

14.07.2023.
Item No. 8.
Court No. 13
ap

F.A. No. 306 of 2014

**Mrs. Dicky Pang & Ors.
Versus
Sahaji Finance Private Limited & Ors.**

Mr. Amales Ray,
Ms. Mousumi Bhowal,
Mr. Ishan Bhattacharya.

...For the Appellants.

Mr. Saptangsu Basu, Id. Sr. Advocate,
Mr. Saumyen Datta,
Mr. Rajendra Nath Barik.

...For the Respondents.

1. This appeal is directed against the judgment and order dated 1st April, 2014 passed by the learned Civil Judge (Senior Division) Siliguri, Darjeeling in O.C. Suit No. 66 of 1998.
2. By the impugned judgment, a suit for eviction of the defendants/appellants was decreed in favour of the plaintiffs/respondents.
3. The facts relevant to the instant case are that the plaintiff had purchased the suit property from the legal heirs of one Gopal Chandra Roy on 27th April, 1994. The original tenant under the original landlord Gopal Chandra Roy was one Ms. Chawa Yu Deen, who died on 7th November, 1994. Prior to her death the said Ms. Chawa Yu Deen was running a Bar-cum-Restaurant called "Dicky's" at the suit premises.
4. After the death of Ms. Chawa Yu Deen, the plaintiffs claim that the 4th defendant in the suit,

namely, Mr. Dawa Tshering, a Manager, was running the said Bar-cum-Restaurant and hence illegally occupying the premises as trespasser.

5. The plaintiffs issued a notice of eviction under Section 13(6) of the West Bengal Premises Tenancy Act, 1956 on the defendants and thereafter filed the suit in the court below.

6. The persons arrayed as defendants in the suit are Mr. Wang De Yu Deen (Defendant no. 1), son of Late Chawa Yu Deen; Mrs. Dicky Pang (Defendant no. 2), daughter of Late Chawa Yu Deen; Mrs. Kay Lakshman @ Kaysang Lakshman (Defendant no. 3), another daughter of Late Chawa Yu Deen and the fourth defendant, namely, Mr. Dawa Tshering, the manager.

7. In the plaint, the plaintiffs averred that the defendants were the defaulters in payment of rent. The legal heirs of the original tenant were not running the Bar-cum-Restaurant hence were not in occupation of the suit property. The 4th defendant, namely, Mr. Dawa Tshering, a manager of the erstwhile tenants, was therefore a trespasser in the suit property.

8. It was also stated in the plaint that the notice of eviction under Section 13(6) of the West Bengal Premises Tenancy Act, 1956, was not responded to by the defendants. The plaintiffs' reasonably required the suit premises for thier own use as their business was

expanding and they were using the office premises of another sister concern. One of the Directors of the plaintiffs was a heart patient and could not climb to the 4th floor to conduct his business. A decree for eviction of the defendants and for mesne profit had been prayed for.

9. There is one written statement filed in the suit. It is stated to have been filed on behalf of the 2nd and 4th defendants. The written statement was verified only by the 4th defendant. It was averred in the written statement as follows:

- a) The 4th defendant was not the Manager of the second defendant.
- b) He was brought up by the original tenant, Ms. Chawa Yu Deen since his childhood after the death of his own mother.
- c) The 4th defendant has not received notice under Section 13(6) of the West Bengal Premises Tenancy Act, 1956.
- d) A Will has allegedly been executed by the original tenant in favour of the 4th defendant, which is pending consideration for Probate.
- e) The plaintiffs refused to receive rent from the defendants and hence, the rent was being deposited with the Rent Controller.
- f) The plaintiffs do not require the suit premises since it has a huge area suitable for office

accommodation and other purposes. No particulars of such area or absence of the plaintiffs' requirement indicated by the said 4th defendant.

10. On behalf of the plaintiffs five witnesses were examined. The defendants examined three witnesses. DW-1 was Ms. Pema Chuki Tshering, daughter of the 4th defendant. DW-2 was Keshar Bahadur Lama, who is in no way connected with the suit premises and is a local resident. DW-3 was one Mr. Philip Tshering another local resident and in no way connected to the suit property.

11. A large number of documents have been exhibited by the parties. The learned Court below carefully examined the entire evidence on record and the facts of the case, and found favour with the plaintiffs. The case of the defendants was not accepted.

12. This Court has carefully considered the evidence on record, both oral and documentary, and the findings of the Court below.

13. It is very curious to note that the 4th defendant had little knowledge of the original tenant, namely, Ms. Chawa Yu Deen although he claimed to have been brought up by her. The second son of the deceased original tenant, namely, Chen Chang Ming was a permanent resident of England has not been

mentioned in the evidence. There was no whisper of Chen Chang Ming by the defendant no. 4 or any of the DWs.

14. Although the written statement was filed on behalf of the 2nd and 4th defendants and signed by the 4th defendant, there is no whisper of the Authority of the 4th defendant, to affirm the same on behalf of the 2nd defendant.

15. It is not in dispute that the said second defendant, namely, Mrs. Dicky Pang is a permanent resident of United States of America and has not visited the suit premises for decades.

16. For the first time in the instant appeal, a Power of Attorney is stated to have been executed by the 2nd defendant in favour of the daughter of the 4th defendant to run the Bar-cum-Restaurant on behalf of the 2nd defendant.

17. What is clear and evident before this Court is that the legal heirs of the original tenant have not filed any written statement or taken any steps to defend the suit. There is no defence on behalf of the 2nd defendant and the Court below was misled into believing that the 2nd defendant was also contesting the suit.

18. The 4th defendant's relationship with the original tenant or her legal heirs is non-existent except a purported Power of Attorney in favour of his daughter to run the business. The Authority of the 4th defendant

to contest the suit on behalf of the 2nd defendant is wholly suspicious and even otherwise not material.

19. This Court has no hesitation to hold that the 4th defendant is a rank trespasser in the suit premises.

20. None of the legal heirs of the original tenant are either occupying the suit premises or have actually contested the suit.

21. There is oral and documentary evidence indicating that the plaintiffs are the lawful owners of the suit premises. The case of reasonable requirement, made out, is more than enough in the facts and circumstances of the case. In fact, the plaintiff would have been entitled to a decree for possession of the suit premises primarily against the 4th defendant, who was a rank trespasser thereat, having no connection whatsoever with original tenant, within the meaning of the West Bengal Premises Tenancy Act, 1956.

22. The arguments of the learned Counsel for the appellants/defendants, that the plaintiffs were required to demonstrate sufficiently and comprehensively of their reasonable requirement, cannot be accepted, as the 4th defendant, the actual person behind the defence in the suit, was himself a rank trespasser. The plaintiff has prayed for a decree of eviction of the 4th defendant that he is a trespasser.

23. It is equally curious to note that the 4th defendant did not even bother to depose in the suit

himself. His daughter Pema Chuki Tshering, who could not have any personal knowledge of the facts and circumstances of the case, was the only witness of any relevance from the defendant side. The evidence of the other two witnesses of the defendants must be disregarded as has been rightly done by the Court below. They were local residents not in any way connected to the suit premises or the original tenant.

24. This Court is, therefore, of the view that the impugned judgment and decree passed by the Court calls for no interference whatsoever, for the reasons recorded by the Court below as also those indicated hereinabove.

25. Learned Counsel for the appellants Mr. Amales Ray on instructions seeks six months time to vacate the suit premises. The wife of the deceased 4th defendant, namely, Mrs. Rita Tshering, is personally present before this Court and confirms that she needs six months time to vacate the suit premises.

26. In the facts and circumstances of the case, this Court is, however, inclined to grant only three months time to the appellants to vacate the suit premises.

27. The calculation of mesne profit shall be done as per the decree impugned.

28. With the aforesaid observations and the discussions made hereinabove, the judgment and decree dated 1st April 2014 is affirmed and the instant

appeal being No. F.A. 306 of 2014 shall stand dismissed.

29. Interim orders, if any, shall also stand vacated.

30. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)