

SAT 197 of 2014

**Smt. Kiran Bag & Anr.
Vs.
Sri Bablu @ Rabin Chaudhury**

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The appeal is of the year 2014.

The appeal appeared in the warning list on 29th November, 2022 with a clear indication that the same shall be transferred to the regular list on 5th December, 2022, since then the matter is appearing in the list.

It appears from the record that on 17th November, 2021 the matter was adjourned till 6th December, 2021 with the observation that the defects would be cured in the mean time.

The department has filed a revised report stating that the defects pointed out by the stamp reported dated 7th June, 2014 have not yet been removed. Be that as it may, we propose to consider the appeal whether any substantial question of law is involved in this appeal.

The appellate decree dated 14th March, 2014 affirming the judgment and decree passed by the trial court on 28th September, 2012 in a suit for eviction of a licensee and permanent injunction is the subject matter of challenge in this second appeal.

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

The suit was decreed on contest.

It appears that the defendant no. 1 admitted that the plaintiff and the proforma defendant were not owner of the suit property. According to the trial court the onus is also established from Exhibits 1 to 4(b) filed by the plaintiff. The defendants could not lead any contrary evidence.

The defendants also did not claim that they were the tenants.

The learned Trial Judge relied upon the decision of the Hon'ble Supreme Court in ***Bhagwati Prasad v. Chandramaul*** reported in **AIR 1966 SC 735: MANU/SC/0335/1965** for proposition if the status of the defendants is not proved in a eviction suit it is to be presumed that the defendant is a licensee.

In paragraph 14 of ***Bhagwati Prasad*** (*supra*) it was observed:

“14. In support of its conclusion that in a case like the present a decree for ejectment can be passed in favour of the plaintiff, though the specific case of tenancy set up by him is not proved, the High Court has relied upon the two of its earlier Full Bench decisions. In Abdul Ghani v. Musammat Babni I.L.R. 25 All. 256 the Allahabad High Court took the view that in a case where the plaintiff asks for the ejectment of the defendant on the ground that the defendant is a tenant of the premises, a decree for ejectment can be passed even though tenancy is not proved, provided it is established that the possession of the defendant is that of a licensee. It is true that in that case, before giving effect to the finding that the defendant was a licensee, the High Court remanded the case, because it appeared to the High Court that that part of the case had not been clearly decided. But once the finding was returned that the defendant was in possession as a licensee, the High Court did not feel any difficulty in confirming the decree for ejectment, even though the plaintiff had originally claimed ejectment on the ground of tenancy and not specifically on the ground of licence. To the same effect is the decision of the Allahabad High Court in the case of Balmakund v. Dalu” (emphasis supplied)

The first appellate court affirmed the suit decreed on re-appreciation of the evidence on record.

The concurrent finding of facts not being perverse we are not inclined to accept the second appeal.

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

There will be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)

