

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:
Hon'ble Justice Shampa Sarkar

CO 3362 of 2022

Dr. Snehasish Datta

vs.

Ayan Kumar Roy

For the petitioner :Mr. Sounak Bhattacharya,
Mr. Sounak Mondal,
Mr. Abhirup Halder,
Mr. Anirban Shaa Roy.

For the opposite party : Ms. Shebatee Datta,
Ms. Babita Dey.

Hearing concluded on: 16.06.2023

Judgment on: 11.07.2023

Shampa Sarkar, J.:-

1. This revisional application has been filed by the plaintiff in Title Suit No.983 of 2016, which is pending before the learned Civil Judge (Senior Division) 3rd Court at Alipore, district 24-Parganas (South). The petitioner is aggrieved by the order dated September 20, 2022 passed by the learned Court below. By the order impugned, the application filed by the plaintiff under Order 26 Rule 10A of the Code of Civil Procedure was rejected.

2. The petitioner filed an application after arguments had commenced and was near completion, praying for appointment of a hand writing expert to compare the admitted signature of the plaintiff in the vakalatnama with the signatures on the rent receipt, namely, Exhibit A, A1, B1 and, B2 filed by the DW-1 and DW-2 respectively, in order to ascertain whether they were identical or whether any interpolation had been made. The defendant filed an objection to the said application. The said application came up for hearing along with the objection on September 20, 2022, before the learned Court below. The application was rejected with reasons.

3. The learned Court below found that the application was filed at a belated stage, almost at the closure of argument, only to fill up the lacunae in the plaint case. The defence case was that the defendant was a tenant in respect of the suit property and rent receipts were exhibited in support of such claim. Elaborate cross-examinations were conducted by the plaintiff. At the relevant point of time, no prayer had been made for appointment of a hand writing expert. The DW-2, who also claimed to be a tenant in another portion of the building in which the suit property is housed, deposed and tendered rent receipts which were marked as Exhibits B1 and B2. At the relevant point of time also, no application was made for appointment of a hand writing expert. At a belated stage, when the arguments were almost closed, the application for appointment of a hand writing expert was filed. The learned trial court found such application to be an afterthought and an attempt to fill up the lacunae in the plaint case. Thus, the application was rejected without any cost. Learned

Court below fixed the suit for reply of the plaintiff and for filing of written arguments by the parties, if any.

4. Mr. Sounak Bhattachaya, learned Advocate for the plaintiffs submits that the order impugned suffered from several irregularities. That the plaintiff should be given an opportunity to ascertain whether the rent receipts tendered by the defendants were forged or not. The report of the handwriting expert would be clinching evidence in support of the plaintiff's contention that the rent receipts had not been issued at all and they were forged. Whether any interpolations were made in the rent receipts and in the quantum of rent, as also in the name of the tenants, were relevant issues in the suit. Moreover, if the rent receipts filed by Joydeb Mondal DW-2 (another person claiming tenancy), were accepted by the court and relied upon by the learned Judge while deciding the suit, other proceedings pending between the plaintiff and Joydeb Mondal, would be prejudiced.

5. Pointing out to the written statement of the defendant/opposite party, the petitioner emphasized that as the defence case was that the entire building in which the suit property was situated was a tenanted property and Joydeb Mondal/DW-2 was also a tenant, a scientific opinion with regard to the genuineness of the rent receipts tendered by Joydeb Mondal, which were marked as Exhibits B1 and B2, would be relevant and admissible evidence. Learned Advocate contended that if such rent receipts prevailed upon the learned judge and a decision with reference to the same would be delivered in

the present suit, the same would ultimately prejudice the right of the plaintiff to proceed against Joydeb Mondal in any other suit or proceeding.

6. The plaintiff filed a suit for eviction, recovery of khas possession and permanent injunction against the opposite party (sole defendant). The opposite party entered appearance in the suit and contested the suit by filing a written statement.

7. The plaint case was that the plaintiff was the sole and absolute owner of the suit property as described in the schedule of the plaint. The defendant/opposite party trespassed into the suit property on November 10, 2014 by illegally dispossessing the plaintiff, when the plaintiff was out of station, on account of his transferable service. The defendant was in possession of the entire building, except the suit property and another small portion thereof. That one Gayatri Saha sold the building to one Naresh Prasad Shaw sometime in 1997. Naresh Prasad Shaw became the sole and absolute owner of the said building in which the suit premises was situated. Thereafter, the building was transferred to the plaintiff by a registered deed of conveyance dated September 9, 2002. The plaintiff was in possession of the suit property since then. When the plaintiff was transferred to Jhargram and thereafter to Kakdwip, the opposite party/defendant, taking advantage of the temporary absence of the plaintiff, illegally trespassed into the property and forcefully dispossessed the plaintiff. That, there was imminent danger of damage and wastage of the suit property. The opposite party/defendant had threatened to create third party interest in respect thereof. The plaintiff prayed for a decree of

recovery of khas possession and permanent injunction against the defendant/opposite party.

8. The schedule of the suit property is as follows:-

“All that piece and parcel of 3 pucca rooms, one garage, one kitchen, bath and privy in the ground floor lying and situated in Mouza Panchur-2, Police Station-Metiabruz, now Rabindranagar. R.S Khatian No.465, J.L. No.3, Touzi No.348, Dag no.1765 (Part), Plot No. 15 at Santoshpur, Bidhangarh, Police Station Metiabruz, Kolkata-700066, under ward No.9, corresponding Municipal Street Bidhangarh Road Bye Lane – 2, under the Mahesthala Municipality, District: South 24-Parganas, which is butted and bounded as follows:-

On the North: House of Prodyot Kumar Chakraborty;
On the south: 6'wide common passage;
On the East: House of Runa Dey;
On the West: House of Manjurani Dey.

9. In the written statement, the opposite party claimed to be a tenant in respect of the ground floor of the property under the plaintiff/landlord. It was also averred that Joydeb Mondal was a tenant in respect of the first floor of the building property. Allegation of suppression of material facts was made. It was urged that the plaintiff was illegally trying to evict the opposite party and other tenants from the building in which the suit property was situated. It was further averred that Joydeb Mondal had filed a suit being Title Suit No.120 of 2015 against the plaintiff. The documents sought to be relied upon by the defendant in the suit were rent control challans, copy of plaint and rent receipt.

10. In the examination-in-chief, the opposite party/DW-1 tendered certain documents, namely, the rent receipts which were marked as Exhibit-A and the signature of plaintiff on the rent receipt was marked as Exhibit-A1. The three rent control challans from January 2015 to January 2016 and September 2019

were also marked as exhibits. Joydeb Mondal, Amit Ghosh and Sumit Ghosh, deposed in favour of the opposite party. Joydeb Mondal deposed as DW-2. He identified the opposite party and deposed that the opposite party was a tenant under the plaintiff/petitioner. He identified the signature of the petitioner and also produced rent receipts allegedly issued by the petitioner to him. Other DWs deposed that the opposite party was a tenant in respect of the ground floor of the suit property. In the cross-examination of DW1, there was a suggestion that the rent receipt was forged, which was denied by the plaintiff. With regard to Exhibit B1 and B2, namely rent receipts issued to Joydeb Mondal by the plaintiff, no suggestion of forgery was made. The suit proceeded, arguments were advanced by the plaintiff and the defendant. The suit was kept for final reply and submission of written arguments. At such an advanced stage of the suit, the plaintiff prayed for appointment of a hand writing expert for ascertainment of the fact whether the signature of the plaintiff in the vakalatnama and on the rent receipts tendered by the DWs were identical or not. Specially, the opinion of the handwriting expert with regard to the signature of the plaintiff on the rent receipts filed by Joydeb Mondal being Exhibit B1 and B2, was sought to be obtained. The plaintiff contended that such expert opinion was necessary for adjudication of the instant suit and also in respect of proceedings against the DW2.

11. In the opinion of this Court, at this stage when the arguments were nearly completed, such application was rightly rejected. The learned court found that after closure of the reply by the defendant, the prayer was made for

appointment of a hand writing expert only to fill up the lacunae in the plaint case, which was realized after the defendant had completed the arguments. The petitioner had lost his opportunity to ask for appointment of a hand writing expert at the appropriate stage. When the documents were marked as exhibits, the petitioner did not make such a prayer. Elaborate cross-examination was done on Exhibits A, A1, B1 and B2.

12. Moreover, the rent receipts filed by Joydeb Mondal being Exhibit B1 and B2, are not relevant for adjudication of the present suit. This is a suit for eviction of a trespasser, recovery of khas possession and permanent injunction. The opposite party is the sole defendant. The plaintiff only has to prove his title in respect of the property and the defendant will have to prove that he has a right to stay in the property, either as a tenant or otherwise. The evidence of the other DWs including Joydeb Mondal, would only be relevant in order to prove the facts in issue i.e., the tenancy of the defendant or whether the defendant had a right to stay on the property in question, either as a tenant or in some other capacity. The tenancy of Joydeb Mondal, is neither a fact in issue in this case nor a relevant fact. The rent receipts tendered by Joydeb Mondal are not relevant for deciding the case in hand.

13. Thus, this Court is of the opinion, that the attempt of the plaintiff to obtain an expert opinion with regard to the signature on the rent receipts and with regard to the hand writing on the rent receipt, was an attempt to cover up any disadvantage the plaintiff may have faced at the trial. The learned Court below, rightly rejected the application. This Court finds that the apprehension

of Mr. Bhattacharya that any decision on Exhibit B and B1 i.e., the rent receipts tendered by Joydeb Mondal in this proceeding would prejudice other proceedings against Joydeb Mondal, is unfounded. The instant suit calls for a decision as to whether the plaintiff is entitled to evict the opposite party on the ground of trespass and obtain a decree of eviction and recovery of possession. It is for the defendant/opposite party to establish that he is not a trespasser, but a tenant in respect of the property in question and he has the right to remain on the said property either on the account of such tenancy or in any other legal capacity. The rent receipts of Joydeb Mondal, do not have any relevance. The decision in this suit will not operate as a judgment in rem, but it will be a decision binding between the plaintiff and the opposite party. The decision will also not operate as a res judicata in any suit or proceeding against Joydeb Mondal.

14. Under such circumstances, the revisional application is dismissed.

15. There will be no order as to costs.

16. Parties are directed to act on the server copy of this judgment.

(Shampa Sarkar, J.)