

21.05.2024
Sl. No.21(DL)
srm

C.O. No. 1484 of 2024
Pankaj Kumar Samanta
Versus
Raj Kumar Jana

Mr. Jayak Gupta,
Mr. Biswa Brata Basu Mullick,
Mrs. Tapati Sinha Palit,
Mr. Suma Chattopadhyay
...for the Petitioner.

Mr. Megajit Mukherjee
...for the Opposite Party.

1. Affidavit-of-service is taken on record.
2. The revisional application arises out of an order dated March 15, 2024 passed by the learned Judge-in-Charge, 3rd Court, Presidency Small Causes Court at Calcutta, in Ejectment Execution Case No..156 of 2013. Misc. Case No.64 of 2022 is an application under Section 47 of the Code of Civil Procedure. The same was rejected. The execution proceeding arose out of an eviction decree passed in Ejectment Suit No.12 of 2007.

3. The judgment-debtor challenged the executability of the decree on the ground that the suit property was a trust property and the plaintiff/predecessor-in-interest of the opposite party did not have any right to sue the tenant for eviction and recovery of possession, being a trustee and not the owner of the property in question.
4. The learned court was of the view that the trial Judge and the first appellate court had both held that the evidence did not support that the suit property was a trust property and that the plaintiff had filed the suit in the capacity of a trustee. The eviction decree was upheld even by the High Court, in the second appeal. The title of the plaintiff/landlord could not be reopened by the court. The executing court was bound by the decree and could not go beyond the decree.
5. Mr. Basu Mullick, learned Advocate appearing on behalf of the tenant/judgment-debtor submits that the trust deed was suppressed by the plaintiff. The suit property was a trust property. The son of the plaintiff, the opposite party was substituted in the execution proceeding. For the first time he disclosed that the property was a trust property and the plaintiff was a trustee. Accordingly, the learned court should have allowed the misc. case, *inter alia*,

holding that the decree was a nullity. Relevant paragraphs of the application for substitution have placed before this Court, in great details.

6. Mr. Meghajit Mukherjee, learned Advocate appearing on behalf of the decree-holder submits that the issue of maintainability of the suit had been decided in favour of the plaintiff by the learned trial Judge and also by the learned appellate court. The second appeal was also dismissed upon affirming the judgments and decrees passed by the learned courts and the High Court had held that the ground of reasonable requirement had been adequately proved. The concurrent findings of the courts below were not interfered with in the second appeal.
7. Heard learned Advocates for the respective parties.
8. Admittedly, this is a suit for eviction under the West Bengal Premises Tenancy Act, 1997. The tenant cannot question the title of the landlord in such a suit. Secondly, the learned trial Judge had categorically held that the plaintiff had not filed the suit on behalf of any trust. The plaint did not disclose that the property was a trust property. Rather, the plaintiff had filed the suit in the capacity of the owner.

9. The plaintiff acquired ownership of the property by a registered deed of sale dated August 12, 1907, Exhibit 2.

In the recitals of Exhibit 2, there was no whisper about existence of any trust in respect of the property in question. Such issue of maintainability of the suit at the instance of the plaintiff was decided in her favour. The learned first appellate court recorded that the contentions of the defendant/appellant that the suit property was a trust property and the plaintiff could not have filed the same in her personal capacity, was not acceptable as the factual aspect was different. The documentary evidence *vide* Exhibit 2 being the registered deed of sale dated August 12, 1907 indicating that the plaintiff had become the owner of the suit property by dint of the sale deed, was relied upon. There was no material on record which would indicate that the suit property was a trust property. Thus, the learned appellate court held that there was nothing on record to show that the plaintiff was not the owner of the property and could not file the suit.

10. The second appeal came up for admission under XLI Rule 11 of the Code of Civil Procedure and the Hon'ble Division Bench of this Court held that the plaintiff's

family reasonably required at least one room for exclusive use as a bed room. Considering the size of the plaintiff's family, reasonable requirement was proved. Thus, the question which has been now raised by Mr. Basu Mullick on the basis of an averment in the substitution application is not open for re-adjudication. The plaintiff acquired right, title and interest on the basis of the Exhibit 2. There were concurrent findings with regard to her ownership in respect of the property *vide* Exhibit 2. The defendant had failed to prove that the suit property was a trust property.

11. Under such circumstances, the revisional application fails. The learned executing court could not go beyond the decree and reopen the question of the property being a trust property. Moreover, in a suit for eviction of a tenant under the West Bengal Premises Tenancy Act, the tenant could not have questioned the title of the landlord.
12. The revisional application is accordingly dismissed.
13. There shall be no order as to costs.
14. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)