

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

S.A.27 of 1993

**Smt. Katyani Roy Chowdhury, since deceased,
represented by Prativa Ghosh &Ors.**

-Versus-

**Shree Chitta Ranjan Roy, since deceased, represented by
Purnima Roy &Ors.**

For the Appellants	:	Mr. Sounak Bhattacharya Mr. Sounak Mandal Mr. Anirban Saha Roy Mr. Abhirup Halder
--------------------	---	--

For the Respondents	:	Mr. Nirmalya Roy
---------------------	---	------------------

Heard on	:	01.08.2024
----------	---	------------

Judgment on	:	19.11.2024
-------------	---	------------

Dr. Ajoy Kumar Mukherjee , J.:

1. This Second Appeal has been preferred against judgment and decree of eviction of a premises tenant passed against the defendant/Appellant/tenant. The factual backdrop of the plaintiff's case is that the original plaintiff Katyani Roy Choudhury filed Title Suit no. 495 of 1974 against the original defendant Chinta Horon Roy

Choudhury (Predecessor of present Appellants) for recovery of khas possession and mesne profit. In the said suit filed in 1974, it was pleaded that plaintiff is an old aged ailing lady and plaintiff and her husband are unable to manage their own affairs and they need constant care and attention. It was further pleaded that beside the married daughter and son-in-law they have no other relations to be cared for but plaintiff fails to accommodate the said son-in-law and their family members and for which plaintiff reasonably require the suit premises and the garage. Learned Trial court while dealing with plaintiff's case of reasonable requirement came to a finding that in any view of the matter the plaintiff's reasonable requirement cannot be satisfied by partial eviction and accordingly decreed the suit as a whole directing the defendant to quit and vacate the suit premises within 60 days from the date of the decree.

2. Being aggrieved and dissatisfied by the said judgment of eviction, the defendant preferred First Appeal before learned District Judge being Title Appeal no. 841 of 1985. The First Appellate court came to a finding that the son-in-law has become handicapped due to surgical operation on his body and he must be provided with a room in the ground floor for his residence but he cannot be provided with any room for making his office or for his business purpose and accordingly the First Appellate court thought it prudent that the defendant may be asked to surrender the garage for keeping car of the son-in-law and also to surrender one room in the ground floor for his accommodation from the tenanted portion and therefore the First Appellate court allowed the

appeal in part and thereby modified the judgment of the Trial court with a direction that the defendant shall give up the vacant possession of the garage and one suitable room out of three tenanted rooms in favour of the plaintiff within 60 days from the receipt of the order.

3. Being aggrieved by the said order of the First Appellate court dated 24.06.1987, the plaintiff/landlord preferred present Second Appeal being S.A 27 of 1993.

4. During pendency of this Second Appeal, an application under Order XLI Rule 27 C.P.C was filed on behalf of the plaintiff for taking into consideration on some additional facts. It was contended that original landlady/plaintiff died leaving behind two daughters Prativa and Sheely. Sheely died long back. However Prativa has three daughters namely Purnima, Jyotsna and Chandra. Out of these three adult daughters the first one is a lecturer, the second one is a gynaecologist and the third one is a teacher of geography in Pratt Memorial School. It was further stated therein by the plaintiff/appellant that during the life time of original plaintiff/Katyani, she bequeathed all her properties including the suit property in favour of Prativa and the said Will was subsequently probated and accordingly Prativa exclusively got the property and thus the requirement of aforesaid three daughters of Prativa, engaged in three different professions are sought to be incorporated. It was alleged that Prativa's family comprising of six members and as such suit rooms in the ground floor are extremely essential for the accommodation of her family. Further case of the plaintiff as stated is that Prativa's eldest daughter Purnima is a lecturer

and she require one room for pursuing her profession and study. Prativa's second daughter Jyotsna is a gynaecologist and she also require room and Prativa's other daughter Chandra require one room to coach her students and Prativa's son-in-law has started a business after retirement in the suit premises which is evident from the commissioner's report.

5. This High court after considering the submissions made by the parties remitted the matter before the Trial court for taking decision on the issues mentioned in the application being CAN 42137 of 2001 filled by the appellants under Order XLI Rule 27 along with affidavit in opposition filed by the defendant and liberty was also given to the Trial court to take further evidence oral or documentary in coming to a decision in respect of the point in issue, keeping the main appeal part heard. Further direction was made upon Trial court that immediate after coming to a decision by the Trial court he will transmit his decision with evidence and all other documents lying in the record and thereafter the main Second Appeal will be taken up. In this context this court also framed two issues to be decided by the Trial court on evidence

"A. Whether Prativa is the absolute owner of the suit property.

B. Whether in view of subsequent events as disclosed in application under Order XLI Rule 27 plaintiffs reasonably require the suit premises on eviction of the defendant."

6. In view of aforesaid direction learned Trial court by his decision dated 23rd March, 2005 disposed of the first issue with the finding that plaintiff duly proved the corporation tax bill (exhibit 15 series) and the

mutation certificate (exhibit 16 series) which clearly go to show that the name of the plaintiff has been duly entered in the corporation record and therefore considering the probated will coupled with the tax receipt and bills, Trial court came to a conclusion that the plaintiff is the owner of the suit premises and accordingly said issue was decided in favour of plaintiff/landlord.

7. It is not in dispute in the present case that the plaintiffs are in occupation of four rooms and the defendants are in possession of three rooms along with one mezzanine floor room and garage in their tenanted portion and the defendant never raised any dispute that out of Prativa's three daughters two are un-married and the youngest daughter is married.

8. While dealing with the second issue as framed by this High Court, learned Trial court observed that the defendant never raised any dispute that the un-married daughter of plaintiff are residing with her but the only dispute that has been raised is for the separate room for son-in-law namely Saibal Basu (However I am informed that said Saibal Basu also died in the meantime). Learned court below held that during cross examination the learned advocate for the defendant suggested P.W-3 that they are going to vacate the garage and another room but the plaintiff did not agree to such proposal. Plaintiff filed Ration card, PAN card, and Voter Id card of Prativa and her three daughters and as such the Trial court held that it can be safely said that the plaintiff along with her daughters reside in the suit premises. Such observation of the Trial court after remand that Prativa and her three daughters out

of which two are un-married and one is married, are residing in the suit premises was never challenged by the defendant/tenant.

9. However in the same tune learned Trial court made a contradictory observation stating that there is no scrape of paper to conclude that Saibal Basu (who died subsequently), husband of youngest daughter Chandra Basu also reside in the suit premises. Trial court relied upon P.W-3 Purnima's evidence where she was suggested during examination by the defence that Saibal along with Chandra and their daughter Surabati resides at Jodhpur Park and he further observed that it is not the case either of the parties that said youngest daughter of Prativa namely Chandra is residing separately from her husband and/or residing at her paternal house and accordingly the Trial court came to a conclusion that Chandra along with her husband and daughter residing elsewhere.

10. It is not in dispute in the present context that plaintiff filed birth certificate of Prativa's grand daughter namely Surabati Basu which shows that she is residing at the suit building but the Trial Court opined that birth certificate cannot be the concluding proof of residence of a persons after 14/15 years from her birth. On the basis of surmise and conjecture the trial court held that normally in our country a women gives birth to her child by temporarily residing in her paternal house and for such reason the address of the suit building has been shown as the place of residence of the minor girl. Since the plaintiff did not file any school document, so Trial court held that the evidence clearly shows that husband and daughter of Chandra are not residing

at suit building and it is highly probable that plaintiff's youngest daughter Chandra and her husband and their daughter are residing at a different place. Furthermore Trial court held that the commissioner's report reveals that the size of the rooms in occupation of plaintiff are quite big and Purnima can arrange a portion of that room as study room. The Trial court further held that since Jyotsna is a medical practitioner so one room from tenanted portion is sufficient to meet plaintiff's requirement and as neither party is in possession of any vehicle so plaintiff is entitled to get vacant possession of the garage because in future they may purchase a car and for which the garage may be required. The relevant portion of Trial court observation may be reproduced below

"Now if I simply sum up the requirement of the plaintiff then it comes 14 rooms along with garage kitchen and bath room cum privy. At the outset I went to make it clear that there is no point in discussing the requirement of Chandra Basu as it is already observed that he is not residing in the suit premises with her husband and daughters. According to the plaintiff (P.W.6) she has one fulltime maid servant cum attendant to look after her. Apart from the verbal asservi on there no other materials on the four corners of the record to suggest that she have a full time attendant. Even if I assume that there is one attendant to look after P.W.3 then also it is expected that such attendant will be attached to her on a 4 X 7and the question of separate room for such attendant hardly arises. In the similar way, one separate room for the servant of Jyotshan Ghosh does not arise. In absence of any positive evidence that Jyotsna Ghosh have full time maid servant to look after her.

Needless to mention that the city of Kolkata is facing some acute accommodation crises and to overcome such crises and to protect the tenants from the ant of the landlord, the tenancy act was legislated. So, the picture of accommodation as painted by the landlord must be genuine and reasonable. Reasonableness demands separate bedroom for adult persons at protect their privacies. On that count it is absolutely essential that Protiva Ghosh, Purnima Ghosh and Jyotsna Ghosh should have separate bed rooms for themselves. When the plaintiff have married daughter along with son in law and granddaughter there it is absolutely essential that the plaintiff have a guest room to accommodate

the guests. It is already stated that there are 4 rooms in the first floor and if the 4 rooms in the first floor are exhausted in view of the above observation then the primary requirements of the plaintiff will be satisfied.

Now the plaintiff also demanded two rooms for her daughter Jyotsna to make arrangement of a Medical Chamber. There is no dispute regarding the fact that Jyotsna is a Doctor and it is very much probable that she is going to practice by arranging a chamber in her own house. For a Medical Chamber one room in the ground floor is sufficient and I find no reasons to why the plaintiff is demanding two rooms for the Medical Chamber of their daughter. The plaintiff also demanded two rooms apart from the bed room for her eldest daughter Purnima. The plaintiff intended to use one room as study room and one as professional room. It is specifically stated by P.W 6 that P.W.3 is a teacher at Deshbandhu College and also have a research project, apart from being an examiner. It is evident from the commission report that the size of the rooms are quite big and in such rooms a facility for study can be arranged. In other words, one room can be used as a study cum bed room by Purnima and two separate rooms are absolutely redundant.

During argument, Ld Advocate for the defendant argued that she has cry for her own. It transpires from the evidence that plaintiff made verbal assertion of owning a car but no documents came before the court to substantiate that a present the plaintiff is having a car of her own. As the defendant are also not possessing any car so the requirement of garage can be settled in favour of the plaintiff because in future they may have a car and to park such car they may need a garage.

Therefore, considering all the aspects I am of the opinion that the plaintiff's requirement can be satisfied if out of the tenanted portion one room in the ground and the garage is extracted in favour of the plaintiff."

11. Defendant has not disputed plaintiff's contention that second daughter of Prativa namely Jyotsna is a gynaecologist. Learned Trial court allotted one room in the ground floor from tenanted portion observing that one room would be sufficient and he finds no reason as to why plaintiff is demanding two rooms for medical chamber of said Jyotsna. Such observation of the court below, in my opinion is not

supported by prudence, when there is no dispute that she is a gynaecologist and wants to start practice in the suit building. In order to maintain privacy for the female patients, it's quite natural that she requires another room as patient's waiting room and/or for patient's examination room. Moreover though plaintiffs claim is that the eldest daughter Purnima is a lecturer and she require one study room come professional room but Trial court observed that since the size of the rooms in their occupation are quite big, so it is for the plaintiff's daughter to arrange for a partition of her bedroom and to create a study room. It is well settled in view of case decided in **(1996)5 SCC 344** that it is for the landlord to decide how and in what manner he should live and he is the best judge of his residential requirement. It is also well settled that the requirement as on the date of the decree is the relevant factor for consideration and not what the requirement was at the date of filing the suit. The dictation given by the court below to the landlord that the eldest daughter should use her bed room as 'bedroom cum study room' and that one room is sufficient for Jyotsna's private practice as gynaecologist, are appears to be swayed away by emotion which reflected from his observation that "*city of Calcutta is facing acute accommodation crysis and to overcome such crysis and to protect the tenant form the hands of landlord, the tenancy Act was legislated*" and such observation is a pre-judged observation and does not based on evidence or documents.

12. The Apex Court in **(2001) 8 SCC 561** held that the question to be asked by a judge of facts by placing himself in the place of the landlord,

is whether in the given facts proved by the material on record, the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive the need is *bonafide*. The concept of *bonafide* need or genuine requirement needs a practical approach instructed by the realities of life.

13. It was further held that an approach either too liberal or too conservative or pedantic must be guarded against. If the landlord wishes to live with comfort in a house of his own, the law does not command or compel him to squeeze himself and dwell in lesser premises so as to protect tenant's continued occupation in tenanted premises.

14. From the Trial court judgment it is clear that P.W-6 Prativa Ghosh in her deposition has stated about her requirement as follows:-

- "1.** One room along with a bath room for herself.
- 2.** One room for her attendant cum servant.
- 3.** 3 rooms, namely one professional room one study room and one bath room for Purnima Ghosh.
- 4.** 3 rooms, namely one bed room and two rooms for professional chamber along with bath and privy in the ground floor for Jyotsna Ghosh.
- 5.** 1 room for servant of Jyotsna Ghosh.
- 6.** 3 rooms for her daughters Chandra Basu, namely one bed room, one chamber for son in law Saibal Basu and one study room for grand daughter Surabati Basu.
- 7.** One garage.

8. One Guest room.

9. One Puja room.

10. One Vegetarian Kitchen.”

15. Admittedly Prativa’s/plaintiff’s youngest daughter Chandra Basu is married and she has one daughter namely Surabati Basu. Though the Trial court specifically held that plaintiff filed Ration card, PAN card and Voter Id card of Prativa, Purnima , Chandra and Jyotsna and thereby he safely came to a conclusion that Prativa along with her daughter reside in suit building but since an evasive suggestion was given to P.W-3 by defence side that said Chandra Basu along with her husband and daughter reside at Jodhpur Park, so the court below came to a conclusion that Chandra and her family does not reside in the suit building. Such observation of the Trial court below on the basis of surmise and conjecture is perverse in view of the fact that admittedly birth certificate of Surabati states that her address is 8/49 Fern road, which is the suit building and there was no occasion for the Trial court to make a presumption that normally in our society a women gives birth to her child by temporarily residing in her parent house and for such reason Surabati’s address is given as 8/49 Fern road. When there was no adverse document to dispute the said fact, the court below ought to have believed that Surabati also resides in the suit building. Accordingly the observation of the court below that *“it is very much probable that Chandra and her daughter does not reside in the suit property and they are residing elsewhere”*, is not based on materials available on record and as such liable to be set aside. So in the first

floor plaintiff requires three rooms for three daughter's bed room and one, room for said Surabati for her bed room cum study room. Furthermore when admittedly plaintiff's daughter Chandra is a married one. The claim of the plaintiff for one guest room for the purpose of accommodating the family guest must be considered as an essential requirement in a dwelling unit. The plaintiff's claim of separate room for the full time maidservant of two un-married daughters had also been turned down unnecessarily by the Trial Court with the observation that there is no evidence that the un-married daughters have at all engaged any full time maid servant to look after them.

16. This High Court in a judgment reported in **2002 CWN 405** held that the provisions of West Bengal Premises Tenancy Act do not authorise the court to look into comparative advantage and disadvantages of landlord and tenant while deciding the issue relating to requirement of landlord's accommodation for his own use. It was further held that the requirement of a guest room is always been mentioned for his married daughter and the defendant could not have been taken by surprise nor could he contend that such claim was not anticipated. A guest room, a drawing room and dining room must be held to be essential requirement in a dwelling unit.

17. It is well settled that if the court finds that by getting possession of the disputed premises, the requirement in favour of landlord would be fulfilled to a considerable extent or that the landlord would be in a better possession to some extent in comparison with his present

accommodation, the court would not hesitate in passing the decree on the ground of reasonable requirement in favour of the landlord.

18. So far as three rooms in the ground floor (tenanted rooms) are concerned, as I have already held that two rooms are required to start practice by gynaecologist/daughter and at least one room is required for her other daughter Purnima for professional room cum study room.

19. In view of aforesaid discussion, I am to conclude that though the Trial court as per direction of this court decided the first issue regarding plaintiffs' ownership in respect of the suit property in a right direction but came to a perverse finding so far as second issue is concerned which relates to reasonableness of plaintiff's requirement in the suit premises. In such view of the matter the impugned judgment of the First Appellant court dated 24.06.1987 passed in Title Appeal no. 841 of 1985, pertaining to partial eviction to meet the requirement of plaintiff, is hereby set aside and the ordering portion of the Trial court passed in Title Suit no. 495 of 1974 dated 30th July 1985 is hereby affirmed.

20. S.A 27 of 1993 is thus allowed. Trial court record be returned to the concerned court at once.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)