

19th December,
2024
(AK)
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S.A.T 2 of 2012
IA No: CAN 1 of 2012
(Old No: CAN 20 of 2012)
CAN 2 of 2012
(Old No: CAN 8433 of 2012)

Ratan Dutta
Vs.
Krishna Chandra, since deceased, her heirs and legal
representatives Samar Chandra and others

Mr. Purnasish Gupta
Mr. Jayanta Mukherjee
...for the appellant.

Mr. Binayak Kr. Ghoshal
Mr. Ashis Kumar Dutta
...for the respondent no.3.

1. The present second appeal has been preferred against a judgment of affirmance by both the trial court as well as the first appellate court.
2. An eviction suit was filed on several grounds against the present appellant by the predecessor-in-interest of the original respondent no.1 (since substituted by her heirs and legal representatives on her demise).
3. Subsequently the original plaintiff having died, the original respondent no.1 was impleaded as the plaintiff, claiming title to the property on the strength of a deed of settlement executed by the original owner.

4. Learned counsel appearing for the appellant submits that the impugned judgment of affirmance of the learned Judge of the first appellate court is tainted due to utter lack of reasons.
5. It is submitted that the first appellate court mechanically affirmed the findings of the trial court without entering into any independent enquiry or without giving its independent findings on the facts of the case.
6. It is submitted that in view of the lack of independent appreciation of the evidence by the first appellate court, the impugned judgment of the first appellate court is vitiated.
7. Learned counsel further submits that the question of ownership of the plaintiff was not adverted to by the appellate court.
8. Moreover, in view of the gross suppression of the availability of suitable alternative accommodation by the plaintiff/respondent no.1 in her pleadings, the suit ought to have been dismissed, which aspect was not considered by the first appellate court at all.
9. Learned counsel cites a Supreme Court judgment in the matter of *Mohinder Singh and Co. vs. Board of Trustees of the Port of Bombay* reported at AIR (SC) 2009 1844, where it was held, while deciding

an appeal under Section 37 of the Arbitration and Conciliation Act 1996, that the order of the appellate court was not a speaking or reasoned order and was passed without applying its mind, on which ground the same was set aside by the Supreme Court.

10. Learned counsel for the appellant next relies on the judgment of the Supreme Court in *United India Insurance Company Limited vs. Kanwal Nair Sachdeva* reported at (1999) 9 SCC 193, where, in similar vein, it was held that the High Court therein had dismissed an appeal by a cryptic order stating that no case had been made out for interference with the well-reasoned award of the Motor Accident Claims Tribunal. The said order was accordingly set aside by the Supreme Court due to lack of sufficient reasons.
11. The third judgment cited by learned counsel for the appellant is *DIVL Forest Officer Kothagudem vs. Madhusudhan Rao* reported at AIR (SC) 2008 1479, where the Supreme Court held, *inter alia*, that it was the duty of the appellate authority to give at least some reasons for rejecting the appeal. In the interests of justice, it was held, the delinquent officer was entitled to know at least the mind of the appellate or revisional authority in dismissing his

appeal and/or revision. Although no detailed reasons are required to be given, but some brief reasons, it was observed, should be indicated even in an order affirming the views of the lower forum.

12. Learned counsel appearing for the appellant next relies on *Santanu Kumar Mukhopadhyay vs. State of West Bengal* reported at (2010) 4 CHN 580, where a Division Bench of this Court held that the order of the Appellate Authority therein was not legally sustainable due to lack of assigning reasons even in brief while affirming the decision of the Disciplinary Authority.
13. Lastly, learned counsel cites a judgment of a learned Single Judge of this Court in the matter of *Prasanta Kimar Mondal vs. Sukanta Pal* reported at (2011) CHN 2 225, where the learned Single Judge observed that the matter was being sent on remand since the lower appellate court had not assigned any reason whatsoever while passing the impugned judgment and decree. It was held that from the judgments cited at the Bar it would appear that the learned lower appellate court, even while affirming the judgment of the learned trial court, ought to have given some reason as to why it thought fit to affirm the judgment and decree of the learned trial court.

14. However, we are unable to accept the contentions of the appellant in the present case.
15. We find that the learned trial Judge elaborately discussed all the facets of the matter and granted a decree of eviction against the present appellant on the sole ground of personal requirement of the landlady.
16. While dealing with the same, in first appeal, the learned appellate Judge adverted to the salient features and the relevant aspects of the matter.
17. Although learned counsel for the appellant is justified in arguing that if an appellate court's judgment is cryptic and is devoid of any reason, the same is susceptible to being set aside, the said proposition is not echoed in the present case, since the first appellate court in the instant case did not pass a cryptic judgment and the judgment of the learned appellate Judge is not devoid of reasons.
18. We find from the records that the learned appellate Judge considered in detail the respective cases of both the parties.
19. In the "Decision with Reasons" portion of his judgment, the learned first appellate Judge observed that on perusal of the case records, it appeared that notice to quit was served on all the heirs of the deceased tenant.

20. It was also considered that the service of notice of ejectment upon all the heirs was valid and legal.
21. The learned appellate Judge then proceeded to consider that Rita Kundu had a lifetime interest in respect of a room by a deed of settlement executed by the original landlord/plaintiff Dhirendranath Kundu.
22. Upon such consideration, it was also observed that Rita Kundu had died and that appeal is a continuance of the suit and during continuance of the suit since the said Rita Kundu died, her lifetime interest was extinguished.
23. The first appellate court went so far as to observe that it was not necessary in a suit for ejectment to make all the owners parties for filing the suit, since even if one owner is the plaintiff, the suit is legally sufficient.
24. We rather agree with such proposition, since even if the question of ownership of the substituted plaintiff, who was the original respondent no.1 herein, was not entered at length, the fact of a deed of settlement being executed in her favour was considered and it was also observed that even if she did not acquire exclusive interest by virtue of such deed, the said holder of the deed of settlement, as a

co-owner, was entitled to maintain a suit for eviction.

25. Such proposition of law is well-accepted and we do not find any reason to interfere with the same.
26. That apart, the learned appellate court went on to observe that the defendant/appellant had claimed that the plaintiff had alternative suitable accommodation, which was not pleaded in the plaint but was admitted in cross-examination by the plaintiff on July 31, 2006 to the effect that she had an accommodation in her matrimonial home, regarding which it was not possible for her to file any document of her husband.
27. In any event, the accommodation of a married daughter in her matrimonial home is not at all germane in considering the availability of suitable alternative accommodation for the purpose of obtaining an eviction in her parental home, which is situated elsewhere.
28. Apart from the suit premises being the parental house of the plaintiff, we find that she, on the strength of the deed of settlement, became an owner of the property.
29. In such dual capacity, as a married daughter of her father who was the original owner and as the owner of the property by dint of a deed of settlement, the

plaintiff was very much entitled to maintain the eviction suit.

30. The accommodation of a married daughter in her matrimonial home cannot be considered to be a suitably alternative accommodation insofar as her requirement for rooms in her parental house is concerned.
31. Such aspect was fully dealt with by the learned appellate Judge.
32. It was also found that from Exhibit-7, 7A and 7B it appeared that the son of the plaintiff had received training in computer courses and so the probability of setting up a computer business for the son went in favour of the plaintiff.
33. Such essential component of the personal requirement of the plaintiff was, thus, also fully considered by the learned Judge of the first appellate court.
34. Hence, the proposition laid down in the judgments cited by the appellant do not hold good insofar as the case at hand is concerned, since the learned appellate Judge, although in a concise manner, dealt with all the relevant aspects and gave his independent reasoning as well.
35. In any event, a reiteration of the entire appreciation of evidence by the trial court is not required by the

appellate Judge if the Appellate Court's findings end in a judgment of affirmance. Such reiteration would be an entirely unnecessary repetition.

36. As such, we do not find any substantial question of law involved in the present case, particularly since the courts below have returned a concurrent finding insofar as the personal requirement of the plaintiff is concerned.
37. Hence, in the absence of any substantial question of law, SAT 2 of 2012 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure, read with Order XLII of the Code.
38. Consequentially, CAN 1 of 2012 is also dismissed.
39. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)