

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

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

SA 475 of 2003

**Chittaranjan Sinha, Since deceased,
Smt. Latika Sinha
Vs
Kanaklata Biswas**

For the Appellant : Mr. Soumik Ganguly
Mr. Dilip Kumar Sadhu
Ms. Chandana Chakraborty

Heard on : 16.01.2024

Judgment on : 06.02.2024

Ajoy Kumar Mukherjee, J.

1. This second Appeal has been preferred challenging the impugned judgment and decree dated 31st January, 2003 passed by the learned District Judge, Hooghly in T.A. No. 78 of 2002, thereby reversing the judgment and decree dated 31.01.2002 passed by the learned Civil Judge (Junior Division) 1st Court Hooghly in T.S. No. 217 of 1996.

2. The brief background of the present case as narrated in the plaint is that the suit property originally belonged to one Biswamohan Dutta from whom original plaintiff Chittaranjan Sinha Purchased the same by two separate registered sale deeds dated 13.06.1991 and 24.01.1992. The original defendant was a tenant at monthly rent of Rs. 60/- payable according to English Calendar Month. During pendency of the suit original

defendant died and the present respondents being his legal heir have been substituted. Plaintiffs' further case is that his family consists of himself his wife and their only issue i.e. their married daughter Smt. Mousumi Karmakar and son-in-law Prabir Karmakar. Plaintiffs further contention is that plaintiff and his wife are persons of advanced age and have been suffering from different physical ailments and having no son, their daughter and her husband are the only person who can look after them and as such they require to stay together with the plaintiff in the suit holding. It has also been contended that in the ground floor of the suit holding there are four separate other tenancies occupied by different tenants. In one part of the ground floor the said son in law of the plaintiff Prabir Karmakar runs a Xerox copying business. Plaintiffs' further contention is that after evicting all the tenants from the ground floor the plaintiff will resort to building and rebuilding of the entire structure and will render the ground floor of the said building as a residential unit for occupation of plaintiff's daughter and her husband and for which plaintiff has obtained a plan sanctioned by the Municipal Authority. Plaintiff's further case is that space meant for business of the plaintiff's son-in-law is inadequate and for which the suit premises reasonably required for his use and occupation. Plaintiff instituted five different suits against five tenants. Plaintiffs served notice of eviction upon the defendant/tenant/respondent herein under section 13(6) of the West Bengal Premises Tenancy Act, 1956 (Act of 1956) but defendant failed to quit and vacate the suit premises in terms of said notice, which compelled the plaintiff to file the instant suit.

3. Defendant contested the suit by filing written statement denying all material allegations made in the plaint. Defendant denied that plaintiff requires the suit premises for his own use and occupation or for the occupation of any person for whose benefit the premises is held. According to defendant, plaintiff is in possession of sufficient accommodation and his claim for eviction of the defendant on the ground of personal requirement is merely a pretext for evicting the tenant.

4. After conclusion of trial learned trial court decreed the suit on the ground of reasonable requirement with further observation that the notice to quit was lawful, valid and duly served upon the defendant.

5. Being aggrieved by that judgment and decree passed by the Trial court, the defendant preferred first appeal before learned District Judge Hooghly at Chinsurah. According to the first appellate Court, there is no denying in the position of law that the requirement for the married daughter being the only issue of an old and ailing landlord parents, is a requirement of a landlord himself and analogy can be notionally stressed further to include the requirement of the husband of the said married daughter as the requirement of the landlord but he considered two aspects of the said issue in controversy.

(i) whether the plaintiff and his wife are as a matter of fact so much ailing as they require the constant assistance and company of their married daughter

(ii) whether the accommodation available to the plaintiff is sufficient to fulfil his need.

6. While answering the first question the court below observed that plaintiff's wife suffered from pelvic endometriosis in 1975 which alleged to have relapsed in 1983 and it further appears that in or about 1993 her patela was operated upon and according to plaintiff's daughter her mother cannot move freely but the court below held that plaintiff is aged about 62 years and his wife is supposed to be younger to him and such age of person with the advancement of the medical science, now a days are not considered to be a very old age so much so that would require the assistance of their son or daughter or any other person to help them to pursue their ordinary avocation of life, unless it is shown with cogent material that their physical condition is in such a state that such help is an essential requirement for them to have a comfortable living.

7. While answering aforesaid issue no. (ii) as to the question of requirement the court below held that the first floor of the disputed building as depicted in the commissioner's report marked exhibit-12 indicates two separate vacant spaces, earmarked by the commissioner as space A and space B measuring 13ft.3inch x 11ft. 4 inch and space B is a simple rectangular shape measuring 14ft. 10inch x 11ft.2inch and that apart there is a corridor between the kitchen and room no. 2 measuring about 3ft. 4inch wide on the northern side of space B and to the southern side of space B there is another space with 4ft. 6inch wide.

8. The court below further observed that with increasing urbanisation, people are constrained to have their residential accommodation in a very small size providing a self-contained compact unit and going by the modern standard size of the flats and rooms, there in a room with 13ft. 3inch and

11ft. 4inch or 14ft. 10 inch x 11ft. 2inch are quite logical as being commensurate to the present day standard. Furthermore the space to the west of the stair case till the room no.1 is also something which may not be ignored. Accordingly the court below advised the plaintiff in the form of suggestion that the plaintiff can satisfy his need for further accommodation by resorting to a smaller construction by converting aforesaid space A and Space B into two rooms.

9. In view of the aforesaid discussions made in the judgment, that in the absence of sufficient evidence to prove the necessity of their married daughter living with them as absolute necessity and that to expand plaintiffs son-in-law's business, the backyard can be easily used with little work made thereon, the court below set aside the Trial courts judgment

10. Being aggrieved and dissatisfied with the said judgment passed by the court below, Mr. Gangully on behalf of the appellant made the following submissions along with others:-

(i) The observation of the learned lower appellate court is thoroughly perverse in holding that due to advancement of medical science, 62 years old plaintiff and his wife are not so old that they require the help of their married daughter

(ii) At present the appellant no.1 is aged about 80 years and ailing lady and as such she is required the help of her only married daughter to perform her day to day activity and such requirement constitutes reasonable requirement.

(iii) In the present context the report of the commissioner is an evidence on the fact that there is no sufficient accommodation to

accommodate the only married daughter of the appellant no.1 and her family members.

(iv) The age does not determine the physical condition of a person. The court below while swayed by the argument of opposite party herein observed that the plaintiffs do not require the help of their married daughter, failed to consider the unimpeachable evidences adduced by the plaintiff and the evidence of PW 1,2,3 who categorically corroborated each other and such corroboration are substantiated by medical papers, prescriptions as exhibited by the plaintiffs and neither during the cross examination of the said PWs nor from any other evidence, the defendants could shaken the evidence and as such learned appellate court completely misdirected himself and passed the judgment impugned on the basis of surmise and conjecture.

11. The Division Bench of this court while admitting the second Appeal vide order dated 12.06.2003, has been pleased to formulate the following substantial question of law:-

“Whether the reasoning that on account of advancement of medical science, 62 years is not old age is thoroughly perverse having regard to the facts and circumstances of the material on record when admittedly the couple was ailing and suffering from various disease, and thus the court of appeal below proceeded on the footing of a wrong concept in regard to the reasonable requirement as pleaded in the plaint.”

DECISION WITH REASON

12. The substantial question of law as framed by this court for disposal of the present second appeal, pertains to the observation of the court below that on account of advancement of medical science, 62 years is not old age and for which plaintiff's requirements for his daughter and his son-in-law to

look after them can not be said to be a reasonable requirement of plaintiff for his personal use and occupation, is sustainable in law or not.

13. The Trial Court while dealt with said issue scanned the evidence and found that the plaintiff has got no son and plaintiff and his wife are advanced in age and have been suffering from various ailments due to their old age and it is the desire of the plaintiff to put up his daughter and son-in-law in his family. Trial Court also referred evidence of P.W-5 who has stated that she visits everyday her parents at the suit holding and returns home at 11.00 p.m. Trial Court also noted from evidence of P.W-1,2, 3, 5 and D.W-1 that the space for business of plaintiff's son-in-law is insufficient for which suit premises is reasonably required for the use and occupation of plaintiff and his family. Trial Court in this context referred judgment reported in **(1988) 1 CLJ 278**, where on a similar context this Court observed, that plaintiffs married daughter is their only issue and the suit premises required for the accommodation of married daughter and their family, so that plaintiff may live with them and the plaintiff and his spouse may be properly look after and taken due care at their old age, such requirement in law is not a requirement of that daughter or her family but would amount to the requirement of the landlord for his own occupation within the meaning of Section 13(1)(ff) of the West Bengal Premises Tenancy act 1956. Putting the said case law in the fact and circumstances of the present case, Court below concluded that plaintiff's requirement for the occupation of their only issue who is a married daughter, is a reasonable requirement of the plaintiff and for which plaintiff is entitled to get decree.

14. While contradicting the aforesaid observation of the Trial Court who observed that the suit property is required by the plaintiff for his own use and also for use and occupation of his only married daughter, observation of the court below in support of setting aside judgment of Trial Court has already been quoted above in paragraph 5 to 9 of this Judgment.

15. Let me consider whether the above-quoted findings of the court below is sustainable in law or such finding is a perverse finding. The words “his own occupation” as used in Section 13 (1)(ff) of the Act of 1956 does not necessarily mean of the particular individual alone i.e. the plaintiff but it must have been interpreted to include the plaintiffs’ family and such person or persons who may be essential and necessary for the purpose of such occupation. In determining the question as to what constitutes plaintiffs family or whose service is essential and necessary for occupation of the suit premises, the court should consider such expression “his own occupation” in the context of social need prevailing in that community. When the evidence shows that the daughter of plaintiff comes to plaintiff’s house every day to look after her parents and compel to leave the house of the plaintiff every day at 11:00 p.m., such habits and idea of living with the aid and assistance of son and daughter at the old age, in the community to which the individual concerned belongs must also be taken care of and then ought to have come to a conclusion on the fact of circumstances of this particular case.

16. It is well settled that landlords reasonable requirement of suit premises for himself and family which includes married daughter and son in

law, the claim of suit premises accommodating such married daughter, includes plaintiff's reasonable requirement. Son-in-law of the plaintiff can be regarded as a member of the plaintiff's family because there is no scope to interpret the family in a narrow sense. A judge is expected to consider the question of reasonableness about plaintiff's requirements in the given facts proved by the materials on record. Court is to see only that the need to occupy the premises can be said to be natural, real, sincere and honest or not. In the present context the case of reasonable requirement as set out by the plaintiff that being an aged citizen they are required to be looked after and to take care by their only issue, who is a married daughter, can neither be said to be unnatural or dishonest intention. When the landlord and his wife are both aged and are suffering from old-age ailments, the requirement of the landlord for accommodating his married daughter in his family for looking after him and his wife must be held to be *bonafide* personal requirement of the plaintiff/landlord and in this context expression family has to be determined having regard to the habits, ideas and socio-economic milieu of the parties. Accordingly the concept of *bonafide* need or genuine requirement needs a practical approach instructed by the realities in life. If the landlord wishes to live with comfort along with only married daughter and her family in his own house, the law does not command or compel him to separate himself with such family members, so as to protect the tenants continuous occupation in a tenanted premises.

17. In several judgments passed by this court it has been observed that in a suit for ejectment on the ground of reasonable requirement, the landlord's requirement is to be tested from two angles:

(i) Why does he require the suit premises?

(ii) How much of it does he require?

18. I have already stated to the answer of the first question as to the quality or purpose of plaintiffs requirement which is *bonafide* and lawful and can be regarded to be a reasonable one under the law. Now as the purpose is found to be qualitatively reasonable, the finding as to the quantity or extent of his requirement would by and large a question of fact and not a question of law and does not come within the purview of section 100 of the code of Civil Procedure to answer as substantial question of law. The Trial Court after making through scrutiny of the evidence adduced by the parties with the support of oral and documentary evidence regarding assistance of plaintiff's married daughter to pursue their ordinary avocation of life, came to a definite conclusion that plaintiff's requirement is *bonafide* and not fanciful, which the court below contradicted, swayed by emotions illogical considerations, and misapprehension of fact and law. In fact the findings of the court below that the age of plaintiff cannot be considered to be such that he or his wife require the assistance of their daughter or any other persons to help them to pursue their ordinary avocation of life are based on no evidence and arbitrary and no reasonable man can arrive at such finding on the basis of materials in record.

19. The court below while setting aside the judgment and decree of eviction passed by the Trial Court suggested the plaintiff to convert space A and space B in terms of commissioner's report into two rooms in order to meet his requirement. It is well settled that landlord himself is the best judge of what his requirements are and neither the tenant nor the court may

endeavour to say the landlord how he should adjust himself. It is always the prerogative of landlord that if he requires the premises in question for his *bonafide* use for expansion of business there is no ground to say that his son in law already running a business and he could have expand the same by making new construction on any vacant space because landlord being the best judge of his requirement for residential or business purpose has got complete freedom on the matter.

20. In view of aforesaid discussion I have no other option but to conclude that the observation of the court below that in the present social context the age of plaintiff is not such that the well being of the plaintiff and his spouse are necessary to be looked after by their only married daughter and her family and for which suit premises can be said to be reasonably required for their accommodation as plaintiff's reasonable and *bonafide* requirement, is absolutely perverse and not sustainable in the eye of law and for which the judgment and decree passed by the court below is liable to be set aside.

21. In view of aforesaid discussion **SA 475 of 2003** is allowed. The impugned judgment and decree dated 31.01.2003 passed by learned District Judge, Hooghly in Title Appeal no 78 of 2002 is here by set aside and the judgment and decree passed by Learned Civil Judge, Junior Division, 1st Court, Hooghly in Title Suit no 217 of 1996, dated 31.01.2002 is hereby affirmed.

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.)