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Ct-08

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SAT 248 of 2011
with
I.A No. CAN 1 of 2013(Old CAN No. 6308 of 2013)

Smt. Sova Msaity
Vs.
Dilip Kumar Nayek & Ors.

Mr. Sarajit Sen
... For the Appellant

We have heard Mr. Sarajit Sen, learned counsel representing the appellant.

The appellate decree dated 23rd March, 2011 affirming the judgment and decree passed by the trial court on 27th February, 2006 in a suit for eviction of a licensee is the subject matter of challenge in this second appeal.

The appellant is a licensee under the plaintiffs.

Mr. Sen submits that the suit is bad for non-joinder of necessary parties and other co-sharers, who have not been made parties in the suit. Moreover, the acquisition of title of two sataks of land by way of amicable arrangement could not be proved at the trial by the plaintiffs. He further submits that the finding of the trial court is perverse and accordingly, the second appeal may be admitted on the aforesaid grounds.

We have carefully read the judgment of the trial court as well as the first appellate court.

The appellant filed the suit for eviction on the revocation of licence. The plaintiffs are the legal heirs of Sridhar Nayek. Sridhar was in possession of two sataks of land out of the suit land by way of an amicable arrangement with the other co-sharers. In furtherance of such

amicable settlement his name was recorded in the LRROR in respect of two sataks of land in the suit plot. The said LRROR was exhibited and marked as Exhibit-2. The said document undoubtedly establishes an amicable arrangement among the co-sharers. It was within this portion where the respondent was permitted to reside as a licensee. The plaintiffs are in no way concerned with the other co-sharers and for the purpose of deciding the dispute between the parties the presence of other co-sharers are not necessary as they have no interest over the suit plot in view of the amicable arrangement duly proved at the trial.

It appears that before the trial court as well as the first appellate court the plaintiffs relied upon **Ram Prosad Mondal Vs. Sm. Snehalata Ghosh, reported in volume 71 C.W.N pg 17** and **Haji Sharafat Hussain (dead) and Ors. Vs. Badri Bishal Dhandhania, reported in AIR 1976 SC 2325** to argue that only one co-sharer of a property can maintain the suit for eviction of a licensee. In Ram Prosad Mondal (supra) Hon'ble Justice P.N. Mookherjee, the then Acting Chief Justice, on consideration of the right of a co-owner to evict the licensee observed *"the plaintiff's claim to exclusive title to the suit property would, therefore, fail. But this will not mean an end of the plaintiff's claim in the present suit, as, on the admitted cases of the parties, the plaintiff would be a co-owner of the disputed property to the extent of a moiety share, and, upon that footing, the plaintiff can claim to restrain a third party, not her co-owner or co-sharer, from disturbing her possession or the construction, to be made by her, as she will have,*

as such co-owner, the right to use every inch of the joint land subject to the rights of her co-owner. Clearly, therefore, if the defendant's claim of tenancy or of any subsisting right, either as licensee or otherwise, be negatived, the plaintiff would be entitled to the decree, granted by the learned trial Judge, even though her claim of exclusive title to the disputed property might fail."
(emphasis supplied)

It is beyond any dispute and as established from the evidence that the grandfather of the plaintiffs has interest and was one of the co-sharers in and of the suit property. The evidence on record, both oral and documentary, also made it clear that the plaintiffs had acquired title and interest in the suit property. It is equally well settled that one of the co-sharers can bring a suit for eviction of licensee or tenant from the property in respect of which there are other co-sharers. Mr. Sen has fairly submitted that the application filed by the defendant for addition of other co-sharers was rejected. Thus, it can be safely presumed that the presence of other co-sharers are not necessary to decide the dispute between the parties.

It was also established from the evidence that the defendant has been residing in a portion of the suit property, belonging to her father, Sridhar Nayek, as she was deserted by her husband. She was not given any portion of the suit property belonging to their grandfather. The defendant is a paternal aunt of the plaintiffs. The defendant has failed to establish her independent right, title and interest in the suit property. In the aforesaid background and taking into consideration the concurrent finding of facts based on cogent and credible interest

and proper appreciation of law and fact we are not inclined to accept the second appeal and it does not involve any substantial question of law.

Under such circumstances, the appeal accordingly fails.

The second appeal is, therefore, summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure at the admission stage along with CAN 6308 of 2013.

There will be no order as to costs.

It has been submitted by Mr. Sen that the appellant is suffering from old age problems and may be allowed some time for alternative accommodation. The appeal is pending almost 20 years. Considering the old age of the appellant, she may be allowed time till May 2023 within which she shall find out alternative accommodation failing which the decree may be executed.

(Uday Kumar,J.)

(Soumen Sen, J.)

