

SAT 144 of 2016

**Purnima Das & Ors.
Vs.
Saraswati Bhadra & Ors.**

The appeal is defective. No attempt has been made to remove the defects.

This matter is appearing in the list since 6th February, 2023.

The appellate judgment and decree dated 28th January, 2015 and 29th January, 2016 affirming the judgment and decree dated 20th December, 2006 by the Trial Court in a suit for eviction of a licensee is the subject matter of challenge in this second appeal.

The appellants are the defendants in the suit.

We have carefully read the judgment of the Trial court and Appellate Court. We have also read the grounds of appeal.

The plaintiff filed the suit for eviction of a licensee.

Briefly stated, Krishna Mohan, the predecessor interest of the present plaintiffs, was the original owner of the suit property. After her demise on 4th February, 2008 Jatindra inherited the property as the only legal heir. The plaintiffs 1 to 3 are the wife, son and daughter of Jatindra. The other daughters of Jatindra are untraceable since 3rd January, 1989. During his lifetime in 1962 Jatindra permitted the defendant to reside in the suit premises due to his pre-acquaintance with Jatindra without any licence fee. After demise of Jatindra on 4th December, 1998 the license automatically stands revoked and the occupation of the defendant beyond the aforesaid time is unauthorized.

In spite of service of notice, the defendant did not leave the premises. Accordingly, the plaintiff filed a suit for eviction. The defendants in the written statement have contended that they have been inducted as a tenant in the suit premises at a rent of Rs.45 per month. On the request of Jatindra, they released one room and the rent was increased from Rs.45 to Rs.70 per month.

Krishna Mohan used to take rent without giving any rent receipt but the payment of such rent is unusually recorded in an exercise book and after the demise of Krishna Mohan, Jatindra followed the same procedure. In fact, they claimed the tenancy from the time of Krishna Mohan. In 1997, the defendant demanded rent receipts from the plaintiff and sought for permission to repair one room. The plaintiff Bhola Nath however, refused to give such permission and asked them to leave the premises. On 18th January, 1998 they tendered the rent through money order and it was received by Bhola Nath. Subsequently, on 13th March, 1998 again the rent was tendered by money order but it was refused. On the basis of the pleadings the trial court framed six issues. The main contention of the appellants was that the money order and postal receipt marked as exhibits D and D/1 and the letter of the advocate dated 10th February, 1998 would show that they are tenants. The appellant have been depositing the rent regularly since then before the Rent Controller in HRs vide case no.50 of 1998. The defendants claimed themselves as tenants.

Both the witnesses on behalf of the plaintiff denied acceptance of any amount by Jatindra or by them. The appellants failed to prove the money receipt. In view of the fact that the plaintiffs have

been able to establish their title in the suit property. It is for the defendant to prove the character of the possession. The trial Court in this regard has relied upon the decision of our Court in ***Juthika Basu & Ors. vs. Lt. COL. A. N. Sharma*** reported in **96 CWN 923**. In ***Juthika Basu*** (supra) the Hon'ble Judges of the Division Bench gave separate but concurring judgments.

Justice B.P. Banerjee as His Lordship then was in paragraphs 4 and 7 has observed that the "Burden of proof lies upon the party who substantially asserts the affirmative of the issue. As against the case of the landlord appellant that the defendant-respondent was a licensee, the respondent's version being that he was not a licensee but a tenant protected under the provisions of the West Bengal Premises Tenancy Act, 1956, he had to prove his case by adducing evidence in support of his case.

Where a given allegation, whether affirmative or negative, forms an essential part of a party's case, the proof of such allegation rests on him.

In order to establish a case of tenancy, one has first to prove the induction of the tenancy and the terms and conditions thereof. Secondly, in order to establish such a case, there must be privity of contract between the landlord and the tenant and according to the definition of the word "landlord" any person, who is entitled to receive rent, whether or not on his own account, can be treated to be a landlord.

A licence may be granted with or without fees.

Mere occupation of a premises without payment of rent is no proof of any tenancy.

To ascertain whether a lease or licence has been created, the substance of the matter has to be

looked into. If the defendant respondent claimed to be a tenant, he was to discharge the initial onus by proving that the intention of the parties was to create a tenancy and the most important incidence in the tenancy is payment of rent. But the absence of payment of rent has clearly negative the existence of a relationship between the landlord and the tenant.

Justice A.K. Bhattacharjee in his Lordship's concurring judgment in paragraphs 11 and 12 has observed that When the plaintiff proves his title to a property and seeks to evict the defendant from the said property treating him to be a licensee, the onus of proving the right to stay on the property is upon the defendant who asserts such right. In such a case, the onus is absolutely on the defendant to prove that he is a tenant.

The easiest way to prove the existence of a tenancy is to produce the rent receipts and/or any co-lateral document showing the creation of the tenancy. Where no document creating tenancy was proved, no rent receipt granted by the landlord could also be proved though possession was claimed from as far back in 1976 and on explanation was not forthcoming why rent receipts were not granted by the landlord and the tenant did not insist upon obtaining it, prima facie the defendant-respondent had not discharged the onus.

In the instant case, the first appellate court has rightly applied the said principles in affirming the judgment and decree of the trial court.

The stand of the appellants is also inconsistent. The observation of the appellate Court in this regard is reproduced below:

“In our case, the defendant / appellant claimed

that since 1977 he has been possessing the suit premises a tenant except releasing of one room in favour of Jotindra Mohan when she inherited the suit premises. It has been claimed by the defendant/appellant that Jatindra Mohan took rent by writing the same in an exercise book and in-spite of that he tendered his rent on 18.01.1998 through money order which was received by Bhola Bhadra and again he tendered rent on 03rd February, 1998 (sic) which was returned by Bhola Bhadra. Neither he stated what permitted him to tender rent through money order on 18.01.1998 nor he stated in which manner he tendered alleged rent on 13.03.1998 which was refused allegedly by PW2 and he also did not produce the extract of record of HRS vide no. 50 of 1998”.

Interestingly, appellants could not prove how the rent was tendered on 13th March, 1998. Even if it is assumed that appellants were tenants they need to prove that there was valid tender of rent and on refusal rent was sent by money order.

The concurrent findings of the fact, with regard to the status of the appellants in the suit premises, based on cogent evidence and proper appreciation of facts and law. On such consideration we do not find any reason to admit the appeal.

The appeal is dismissed.

(Uday Kumar, J.)

(Soumen Sen, J.)