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Item : DL-19
Matter : SAT
Status : DISMISSED
Bench ID : 266048
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SAT 344 of 2019
with
CAN 1 (497) of 2020

Moulana Abdul Kashem Chowdhury
Vs.
Firoz Ali Khan @ Bobi & Ors.

Mr. Fazlul Haque, Advocate
Mr. Sanatan Mondal, Advocate

.....for the Appellant

1. Though the Trial Court dismissed the suit for eviction against the appellant on the ground that the plaintiff/ respondent has miserably failed to prove that he requires the suit premises for establishing a business for the son but the Appellate Court reversed the said judgment and decree on a categorical finding that the landlord cannot be deprived to get a decree for eviction when it appears from the evidence that his requirement is genuine and not fanciful.
2. Undisputedly the appellant was inducted as a tenant in respect of a suit premises measuring more or less 360 sq.ft., comprising of one bedroom, one dining room, one kitchen and one bathroom under the plaintiff/respondent. The suit for eviction was filed under Section 6 of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred as 'the said Act') after giving a notice under Section 6(4) thereof.
3. The appellant contends that the requirement pleaded in the plaint has no semblance of truth in it which would further be evident from the fact that the plaintiff/respondent entered into an agreement for sale of the suit premises with the appellant and

later on denied to execute the sale deed. The Trial Court was of the view that once an agreement for sale is entered into it reflects the intention of the plaintiff/ respondent that he had no need for the suit premises and the ground set forth in the plaint is fanciful and to get rid of the appellant. The appellant further disclosed the fact that during the pendency of the suit, the plaintiff/respondent sold one of the adjacent properties and, therefore, there is a complete lack of genuineness in the requirement, far to speak of reasonability into it.

4. Indubitably, the deed of sale was marked exhibit so also the agreement for sale allegedly entered into by and between the parties hereto. It is evident from the stand of both the parties as discerned from the pleadings as well as evidence that such requirement was based upon establishing a shop-room for one of his sons and not for residential purposes. The plaintiff/respondent has proved that he has no reasonable suitable accommodation in relation to the requirement as pleaded which is sought to be shattered by the appellant on two factual grounds.
5. Firstly, the plaintiff sold an adjacent property during the pendency of the suit; secondly, he has let the room for installing a mobile tower. So far as the first ground is concerned, it appears that the property which was sold by the plaintiff/respondent during the pendency of the suit, was fully tenanted and, therefore, cannot be said to be reasonable suitable for the purpose of establishing a shop-room for one of his sons. The

property which is fully tenanted, cannot be said to be reasonable suitable nor the tenant can dictate the landlord to evict the tenant of that house. It is a choice of the landlord to seek a eviction from the tenanted premises and if the landlord finds that the suit premises is more suitable for the purpose of establishing a shop-room, it cannot be construed that such need is mere fanciful.

6. Though the appellant sought to contend before the Trial Court that the suit premises is not in a close proximity of the main road yet it is found that commercial activities can be undertaken at the locality where the suit premises is situated. Furthermore, it is an absolute prerogative of the landlord to establish a business in his own house and it is immaterial whether such business would augment a more or lesser income in comparison to a business set up at the main road. The law does not stand in the way, in this regard as it is the absolute choice of the landlord to start a business at a particular place which in his wisdom would be more lucrative and remunerative than at any other place.
7. Taking the second ground, admittedly the appellant has not filed any suit for specific performance of an agreement for sale nor took a plea that he has abandoned and/or surrendered his possession as a tenant and obtained the possession in part performance of the said agreement.
8. Having not taken such stand and the plea of part performance, his possession cannot be elevated solely on the ground that an agreement for same

has been entered into by and between the parties. Furthermore, the aforesaid issue is completely alien to a suit for eviction on the grounds enumerated under Section 6 of the said Act.

9. We thus do not find that the instant appeal involves any substantial question of law.
10. The appeal being **SAT 344 of 2019** and the connected application being **CAN 1 (497) of 2020** are accordingly dismissed.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)