

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Harish Tandon

And

The Hon'ble Justice Ajay Kumar Gupta

SA 53 of 2021

I.A. No. CAN 1 of 2019 (Old No. CAN 9208 of 2019)

I.A. No. CAN 3 of 2022

Samir Sen
Vs.
Asim Mukherje and Others.

For the Appellant : Mr. Debashis Roy, Adv.
Ms. Oisani Mukherjee, Adv.

For the Respondents : Mrs. Shohini Chakraborty, Adv.
Mr. Arijit Sarkar, Adv.

Heard on : 16.08.2023

Judgment on : 18.08.2023

Ajay Kumar Gupta, J:

The instant second appeal is the exception to the judgment and decree dated 20.04.2018 passed by the Learned Additional District Judge, 4th Court, Burdwan in Title Appeal No. 13 of 2014 thereby affirming the judgment and decree dated 31.01.2014 passed by the learned Civil Judge (Junior Division), 2nd Court, Burdwan in Title Suit No. 9 of 2006.

It is the specific case of the appellant/defendant is that he is a tenant in respect of one shop room carrying on their business therein since long. Respondents/Plaintiffs have purchased the suit building knowing the appellant/defendant and other tenants are there for more than 50 years and these facts are specified in the deed of purchase. There were six shop rooms out of which four were let out to different tenants and two were in Khas possession of the respondents/plaintiffs. One shop room has been converted to the chamber of plaintiff no. 1, other converted as maid servant quarter though there was no permanent whole time maid servant in the house of respondents/plaintiffs. Respondents/Plaintiffs have filed the suit being Title Suit No. 9 of 2006 before the Trial Court for eviction on the different grounds including the ground of reasonable requirement and prayed for recovery of Khas possession. Finally, the said

suit was decreed on 31.01.2014 by the Trial Court on contest on the ground of reasonable requirement for garage purpose as respondents/plaintiffs have no other alternative place for using it as a garage save and except of the suit shop room and finally directed to hand over the vacant peaceful possession of the suit premises to the respondents/plaintiffs.

The said judgment and decree passed by the Trial Court was challenged by the appellant/defendant before the First Appellate Court being aggrieved and dissatisfied with the findings made by the Trial Court.

Mr. Debashis Roy, learned counsel appearing on behalf of the appellant/defendant submits that the First Appellate Court, without going into the merits of the case on the basis of oral and documentary evidence led by the parties, came to conclusion that the Trial Court has rightly decided all the issues and finally concluded the findings of the Trial Court had clearly proved the reasonable requirement of the suit premises. It is trite law that the duty of the First Appellate Court is to deal with all the issues on the basis of oral and documentary evidence led by the parties before recording the findings and/or reasoning for its decisions. The First Appellate Court is also silent about the re-appreciation of evidence led by the parties before the Trial Court on its judgment and decree.

Consequently, judgment and decree passed by the First Appellate Court is perverse and required to be set aside.

He also relied on a judgment reported in **AIR 2001 Supreme Court 2171, *Madhukar and Ors. v. Sangram and Ors.*** to support his contention that the First Appellate Court has bounden duty and should have considered all issues after re-assessing and re-appreciation of oral and documentary evidence led by the parties while deciding the appeal but failed.

On the other hand, Mrs. Shohini Chakraborty, learned counsel appearing on behalf of the respondents/plaintiffs vociferously submits that the First Appellate Court examined the facts and law applicable in this regard and did not find any ground warranting interference with the judgment of the Trial Court.

The only point involved in the instant appeal in our opinion is that whether the findings recorded by the First Appellate Court without re-examination or re-appreciation of evidence led by the parties in the Trial Court can be justified in law.

In light of the submissions made by the parties and on perusal of the judgment and decree passed by the First Appellate Court dated 31.01.2014, it appears while considering the judgment and decree of the

Trial Court, the First Appellate Court only held that the Trial Court has rightly decided the Title Suit without re-appreciation of the material on record including oral and documentary evidence and finally came to conclusion that the plaintiffs have clearly proved the reasonable requirement of the suit premises.

It has been further held there was a clerical mistake that **‘the defendant has no other alternative place for using the same as garage’** whereas it should have been written that the **‘plaintiffs have no other alternative suitable accommodation to use it as a garage, other than the suit premises’** without dealing with all the issues decided by the Trial Court and evidence led by the parties and surreptitiously jumped to the conclusion that the Trial Court has rightly decided the case in favour of the respondents/plaintiffs.

We are of the view that the judgment and decree passed by the First Appellate Court is infirm having passed without re-appreciating and re-examining of the evidence led by the parties. First Appellate Court should have reheard both on the question of fact and law. The appeal before the First Appeal Court involved both disputed questions of law and facts. Learned Court should have appraised the evidence available on record which would have been reflective of conscious appreciation of mind and findings therein but failed to follow the provisions of Order XLI Rule

31 of the CPC in letter and spirit while deciding the appeal. Accordingly, the judgment and decree passed by the First Appellate Court on 31.01.2014 is required to be interfered by this Court.

The Hon'ble Supreme Court in ***Madhukar and others, Appellants v. Sangram and others, Respondents***¹ held:

“6. In Santosh Hazari v. Purushottam Tiwari (Dead) by L.Rs. (2001) 2 JT (SC) 407: (2001 AIR SCW 723) this Court opined (Para 15 of AIR):

“The Appellate Court has jurisdiction to reverse or affirm the findings of the trial Court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rearing both on questions of fact and law. The judgment of the Appellate Court must, therefore, reflect its conscious application of mind, and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the Appellate Court.”

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While reversing a finding of fact the Appellate Court must come into close quarters with the reasoning assigned by the trial Court and then assign its own reasons for arriving at a

¹ **AIR 2001 Supreme Court 2171**

different finding. This would satisfy the Court hearing a further appeal that the First Appellate Court had discharged the duty expected of it.”

7. The salutary principles referred to above in Santosh Hazaria’s case (2001 AIR SCW 723) (supra) have been respected in their breach.

8. Our careful perusal of the judgment in the first appeal shows that it hopelessly falls short of considerations which are expected from the Court of first appeal. We, accordingly, set aside the impugned judgment and decree of the High Court and remand the first appeal to the High Court for its fresh disposal in accordance with law.”

We, thus, set aside the impugned judgment and decree dated 31.01.2014 as the appellant/defendant has satisfactorily proved the involvement of the substantial question of law in this appeal and remand it back to the First Appellate Court for its afresh disposal in accordance with law.

The second appeal is thus allowed without any order as to costs.

We make it clear that we do not get an opportunity to deal with the case on merit. Therefore, we express our view that expression whatever made above would not get any influence while deciding the appeal afresh.

Consequently, **CAN 1 of 2019 (Old CAN 9208 of 2019)** and **CAN 3 of 2022** are also thus deposed of.

The learned Judge or Judge-in-Charge available in the First Appellate Court is requested to dispose of the appeal afresh on merit as expeditiously as possible after notice to the parties before ensuing Puja Vacation without granting any unnecessary adjournment to any of the parties.

Department is directed to send down a copy of this judgment and order at once to the Learned Trial Court for information and necessary compliance.

All parties shall act on a server copy of the judgment and order obtained from the official website of High Court at Calcutta.

Photostat certified copy of this judgment and order, if applied for, be given to the parties on priority basis on compliance of all formalities.

I Agree.

(Harish Tandon, J.)

(Ajay Kumar Gupta, J.)