

SAT 414 of 2011

**Ajit Kumar Mandal
Vs.
Asharani Maity**

None appears on behalf of the parties, nor any accommodation is sought for on behalf of the appellants.

The appeal is arising out of the judgment and decree dated 20th June, 2011 passed by the trial court affirming the judgment and order of the learned Civil Judge, Junior Division in a suit for eviction.

We have read the judgment of both the courts.

The title suit no. 50 of 2006 and the Title Suit No. 193 of 2006 were heard analogously.

The plaint case in T.S. No. 50 of 2006 is similar to the written statement in Title Suit No. 193 of 2006 and the written statement in title Suit no. 50 of 2006 is similar to the plaint case. The title Suit no. 193 of 2006 was filed by the land lady for eviction and that suit was heard first. The land lady has sought for eviction of Ajit from the co-schedule premises on the ground of default and obnoxious behavior of the appellant.

The plaintiff alleged that Ajit was inducted as a monthly tenant in respect of Ka schedule property. The defendant paid rent upto the month of May, 2005 and thereafter, did not make any payment. The defendant alleged to have locked the Ka schedule premises and the common entrance gate on 3rd March, 2006 thereby preventing the plaintiff from entering the other portion of the suit property. The defendant was habitual defaulter. The plaintiff duly terminated the tenancy by an advocate's notice dated 3rd July, 2006. Thereby terminating the tenancy on

the expiry of the month of July, 2006. Ajit filed a written statement. He disputed the description of the suit property and service of notice under Section 106 of the Transfer of Property Act. It was alleged that due to good relationship no formal document of creation of tenancy was prepared nor receipts for payment of rent was obtained by the defendant. The agreement for tenancy was of one year but there was option for renewal. It was alleged that one Dilip Kumar Maity was a retired teacher and he proposed to open a partnership business and for that purpose Rs.2,16,000/- by cash and Rs.1,70,000/- by draft were paid to him for purchasing a machine for excavating soil. These facts have been suppressed.

On the basis of the pleadings the trial Court framed six issues.

Both the parties have adduced oral and documentary evidence.

The trial Judge upheld the notice under Section 106 of the Transfer of Property Act. It was further observed that notice clearly describes the true identity of the suit premises and it was also admitted by the defendant in his reply to the said notice. In so far as the default of payment of rent was concerned the plaintiff claimed that the defendant was a monthly tenant since April 2005 at a rent of Rs.7000/-. The defendant claimed that he was inducted since 1998 and written agreement for tenancy was executed in the month of April 2005 for one year with option of renewal.

The written agreement for tenancy was not produced by either of the parties. The suit for eviction was not based on non payment of rent. In absence of any agreement for lease, determination of lease by forfeiture cannot be presumed. It is true that in the notice under Section 106 of the Transfer of Property

Act it was stated that the appellant did not pay rent on and from June 2005 to July 2006 aggregating to Rs.9800/-. The parties have agreed that the tenancy was to be governed by the Transfer of Property Act. Once the appellant admits that he is a tenant under the provision of Transfer of Property Act. He is liable to be affected from the premises on the expiry of period of notice under Section 106 of the Transfer of Property Act. The appellate court has rightly noticed that in the instant case notice was issued for eviction simplicitor and it does not make out a case for eviction on the ground of forfeiture clause, in fact, forfeiture clause could not be presumed as the written agreement not produced by either of the parties. The benefit of Section 114 of the Transfer of Property Act would apply only to those cases where the landlord invokes a forfeiture clause and determines the lease and sues to eject the tenant. (See. **Arulmigu Karkoti Amman Temple represented by its Executive v. N. Krishnaswami**; 1990(1) CCC 165: **R. Baskar Bhat v. Hindustan Petroleum Corporation Ltd. & Ors.**; AIR 2002 Mad 330: **Yashpal Lala Shiv Narain v. Allatala Tala Malik Waqf Ajakhan Mus**; AIR 2006 All 115: **Geetabai Namdeo Daf v. B.D. Manjrekar**; AIR 1934 Bom 400)

In view of the aforesaid we do not find any reason to admit the second appeal it does not contain any substantial question of law.

The appeal stands dismissed.

There shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)

