

IN THE HIGH COURT AT CALCUTTA
(CIVIL APPELLATE JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

S.A. 23 of 2021

ANIL KUMAR GUPTA
VS.
KAUSALYA DEVI MODI & ORS.

For the Appellant	: Mr. Asit Baran Raut, Adv.
For the Respondents	: Mr. Mainak Bose, Sr. Adv. Mr. Rishabh Karanani, Adv. Mr. Anindya Dutta, Adv.
Hearing concluded on	: 14 th July, 2023
Judgement on	: 20 th July, 2023

Siddhartha Roy Chowdhury, J.:

1. This appeal impeaches the judgement and decree passed by learned Judge, 3rd Bench, City Civil Court in Title Appeal No. 51 of 2014, reversing the judgement and decree passed by learned Judge, 6th Bench, Small Causes Court at Calcutta on 24th April, 2014 in Ejectment Suit No. 1897 of 2001.
2. Briefly stated, Jadunandan Prasad, the thika tenant as landlord inducted Chhotey Lal Modi as a tenant in respect of the property in suit at monthly rental of Rs. 62/- payable according to English Calendar month. Jadunandan Prasad, during his life time terminated the tenancy by issuing a notice to quit on 28th November, 1985 under Section 13 (6) of the West Bengal Premises Tenancy Act. By the said notice the

defendant was called upon to quit and vacate the peaceful possession of the suit property on the expiry of January, 1986. The notice was returned to the sender with the postal remark 'not claimed'. But the defendant did not quit and vacate the suit premises. Jadunandan Prasad the original landlord died intestate on 30th January, 1986 leaving behind him surviving Harish Chandra Gupta, Laldei Devi and Sumitra Devi Jaiswal as his legal heirs and successors who filed the suit for eviction on the ground of violation of clause (m), (o) and (p) of Section 108 of the Transfer of Property Act as well as on the ground of default. The erstwhile thika tenants being the landlords transferred their property in favour of Anil Kumar Gupta, the present plaintiff by executing a deed of gift during the pendency of the suit.

3. The defendant, Chhotey Lal Modi contested the suit by filing written statement denying all material allegations made against him by the landlord. The defendant denied to have made any addition and alteration in the suit room, by constructing a C.I. Roof under the R.T. Roof without the consent and permission of the landlord. The defendant stated that at the time of his induction there was a dwarf partition wall in the suit room and concrete loft. The defendant has been running coal shop and grocery shop in the suit room. Admitting, Jadunandan Prasad as his landlord, the original defendant contended that he paid rent till October, 1984 but rent receipt was not given to him either by the original landlord or after his demise by Harish Chandra Gupta. Therefore, the defendant tendered rent in terms of Section 4 of the West Bengal Premises Tenancy Act, 1956 but the money order was not accepted by the landlord and he started depositing rent in the office of

the Rent Controller, Calcutta; after the demise of Jadunandan Prasad the rent was tendered to his legal heirs but it was not accepted in his additional written statement. The defendant stated that he undertook certain repair work in respect of suit property which was necessitated due to normal wear and tear as the landlord did not repair the suit property. After the demise of original defendant, during pendency of the suit his legal heirs and successors were substituted.

4. Learned Trial Court after considering the evidence on record was pleased to pass the decree for recovery of Khas possession by evicting the tenants from the suit property.
5. The defendants challenged the decree passed by learned Trial Court in an appeal being Title Appeal No. 51 of 2014 and learned Appellate Court was pleased to reverse the judgement of learned Trial Court. Hence this second appeal.
6. Mr. Asit Baran Raut, learned Counsel for the appellant submits that learned First Appellate Court failed to appreciate the evidence on record and the judgement impugned is the outcome of absolute misreading of evidence, both oral and documentary. Drawing my attention to the Exhibit-11 a letter written on behalf of Chhotey Lal Modi by his lawyer Mr. Premes Kumar Sur, Mr. Raut submits that Chhotey Lal Modi in the said letter had been depicted as monthly tenant in respect of one shop room on the ground of suit house i.e. 7 Raja Raj Krishan Street, P.S. Bortala, Kolkata-700006. Exhibit-4, the prescribed application form for depositing of rent under Section 21 of the West Bengal Premises Tenancy Act, 1956, filed by Chhotey Lal Modi since deceased, demonstrates that Chhotey Lal Modi introduced himself before the Rent

Controller as a premises tenant in respect of one shop room on the ground floor of the premises no. 7 Raja Raj Krishan Street, Kolkata-700006. But subsequent thereto learned Commissioner, who was engaged by learned Trial Court submitted his report before the learned Trial Court indicating that the defendants/tenants have been occupying three rooms, which unerringly supports the claim of the plaintiff/appellant about the addition and alteration caused by the defendants/respondents. Mr. Raut further submits that on that ground alone learned First Appellate Court ought to have affirmed the well reasoned judgment of learned Trial Court.

7. Refuting such contention of Mr. Raut, Mr. Mainak Bose, learned Senior Counsel for the respondents submits that the plaintiff/appellant who claimed to have acquired title over the suit property by virtue of a deed of gift, cannot be held to be the thika tenant in respect of the property. Therefore, he cannot be held to be the landlord and the suit cannot be said to be maintainable in view of Sub-Section 4 of Section 5 of West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001.
8. Drawing my attention to Sub-Section 4 of Section 5, Mr. Bose submits that in order to transfer the thika property by way of gift the thika tenant(s) is under obligation to obtain prior permission of the competent authority. In the event of any transfer in violation of the statutory provision as laid down under Section 5 (4) of the said Act would attract the provision of Sub-Section 2 of Section 6 which contains a penal provision. Therefore, such transfer should be held to be void and in support of his contention Mr. Bose relied upon a decision pronounced in **ASHA JOHN DIVIANATHAN VS. VIKRAM MALHOTRA & ORS.**

reported in **2021 SCC Online SC 147** and **ALGEMENE BANK NEDERLAND NV VS. SATISH DAYALAL CHOKSI** reported in **AIR 19990 Bom 170**.

9. It is further submitted by Mr. Bose that learned Trial Court appointed Engineer Commission but he did not hold inspection in terms of the direction given by learned Trial Court. In the pleadings the defendants/respondents categorically stated that at the time of induction there was a dwarf wall (wall short in height) in the suit room dividing the room into two parts and there was a concrete loft. The Engineer Commission being an expert ought to have determined the age of such alleged construction which would lend support to the case of the appellant, but no such step was taken. Therefore, it cannot be said that the defendants/respondents undertook any work that would expose them to threat of eviction.
10. According to Mr. Bose, there could be numerous cubicles temporary in nature, such compartments cannot consider to an act of addition and alteration to justify order of eviction of the suit premises. Though substantial question of law was formulated touching the question of legality of the notice of eviction, at the time of argument however, this point was not pressed by either of the parties. The notice to quit Exhibit-9 demonstrates that it was issued on 28th November, 1985 and the defendant/tenant was asked to quit and vacate the suit premises by 31st January, 1986 which was returned as 'not claimed'. It goes without saying that not claimed postal article means to good service.
11. Hon'ble Apex Court in **MADAN AND CO. VS. WAZIR JAIVIR CHAND** reported in **(1989) 1 SCC 264 : AIR 1989 SC 630** held :-

“6..... All that a landlord can do to comply with this provision is to post a prepaid registered letter (acknowledgement due or otherwise) containing the tenant's correct address. Once he does this and the letter is delivered to the post office, he has no control over it. It is then presumed to have been delivered to the addressee under s. 27 of the General Clauses Act. Under the rules of the post office, the letter is to be delivered to the addressee or a person authorised by him. Such a person may either accept the letter or decline to accept it. In either case, there is no difficulty, for the acceptance or refusal can be treated as a service on, and receipt by, the addressee. The difficulty is where the postman calls at the address mentioned and is unable to contact the addressee or a person authorised to receive the letter. All that he can then do is to return it to the sender. The Indian Post Office Rules do not prescribe any detailed procedure regarding the delivery of such registered letters. When the postman is unable to deliver it on his first visit, the general practice is for the postman to attempt to deliver it on the next one or two days also before returning it to the sender. However, he has neither the power nor the time to make enquiries regarding the whereabouts of the addressee; he is not expected to detain the letter until the addressee chooses to return and accept it; and he is not authorised to affix the letter on the premises because of the assessee's absence. His responsibilities cannot, therefore, be equated to those of a process server entrusted with the responsibilities of serving the summons of a Court under Order V of the C.P.C. The statutory provision has to be interpreted in the context of this difficulty and in the light of the very limited role that the post office can play in such a task. If we interpret the provision as requiring that the letter must have been actually delivered to the addressee, we would be virtually rendering it a dead letter. The letter cannot

be served where, as in this case, the tenant is away from the premises for some considerable time. Also, an addressee can easily avoid receiving the letter addressed to him without specifically refusing to receive it. He can so manipulate matters that it gets returned to the sender with vague endorsements such as "not found", "not in station", "addressee has left" and so on. It is suggested that a landlord, knowing that the tenant is away from station for some reasons, could go through the motions of posting a letter to him which he knows will not be served. Such a possibility cannot be excluded. But, as against this, if a registered letter addressed to a person at his residential address does not get served in the normal PG NO 990 course and is returned, it can only be attributed to the addressee's own conduct. If he is staying in the premises, there is no reason why it should not be served on him. If he is compelled to be away for some time, all that he has to do is to leave necessary instructions with the postal authorities either to detain the letters addressed to him for some time until he returns or to forward them to the address where he has gone or to deliver them to some other person authorised by him. In this situation, we have to choose the more reasonable, effective, equitable and practical interpretation and that would be to read the words "served" as "sent by post", correctly and properly addressed to the tenant, and the word "receipt" as the tender of the letter by the postal peon at the address mentioned in the letter. No other interpretation, we think, will fit the situation as it is simply not possible for a landlord to ensure that a registered letter sent by him gets served on, or is received by, the tenant."

Therefore, the notice which is otherwise valid, should be presumed to have been served.

12. True it is that the Engineer Commissioner had the obligation to determine the age of the building but he did not do so as an expert. He replicated the contemporaneous picture of the suit property in his report. But report of the Commissioner Exhibit-10 assumes importance when testimony of D.W. 1 lends support to such report. While adducing evidence D.W. 1 stated during cross-examination that the tenancy consisted of two rooms, one coal shop and another grocery shop. The report is not very happily drafted and there are apparent contradictions, but Exhibit-10 sufficiently demonstrates there are more than one room. Though Mr. Bose wants to consider them as cubicles or compartments, the admission of defendant as D.W. 1 that they have been possessing two rooms, takes the sting out of the argument of Mr. Bose. This statement of D.W. 1 Arjun Prasad Modi when is examined in contradistinction with Exhibit-4 and Exhibit-11 it unerringly demonstrates that after the induction as tenant at any subsequent point of time the defendants/respondents caused addition and alteration and one room which was originally let out to the predecessor of the present respondents, had been converted into two rooms. In view of Section 58 of the Evidence Act, it can be held that the defendants/respondents committed an act, contrary to the provision of Clause (m) (o) and (p) of Section 108 of the Transfer of Property Act, 1882 which is a ground for eviction under Section 13 (1) (b) of the West Bengal Premises Tenancy Act.
13. From the attending facts of the case it is admitted that Anil Kumar Gupta, the appellant acquired the property by way of deed of gift. He has not acquired the property by inheritance. It is equally admitted that

at the time of transfer no permission was obtained from the competent authority by the parties but the question that calls for consideration is whether the respondents being tenant do have the authority to challenge the title of the landlord. Obvious, answer would be no in view of the provision of Section 116 of the Evidence Act which envisages :-

“Section 116 in The Indian Evidence Act, 1872

116. Estoppel of tenant; and of licensee of person in possession.—No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given.”

14. Therefore the judgement pronounced in the case of **Asha John Divianathan (supra)** and **Algemene Bank Nederland NV (supra)** are of no help to the defendants/respondents in view of Section 116 of the Evidence Act.

15. The tenant is estopped from challenging the title of the landlord and Anil Kumar Gupta is not someone stranger to the original tenant. He happens to be the grandson of original tenant, and acquired title by way of gift. In this regard, we can rely upon the decision of Hon'ble Supreme Court in the case of **BANSRAJ LALTAPRASAD MISHRA VS. STANLEY PARKER JONES** reported in **(2006) 3 SCC 91** wherein it is held :-

“13. The underlying policy of [Section 116](#) is that where a person has been brought into possession as a tenant by the landlord and if that tenant is permitted to question the title of the landlord

at the time of the settelement then that will give rise to extreme confusion in the matter of relationship of the landlord and tenant and so the equitable principle of estoppel has been incorporated by the legislature in the said section.

14. The principle of estoppel arising from the Contract of tenancy is based upon a healthy and salutory principle of law and justice that a tenant who could not have got possession but for his in some inequitable situation taking undue advantage of the possession that he got and any probable defect in the title of his landlord. It is on account of such a contract of tenancy and as a result of the tenant's entry into possession on the admission of the landlord's title that the principle of estoppel is attracted.

15. [Section 116](#) enumerates the principle of estoppel which is merely an extension of the principle that no person is allowed to approbate and reprobate at the same time.

16. As laid down by the Privy Council in [Krishna Prasad Lal v. Barabani Coal Concern Ltd.](#), AIR (1937) P.C. 251 :

"It (Sec. 116) deals with one cardinal and simple estoppel and states it first as applicable between landlord and tenant and then as between licensor and licensee, a distinction which corresponds to that between the parties to an action for rent and the parties to an action for use and occupation".

16. Under such facts and circumstances of the case in my considered opinion learned First Appellate Court substantially erred in law by reversing the judgement and decree of eviction passed by learned Trial Court on the ground of addition and alteration of tenanted premises. The impugned judgement passed by learned Lower Appellate Court in Title Appeal No. 51 of 2014 should not be allowed to remain in force and should be set aside, which I accordingly do. Consequently, the appeal

succeeds. The judgement and decree passed by learned Trial Court stand restored.

17. Let a copy of this judgement along with lower Court record be sent down to the learned Trial Court for information and necessary compliance.
18. Urgent photostat certified copy of this judgement, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)