

Ct.  
No.  
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akb

**26.9**  
**2023**

**S.A. 246 of 2010**  
**Sanjib Muhury**  
**-Versus-**  
**Kumari Swapna Dey & Ors.**

**Mr. Gopal Chandra Ghosh**  
**Ms. Arup Kumar Mondal**                      **...For the Appellant**  
  
**Mr. Ashis Kumar Dutta**                      **...For the Respondents**

This second appeal is heard on the following substantial questions of law :

*Whether the learned Courts below committed any substantial error of law in overlooking the fact that the West Bengal Premises Tenancy Act, 1956 having been made applicable to the area where the suit property is situated with effect from 1998, the judgments and decrees passed by the learned Trial Judge were patently erroneous inasmuch as, the learned Trial Judge granted decree even in the absence of any finding as to the existence of grounds mentioned in Section 13 of the West Bengal Premises Tenancy Act and as such, decree has been affirmed by the learned First Appellate Court below?*

The respondents/plaintiffs filed Title suit No. 64 of 2005 seeking eviction from suit premises against the appellant/defendant. The brief facts stated in the plaint is that plaintiffs are the joint owners of the property as described in the schedule to the plaint. The defendant is a tenant under them at a monthly rent of Rs. 70/- payable according to the English calendar month. It is alleged that the defendant is a habitual defaulter in payment of rent and the plaintiff also reasonably requires the suit premises for their own use and occupation. Further allegation is that the defendants caused damage to the suit property by making unauthorized addition and alteration. Plaintiff sent notice of eviction under section 106 of Transfer of Property Act terminating the relationship between the parties, asking the defendant to quit and vacate

the tenanted portion on the expiry of March 2000. Defendant received the said notice but did not comply the terms of the notice and as such the suit was filed.

The learned Trial Court decreed the suit by holding that the suit property situates within the Panchayat area as such the notice sent to the defendant/tenant under Section 106 of the Transfer of Property Act is legal, valid and sufficient and passed decree of eviction against the defendant/tenant.

The question arose before the 1<sup>st</sup> Appellate Court was whether the said tenancy can be determined by giving eviction notice under Section 106 of the Transfer of Property Act or not, when tenant/defendant/appellant has taken a specific plea that in view of Government notification no. 245 dated 12.05.1989 the operation of West Bengal Premises Tenancy Act extended to the area, where the suit premises situates and as such notice of termination of tenancy can only be made by serving a valid notice section 13(6) of the West Bengal Premises Tenancy Act, 1956.

The 1<sup>st</sup> Appellate Court while considering the said issue came to the finding that the suit property situates under Mouza – Panduah, P.S. Panduah, J.L. 108, R.S. Khatian No. 1979, R.S. Dag No. 2016, District – Hooghly, which is within Panchayat area. After hearing the contentions of both the parties learned 1<sup>st</sup> Appellate Court affirmed the judgment passed by the Trial Court, in view of the materials on record and having considered the position of law applicable he accepted the contention of learned Lawyer for the plaintiff that in view of section 45 of the West Bengal Premises Tenancy Act 1997 the Act of 1956 has been repealed and as such aforesaid notification in connection with Act of 1956

has become non-est with the assent given by the president of India vide Notification No. 2683L dated 28.12.1998. present suit was filed on the basis of eviction notice given in the year 2000 and for which he came to the conclusion that the suit is governed by Transfer of Property Act and as such notice under Section 106 of the Act is valid.

Mr. Gopal Chandra Ghosh, learned Counsel appearing on behalf of the appellant has drawn my attention to the fact that the Government of West Bengal by its notification No. 245 L.R. dated 12<sup>th</sup> May, 1989 had extended the operation of the West Bengal Premises Tenancy Act, 1956, West Bengal Act 12 of 1956 in the area comprised in Mouza – Panduah, J.L. 106, Sheet No. 1 and 2, Block – Panduah, Gram Panchayat under P.S. Panduah in the District – Hooghly and boundary of the area has also been specifically mentioned in the said notification.

Having considered the submissions made by both the parties, it appears to me that section 1(2) of the West Bengal premises Tenancy Act, 1997(Act XXXVII of 1997) provides that the Act shall come into force on such date as the state Government may, by notification, appoint./ It is not in dispute that the Act of 1997 came into force vide notification no. 3052-L, dated 9<sup>th</sup> July, 2001 published in the Kolkata Gazette on 9<sup>th</sup> July, 2001.

The present suit for eviction was instituted on the basis of a notice of eviction sent by plain tiff on 11/12.2.2000 to the defendant determining the tenancy on the expiry of the Month of March, 2000, when the aforesaid West Bengal premises Tenancy Act of 1997 did not come into force. The West Bengal Premises Tenancy Act 1956 was repealed under section 45 of the West Bengal Premises Tenancy Act, 1997, when the new Act of 1997 came into

force on and from 9<sup>th</sup> July, 2001.

The court below was erred in law in observing that West Bengal premises Tenancy Act, 1956 was repealed when the new Act i.e. West Bengal premises Tenancy Act, 1997 was assented by the president of India vide notification no. 2683-L dated 28.12.98, overlooking the fact that section 1(2) of the new Act of 1997 has specifically declared that the Act will come into force on the date when the Government notification will be made in the Gazette and not from the date when the President will give assent to such Act.

In such view of the matter, the impugned judgment and decree passed by the Trial Court dated 27<sup>th</sup> February, 2006 and 7<sup>th</sup> March, 2006 in T.S. 64/2005 and the judgment passed by the 1<sup>st</sup> Appellate Court on 11<sup>th</sup> March, 2010 in Title Appeal No. 81 of 2006 are hereby set aside.

The second appeal, being S.A. 246 of 2010 is thus allowed. Consequently, the connected applications are also disposed of.

However, this dismissal order will not preclude the plaintiff/respondent to bring appropriate proceeding if required under the relevant provision of the relevant statute applicable to that area.

The department is directed to send down the lower Court record at once.

Urgent photostat certified copy of this judgment and order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

**( Ajoy Kumar Mukherjee, J.)**