

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

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

S.A. 314 of 2010

**Krishna Singh @ Krishna Devi Singh
Vs.
Sanjib Nandi**

For the petitioner : Ms. Sohini Chakraborty
Mr. Arijit Sarkar

For the Respondent : Mr. Gopal Chandra Ghosh
Mr. Tapash Bhattacharya
Mr. Aviroop Bhattacharya

Heard on : 29.02.2024

Judgment on : 12.03.2024

Ajoy Kumar Mukherjee, J.

1. This second appeal has been preferred by the defendant/appellant challenging the judgment and decree dated September 10, 2009 passed by learned Additional District Judge, 1st Court, Siliguri. By the impugned judgment court below has affirmed the judgment and decree dated 29th March, 2007, passed by learned Civil Judge (Junior Division) Siliguri, in Title Suit No. 184 of 2002.

2. Plaint case is that plaintiff purchased the suit property on 13.11.1997 from the erstwhile owner Ramdev Koiri and Paramananda Koiri by a registered deed and since purchase, plaintiff has been possessing the

suit property by mutating his name with the municipality. Further case of the plaintiff is that he purchased the suit property with several dilapidated structure and for the purpose of security of his ration shop he gave permissive possession of three rooms to the defendant without any licence fee and permission was given till dismantling the dilapidated structure and making new construction therein. The plaintiff requested the defendant to leave and vacate the suit premises described in schedule “B” to the plaintiff which was not complied by the defendant and for which he cancelled the licence in the month of September 2002. It is further alleged in the plaintiff that the defendant has engaged some labours on 24.09.2012 to change the nature and character of the “B” schedule property but due to strong opposition defendant was somehow resisted. Even after termination of licence, defendant has not yet vacated the licensed rooms and is occupying the suit property as trespasser. In the above backdrop plaintiff inter alia prayed for eviction of the defendant from the suit property.

3. Defendant/appellant contested the suit by filing Written Statement denying material allegations made in the plaintiff. Defendant specifically asserted that they along with plaintiff/respondent were enjoying respective premises as tenants under the original landlord Ramdev Koiri and Paramananda Koiri in the suit plot. Defendant’s predecessor Ramchittar Singh was tenant of ‘B’ schedule property as monthly tenant and after his death defendants became tenant under the same landlord. Defendant’s further case is that he has been enjoying the tenanted suit premises for last forty years. His original landlord used to reside somewhere in the state of Uttar Pradesh and Occasionally used to come at Siliguri to look after their

different properties in Siliguri including the suit property and they used to collect the rent for several months, at a time, from their different tenants, including the defendant and accordingly issued rent receipt against realization of the rent.

4. Defendant/appellant also denied the ownership of the plaintiff/respondent over the suit property and contended that the registered deed of conveyance, if any, produced by the plaintiff/respondent is a false and manufactured document and has not been executed by the real owner. Since the defendant has been residing in the suit property as a monthly tenant under the above mentioned landlord, so the question of granting licence in the suit premises by the plaintiff/respondent does not arise at all and the case of permissive possession in respect of the suit premises had been concocted by the plaintiff/respondent with an oblique motive to file the suit. Plaintiffs' plea that the permission was given for the time being till the dismantling of the dilapidated structure is absolutely false and has been manufactured by the plaintiff for the purpose of the suit. In fact the plaintiff/respondent never requested the defendant/appellant to quit and vacate the suit premises. The defendants never tried to change the nature or the character of the suit premises and accordingly defendant has prayed for dismissal of the suit.

5. Learned Trial Court did not accept defendants case of tenancy on the basis of a single rent receipt marked Exhibit-A. According to the Trial Court filing of a suit for eviction amounts to serving of notice to the licensee for his eviction and no formal notice is required to be served upon the defendant prior to filing of the suit. However on the point of injunction Trial Court held

that no specific case of invasion has made out by the plaintiff in the suit to that effect and as such Trial Court was not inclined to allow the plaintiff's prayer for injunction, though the eviction decree was passed, since plaintiff succeed in proving ownership in the suit property and defendant had failed to prove the defence of tenancy.

6. Being aggrieved by the order defendant/appellant preferred appeal before the court below but the first appellate court held that the defendant/appellant have failed to prove their status as tenant in respect of the suit property. It is also not the case of defendant/appellant that they are forceful occupier and as such defendant /appellant are occupying the suit premises as licensee and accordingly the court below affirmed the judgment and decree passed by the Trial Court by the impugned order.

7. Mrs. Sohini Chakraborty, learned counsel appearing on behalf of the appellant, submits that the settled principal of the law is that in order to get a decree, plaintiff has to prove his own case. In the present context plaintiff/respondent has filed the suit for eviction of a licensee but the plaintiff has miserably failed to prove that he ever granted license to the defendant in respect of "B" schedule property to the plaintiff. Unless the plaintiff discharges his onus, the onus upon the defendant to prove that she is a tenant under the Koiris, does not shift. In the present case the oral and documentary evidence clearly establish that the defendant has succeed to prove that she is the tenant in respect of the suit property. In this context she also referred relevant portion of the evidence of PW-1. She has also drawn attention of the court, referring evidence adduced by the defence witnesses that DW-1 produced one rent receipt which was marked as

Exhibit-A. She further stated that DW-2 is an independent witness who is the consumer of the ration shop of the plaintiff and stated that he knows both the parties and that the father of the defendant was a tenant under the Koiris and after his death defendant became tenant in respect of the premises. DW-2 also corroborated the evidence of DW-1 that the predecessor of the defendant was a tenant in respect of the suit property and that the defendant is living there for 35-40 years. DW-3 is another independent witness who also stated that on several occasion she had seen that the tenant had handed over rent to the landlord when landlord Ramdev occasionally visited the suit property. Accordingly the defendant has successfully proved with the help of exhibited document and independent witnesses that she is tenant in respect of the suit property under the Koiris but the plaintiff failed to discharge their initial burden of proving that the defendant is a licensee under him and as such the judgment and decree passed by the courts below are liable to be set aside.

8. Mr. Gopal Chandra Ghosh, learned counsel appearing on behalf of the Respondent, submits that the entire approach of the Trial Court and the Appeal court in appreciating the evidence adduced by the parties are proper and the findings of the court below cannot be reversed as there is no erroneous appreciation of the evidence. He further submits that mere production and making of a document as exhibit by the Court cannot be held to be a due proof of its contents. Each execution has to be proved by admissible evidence. In this context he relied upon following judgment :

(a) *Narbada Devi Gupta Vs. Birenda Kumar Jaiswal* reported in 2003 (8) SCC 745.

(b) *Alamelu and another Vs. State* reported in 2011 (2) SCC 385.

(c) *Sait Tarajee Khimchand and others Vs. Yelamarti Stayam @*

***Satteyya and others* reported in AIR 1971 SC 1865.**

9. Mr. Ghosh further submits, even if one rent receipt has been marked as exhibit without any objection of the plaintiff, such marking of the document does not dispense with proof of said document and the defendants failed to prove the same by withholding the best witnesses. They did not ask Bharat Koiry to face the dock and to prove the rent receipt and also his signature on the rent receipt. He further submits that Ramdev Koiry and Paramanadna Koiry issued rent receipt in favour of plaintiff's predecessor Sankar Nandi and it reflects from their rent receipt dated 01.08.1978, 31.12.1984 that those are printed one and the name of the tenant and the collector of rent receipt were written in Hindi language. Here only one rent receipt has been filed by the defendant which is marked as Exhibit-A, in connection with rent allegedly paid for the month of October 1986 to November 1986 at the rate of Rs. 50/- per month and allegedly issued in the name of defendant's predecessor on 10.05.1991, in support of defendant's tenancy in the suit premises. Said rent receipt marked exhibit "A" bears initial which was not proved by bringing the signatory before the court. Surprisingly in Exhibit-A the name of owner of premises was written as Ramdev Koiri and Paramananda Koiri in Bengali language, whereas rent receipt produced by the plaintiff being Exhibit-1 issued in favour of predecessor of plaintiff, is a printed rent receipt and aforesaid Ramdev and Paramananda being Hindi speaking person used to issue the rent receipt by putting their signature in Hindi language. However defendant's rent receipt

bears the initial of collector and not signed by Ramdev Koiri or Paramanda Koiri and name of the collector also does not appear in the rent receipt. The defendant could not produce any other rent receipt in their names. Plaintiff's rent receipt in original, in the name of his predecessor Sankar Nandi, was issued under the signature of Ramdedv Koiri. Accordingly the document is suspicious and defendant also did not try to remove the cloud. He further submits that in the written statement also defendant did not mention anything about such rent receipt and for which plaintiff did not get any scope to controvert the same by amending the plaint. During evidence of the defendant he for the first time produced the said document by way of surprise and plaintiff did not have any scope to challenge the same in his pleading. However during cross-examination of defendant, a suggestion was put in clear term to the witness that the rent receipt marked exhibit-A has been prepared fraudulently.

10. Mr. Ghosh also pointed out certain other anomalies in the rent receipt and he submits that it is not at all believable that in 1991 the landlord had used one old form of rent receipt printed in 1960 for realization of rent for the year 1986. Accordingly both the courts below came to a concurrent finding that the said rent receipt is not genuine and the defendants had failed to prove his so called tenancy right and High Court in Second Appeal cannot interfere findings based on fact.

11. The Division Bench of this court while admitting the Second Appeal has formulated the following substantial question of law:

- (i)** *Whether the learned judges in the courts below substantially erred in law in decreeing the suit rejecting the Exhibit-A, the alleged rent receipt, granted by the original owner of the property-in-suit, in the*

absence of any ground of fraud with specific and particular pleadings in the plaint?

- (ii)** *Whether the learned judges in the courts below substantially erred in law in decreeing the suit holding that the defendants were licensee under the plaintiff when the defendant produced alleged rent receipt being Exhibit-A issued by the original owner of the property-in-suit?*

12. I have considered submissions made by the both the parties.

13. In the present context as against the plaintiff's case of granting license to the defendant in respect of the suit property, the defendant's contention is that he is a tenant in respect of the suit property. Defendant during evidence has also produced one rent receipt in support of his tenancy which is marked as Exhibit-A. There is no quarrel with the proposition of law that if a single rent receipt issued by the landlord is proved before the court as genuine for the relevant period of time, it is enough to declare the concerned defendant as a tenant in respect of the suit premise and he is not required to prove each and every rent receipt for the concerned period. It is also true that though the defendant has not mentioned in his pleading about the said rent receipt but during evidence said document was marked as exhibit without objection. However, marking of a document as exhibit does not *ifso facto* proof of the contents of the document. The burden lies upon the defendant to prove its genuineness in order to establish his claim of tenancy in respect of the suit premises, even if the plaintiff at the time of evidence did not raise objection for taking the said document in evidence.

14. While dealt with the genuineness of the said rent receipt marked exhibit-A the trial court made the following observation.

"DW1 in her cross-examination asserted that the rent was paid probably in the year, 1991 for the period of October and November, 1986 to one Bharat Kairy. This statements of DW1 appears to be doubtful, if not,

enigmatic. It is unbelievable that rent for the period of October and November, 1986 was paid in the year, 1991. There is no description of the suit property in the said rent receipt i.e. in Exhibit-A. No other rent receipt has been produced by the defendants, though it is the specific case of the defendants that they have been occupying the suit premises for the last about 40 years. Defendant also could not say when her father was inducted as a tenant and what was contractual rent of the suit premises. Thus, the defendants have failed to prove that her father was a tenant of the suit premises. The defendants are not claiming adverse possession or any other status in respect of the suit premises. Accordingly, the status of the defendant would be that of a licensee/permissive occupier.”

15. Being dissatisfied with the said observation the appellant herein preferred first appeal before the court below and learned court below came to a finding after scanning the oral evidence that the defendants could not establish that their predecessor were occupying the suit premises as tenant. Beside oral evidence defendant has also heavily relied upon the document marked Exhibit-A, to establish his case of tenancy, which has been seriously challenged by the plaintiff, who argued that Exhibit-A is a manufactured document and has been created for the purpose of the suit. He made the following observation while dismissing the appeal.

“It has come into evidence that Ramcharittar Singh died on 14-8-97 and from Ext. A it appears that the rent receipt was issued on 10-5-91. So, if the other rent receipts are being misplaced or missing then how the defendants collected this receipt. Moreover, I find that in the receipt it has been shown that Rs. 100/- for two months from October, 1986 to November, 1986 has been realised. It is not believable rather absurd that on 10-5-91, the owner received rents for two months for the period from October, 1986 to November, 1986. It further appears in the receipt that it has also been written in the typed form, rent realised from the month of 1966 and there is interpolation in the Bengali year 1966. Apart from that I find that the signature of the collector of the rents is illegible. It is not clear who has realised the rents. There is no explanation as to why the original owner who granted the receipt have not been examined. There is also nothing in the case record that the defendants took sufficient measure to examine the owners as witness in this case and they could be the best person to state that in what capacity the defendants or their predecessors are occupying the suit premises. Moreover, I find that in the written statement, it has not been mentioned that the rents of the suit premises is Rs. 50/- per month. So, considering all, I think that this document (ext.A) appear to be not genuine. Besides the above, I failed to understand why the defendants or their predecessors have not paid rents to the owners for the suit premises after November, 1986 to till date, if it is taken to be true that this document (Ext.A) is a genuine one. So, considering both oral and documentary evidence, I hold that the

defendants have failed to prove that they have been occupying the suit premises as tenant since their predecessors' time."

16. It is more or less settled that the jurisdiction of the High Court, under Section 100 of the code of the Civil Procedure to interfere with the judgments of the courts below is confined to hearing the parties on the substantial question of law. So far as the facts are concerned the first appellate court is the final court and unless and until the findings of facts recorded by the courts below are found to be manifestly perverse and or contrary to the evidence on record, the High Court would not be justified in setting aside the findings of facts recorded by the courts below and it is not permissible for High court to re appreciate the entire evidence of record and to come to its own finding, when the findings of the courts below are on appreciation of evidence.

17. At the cost of repetition it can be said that both the courts below did not place reliance upon alleged rent receipt due to certain anomalies appearing in the document which made the document suspicious. The oral evidence adduced by the defendants also failed to substantiate the defendant's case of tenancy. The first appellate court while dealt with alleged solitary rent receipt marked Exhibit-A, did not believe that on 10.05.1991, the owner received rent for the period of October, 1986 to November, 1986 and most importantly the courts below observed there are interpolations on the said document in mentioning the year. He also found that the signature of the collector is not legible and for which it is not clear who has realised the alleged rent as landlord. Trial Court also noted that there is no description of the suit property in the said rent receipt and both the courts below found no reason as to why defendant has withheld the best witnesses

to prove the said document. Accordingly after appreciation of all the oral and documentary evidence, the courts below came to a finding that exhibit-A appears to be not genuine and that the defendants have failed to prove that they are occupying the suit premises as tenants since the time of their predecessor. As the entire findings about Exhibit-A have been made on the basis of appreciation of evidence, there is hardly any scope to say that the observations of the courts below suffers from any material irregularity or there is any kind of perversity in the findings of the court or they are not based on materials on record. The High Court cannot substitute its own opinion for the opinion of the courts below unless it is found that the conclusions drawn by the courts below is based upon inadmissible evidence or without evidence.

18. The question whether the courts below could have decided the Exhibit-A as genuine by deciding the same in a different way is not a question of law, justifying interference in second Appeal. The question as to whether exhibit-A is a genuine rent receipt in order to declare the defendant/appellant as a tenant in respect of the suit property is entirely a matter to be decided on appreciation of the evidence. High Court can hardly interfere with the finding of the fact arrived at by the courts below on re-appreciation of evidence.

19. In ***Gurdev Kaur and others Vs. Kaki and others*** reported in **AIR 2006 SC 1975** the Apex Court has clearly observed that the language used in the amended section specifically incorporating the words “substantial question of law” is indicative of the legislative intention and it must be clearly understood that the legislative intention is that they never wanted

second appeal to become “third trial on facts” or “one more dice in the gamble”.

20. The Supreme Court has also cautioned the High Courts while dealing with the jurisdiction of High Court in an appeal under section 100 CPC in **Gurnam Singh and others Vs. Lehena Singh**, reported in **(2019) 7 SCC 641**, by making the following observation in para 19 of the judgment.

19. Before parting with the present judgment, we remind the High Courts that the jurisdiction of the High Court, in an appeal under Section 100 CPC, is strictly confined to the case involving substantial question of law and while deciding the second appeal under Section 100 CPC, it is not permissible for the High Court to reappreciate the evidence on record and interfere with the findings recorded by the courts below and/or the first appellate court and if the first appellate court has exercised its discretion in a judicial manner, its decision cannot be recorded as suffering from an error either of law or of procedure requiring interference in second appeal. We have noticed and even as repeatedly observed by this Court and even in Narayanan Rajendran v. Lekshmy Sarojini [Narayanan Rajendran v. Lekshmy Sarojini, (2009) 5 SCC 264 : (2009) 2 SCC (Civ) 500] , despite the catena of decisions of this Court and even the mandate under Section 100 CPC, the High Courts under Section 100 CPC are disturbing the concurrent findings of facts and/or even the findings recorded by the first appellate court, either without formulating the substantial question of law or on framing erroneous substantial question of law. (emphasis added)

21. In view of aforesaid discussion I do not find that the impugned judgment calls for interference by this court in the second Appeal.

22. S.A. 314 of 2010 thus stands dismissed. Department is directed to return the record of courts below at once

23. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(AJAY KUMAR MUKHERJEE, J.)