direct the learned Trial Judge to appoint a Commissioner to determine the mesne profit and/or damage and upon a report being filed to that effect, decide the issue of mesne profit.

The appeal succeeds in part. However, there shall be no order as to costs.

There shall be a fresh consideration of the mesne profit by the learned Trial Court upon evidence.

The learned trial court is requested to conclude the determination of mesne profit and/or damage within a period of four months from the date of communication of this order by either

of the parties.

If the court is lying vacant, the plaintiff/decreed-holder may approach the learned Chief Judge, City Civil Court at Calcutta for assigning the matter to any appropriate Bench.

In view of the finding that the plaintiff is entitled to the decree for eviction, the execution proceeding may continue.

With the aforesaid directions, the appeal and the application are, accordingly, disposed of.

(Uday Kumar, J.)

(Soumen Sen, J.)