

01-09-2023
ct no. 13
sl. no. 4
sp

S.A. No. 8 of 2023

Sudarshan Shaw & Anr.
-Versus-
Ganesh Ghosh (Pan) & Ors.

Mr. Sudarshan Shaw
...appellant (in person)

Mr. Sandip Das,
Mr. Diptyendu Kr. Pal,
Mr. Dibyendu Kr. Pal
...for the respondents

1. The second appeal has been tendered by tenant/defendant/appellant against the judgement and order dated July 29, 2022 passed by the learned Judge Bench IX, City Civil Court, Calcutta in T.A. No. 74 of 2019.
2. The appellant is appearing in person.
3. The appeal in the Court below was itself directed against a judgement and decree dated August 31, 2019 passed by the 3rd Bench of the Presidency Small Causes Court at Calcutta in Ejectment Suit No. 211 of 2012.
4. The appellant/tenant has vacated the premises pursuant to the judgement of the two Courts below. An order passed by the first Court, i.e., the 3rd Bench of the Presidency Small Causes Court at Calcutta dated June 13, 2022, in Execution Case No. 181 of 2019 in connection

with Ejectment suit produced before the Court by the respondents is kept with the record.

5. Since the appellant/tenant is appearing in person, this Court has given some extra leverage and heard the appellant in Hindi.
6. The facts relevant to the case are that the appellant's father, one Subhas Chandra Shaw was the original tenant under the original landlord Bachchu Prasad Singh at a monthly rental of Rs. 300/- per month in respect of the said property. Bachchu Prasad Singh died. The plaintiffs/respondents Ganesh Ghosh (Pan) and others purchased the property for valuable consideration by two several registered deeds from Bachchu Prasad Singh during his lifetime.
7. The plaintiff/respondents issued notice of eviction on July 18, 2011 on a two-fold ground under Section 6 of the West Bengal Premises Tenancy Act, 1997, i.e. default in payment of rent and reasonable requirement.
8. The appellant/defendant in the suit, filed written statement and applied in the Court below under Sections 7(1) and (2) of the West Bengal Premises Tenancy Act, 1997 for a statutory opportunity to pay the defaulted rent amount.

9. It was also contended in the said written statement that they have deposited rent regularly to the respondents with the rent, though no challan was produced. The Court below under Section 7 (2) of the said Act adjudicated and found a sum of Rs. 17,490/- as arrears payable by the appellant. The two courts below found that the appellant did not pay the said sums of money.
10. There is however some grey area as regards the default in payment of rent, since 51 challans have been exhibited in the Court below by the defendants.
11. The plaintiff/landlord/respondents have exhibited 8 several documents and examined two witnesses, namely, Ganesh Ghosh (Pan), the respondent himself and Tarun Kanti Basu, the Advocate Commissioner.
12. The appellant/defendant examined two witnesses, namely, Rajkumar Shaw and Sudarshan Shaw. The defendant exhibited 5 documents.
13. The first Court found that the appellant was a defaulter in payment of rent since there was no evidence of payment of any rent before the suit was filed. There was also no evidence of the appellant having deposited the amount assessed

pursuant to Sections 7(1) and (2) of the Act of 1997.

14. On the question of reasonable requirement, the first Court relied on the evidence of the Advocate Commissioner and the pleadings of the plaintiffs and the oral evidence and found that the respondents' family comprised in 14 members. They were occupying 3 bedrooms on the ground floor. They had no residence within the metropolitan limits of the city of Calcutta in a radius of 10 kilometres. They had to meet their families who are residing at a distance of 40 kilometres away at Howrah.
15. The appellant/tenant did not cross-examine of the plaintiffs' witnesses on this score. He could not produce any documents to unsettle the evidence of the plaintiff/landlord. The Courts below concurrently also found that the evidence of the defendants was contradictory and unreliable. The defendant's witness could not name his mother or his brother's wife.
16. The first Court therefore was sufficiently justified in the facts and evidence on record to decree the suit.
17. The respondents/plaintiffs have therefore been able to clearly demonstrate reasonable requirement of the suit premises beyond any

reasonable doubt of the first two Courts as well as this Court.

18. What is all the more interesting, however, is the contention of the appellant herein and in the Court below, that he had become the owner of the premises by adverse possession. The appellant claims to have filed applications in the two Courts below to this effect. The aforesaid arguments cannot be accepted in law.
19. Once a person has pleaded and taken a stand in a suit that there is a legally recognised relationship between the recorded owner of the premises and himself, in the instant case as a tenant he cannot in law raise the plea of adverse possession.
20. The relationship between the appellant and the respondents has been clearly found by the two Courts below as that of landlord and tenant. The appellant has filed written statement in the Court below that he and his predecessors were tenants. He has also filed a written statement and has led evidence in the Court below that he is a bona fide tenant and has resisted the claim of being a defaulter on rent. He also applied in the court below under Sections 7(1) and (2) of the West Bengal Premises Tenancy Act, 1997. He is, therefore, estopped from claiming any

other status in respect of the said premises. He also cannot set up an adverse title against the respondents under the law.

21. The ground of limitation raised by the appellant under the law was not formally urged in the Court below. No issue has been framed in the first Court or before the Lower Appellate Court on ground of limitation. The two Courts below have, therefore, concurrently found against the appellant.
22. This Court finds no reason to interfere with such concurrent finding on the question of reasonable requirement of the respondent/landlord. The two Courts below have rightly found favour with the respondent/landlord for eviction of the appellant on the ground of reasonable requirement. The appellant has already vacated the said premises and has handed over peaceful possession.
23. The findings of the two courts below cannot be faulted.
24. This Court is, therefore, not inclined to admit the appeal being S.A. 8 of 2023. There is no substantial question of law found.
25. Hence, S.A. 8 of 2023 shall stand dismissed.
26. Interim orders, if any, shall stand vacated.

27. There shall be no order as to costs.
28. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)