

09 **12.07.
2023**

Ct. No. 04

Ab

SAT 94 of 2023

**Shri Anupam Manna and others
Vs.
Bhajahari Polleye and others.**

**Mr. Debasish Roy,
Mr. Goutam Das.**

... for the appellants.

Learned Advocate for the appellants submits that the deficit Court Fees has been put in vide Document No. 2 on 22nd June 2023.

Office is directed to include the deficit Court Fees with the Memorandum of Appeal immediately.

The unsuccessful tenants have filed the instant second appeal assailing the concurrent finding of facts returned by both the courts below on the ground that in absence of any definite description in the schedule appended to the plaint, the suit ought to have been dismissed. Further plea is taken that the rent in respect of the suit premises was apportioned amongst the co-owners and the notice under Section 106 of the Transfer of Property Act (hereinafter referred to as 'said Act') issued by three of such co-owners is invalid and contrary to the provisions of Section 106 of the said Act.

It is not in dispute that the suit premises originally belonged to Kanaklata, who indubitably inducted the predecessors of the defendants/appellants in respect of the suit premises. A suit for recovery of possession was filed by said Kanaklata against the present defendants/appellants, which stood dismissed on the ground that she had divested her all right, title and interest in respect of the property in favour of the plaintiffs/respondents and the proforma respondents.

A plea is sought to be taken that the moment the suit filed by the said Kanaklata stood dismissed, the title of Kanaklata was shrouded with doubts and any person

claiming through Kanaklata cannot claim the right, title and interest in respect of the suit premises.

The aforesaid submission, in our opinion, is fallacious. The suit filed by Kanaklata was not dismissed on the score that she had no title in the property but was dismissed on the score that she has divested her right, title and interest in respect of the property in favour of the plaintiffs/respondents and the proforma respondents. It cannot be presumed nor can be logically inferred that the Kanaklata did not have a title at any point of time in respect of the property, but because of her divestment of such right, title and interest in favour of the plaintiffs/respondents and the proforma respondents, she does not retain such title. A person, who has acquired the right, title and interest from the admitted owner, has a right to claim recovery of possession from the tenant and/or the lessee, as the case may be, inducted by the original owner.

Learned Counsel for the appellants vehemently submits that there is no attornment of the tenancy in favour of the subsequent purchasers and, therefore, the suit for recovery of possession under Section 111 of the Transfer of Property Act is not maintainable.

We do not find any substance in the aforesaid submission because of the provisions contained under Section 116 of the Evidence Act. The moment the right, title and interest of the original owner is admitted by the defendants/appellants, it cannot take a rebound and deny the title of the subsequent purchasers. Even if the rent is not paid to the subsequent purchasers, it does not act as a deterrent to the subsequent purchasers to file a suit for recovery of possession against a tenant/lessee inducted by their vendor in respect of the suit premises.

Once the defendants/appellants are unable to deny the title of the vendor of the plaintiffs and the proforma respondents, it is not open to them to challenge the title of the predecessor and the estoppel created under

Section 116 of the Evidence Act would equally apply. So far as the apportionment of rent is concerned, there appears to be a misconception in the mind of the defendants/appellants that the tenancy has been splitted up. The apportionment of rent does not ipso facto split the tenancy, which remained one and it is only the entitlement of the landlord to receive a rent in proportionate to the share, which they had in respect of the property.

We also do not find any substance in the submission of the defendants/appellants that unless all the co-owners jointly issued the notice under Section 106 of the said Act, such notice would be construed as defective, infirm and/or invalid. It admits no ambiguity in somewhat settled proposition of law that a co-sharer or co-owner can institute a suit against the tenant for recovery of possession subject, however, that the other co-owners do not object to it. The other co-owners were impleaded as proforma defendants/proforma respondents in the suit and there is no material unearth in course of hearing that the aforesaid co-owners raised any objection against the recovery of possession from the defendants/appellants.

Section 111 of the Transfer of Property Act engulf within itself the several incidences of determination of lease and clause (h) thereof expositis that the lease would be determined on expiration of a notice to determine the lease or to quit or an intention to quit the property leased duly given by one party to the other. The moment the period enshrined under Section 106 of the said Act expires and a suit is filed for recovery of possession, the same is maintainable as the premises is beyond the purview and scope of the provisions contained under the West Bengal Premises Tenancy Act, 1997.

There is no case made out that the notice is defective being short of time provided in Section 106 of the said Act except to the extent that the said notice was

not duly served. Mere denial of service of notice cannot ipso facto rebut the presumption unless there is a convincing material produced in course of the evidence at the behest of the defendants/appellants.

We, thus, do not find that the concurrent findings of both the courts below on the sufficiency and legality of the notice being served upon the defendants/appellants requires any interference.

As a last gasping resort, the Counsel for the defendants/appellants submits that there is an ambiguity in the description of the property shown in the schedule appended to the plaint.

We do not find from the judgment of the trial court that any issue in this regard was framed. A plea, which was not taken, cannot be permitted to be agitated except when such plea is a pure question of law. So far as the wrong description or mis-description of the property given in the schedule appended to the plaint is concerned, it cannot be a ground to deny the relief of recovery of possession, as the defendants/appellants are well aware of the extent of their tenancy in respect of the property and it would not be open to them to defeat the suit on such score.

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

The appeal is, thus, dismissed.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

