

Item No.- 67
28.11.2024
Rohan
Court No. 8

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**SA 89 OF 2024
With
CAN 1 OF 2024**

**Sambhu Kundu @ Shambhu Nath Kundu
@ Shambhu Nath Kuyndu
Versus
Ranjit Pan**

**Mr. Falguni Bandyopadhyay, Advocate
Mr. Asim Hati, Advocate
Ms. Nandini Sharma, Advocate
Mr. Ankriksha Karmakar**

... for the Appellant

1. Both the Courts have concurrently held that the notice under Section 106 of the Transfer of Property Act, 1882 is duly served and cannot be said to be invalid and/or infirmed.
2. Admittedly, the area in which the suit premises is situated does not come within the operation of the West Bengal Premises Tenancy Act, 1997 and, therefore, the protection provided under the aforesaid Act is not available to the appellant.
3. The suit for recovery of possession as a landlord/lessee is filed against the present appellant upon service of notice under Section 106 of the Transfer of Property Act, 1882. The appellant took a defense that after coming in force of the West Bengal Estate Acquisition Act, 1953, the suit premises vested with the State of West Bengal and, therefore, the plaintiff/respondent has lost his right title and interest in respect of the suit premises.
4. Both the Courts found that the appellant himself, during his cross-examination, admitted the

relationship with landlord and tenant/lessor and lessee and continued to pay rent in respect of shop room to them. The tenant who appears to have been inducted by the landlord or his predecessor is estopped from challenging the title of the landlord at the time of such induction in view of Section 116 of the Evidence Act, 1872. A further point is sought to be taken that the landlord has failed to establish his title in respect of a suit premises. It is not necessary for the landlord to prove the title the moment the landlord inducted the tenant and continued to receive the rent from him. Apart from the same, we find that the partition deed was marked Exhibit-4(series) which according to the appellant has not been properly proved.

5. It is a trite law that a litigant must raise an objection when the document is sought to be received in evidence upon being tendered by the witness and having not done so, it is too late in a day to raise an objection that the said document has not been properly proved in accordance with law of evidence. A distinction is to be drawn between a document inherently admissible in evidence and a document admissible in evidence but the mode and the proof required under the law was not resorted to. In the later case, it is not open to the adversary to raise an objection at the later stage of the proceeding or before the higher forum that such document should not be looked into having not proved in accordance with the law of evidence.
6. Be that as it may, the relationship is established and the payment of the rent is also proved before the Court. The appellant himself has admitted the relationship of a landlord and tenant/lessor or lessee upon payment of the rent and, therefore, the

contention of the appellant that the landlord lost title cannot be accepted.

7. We, thus, do not find any substantial question of law involved in the instant appeal.
8. The appeal being **SA 89 of 2024** is thus dismissed.
9. Connected application, if any, is also disposed of.
10. No order as to costs.
11. Urgent certified Photostat copy of this order, if applied for, be supplied to the parties after complying with all necessary formalities.

(HARISH TANDON, J)

(PRASENJIT BISWAS, J)