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

SAT 89 of 2023

Dipankar Chandra Saha
Vs.
Dulal Chandra Ghosh & Ors.

**Mr. Bratin Kumar Dey Advocate
Mr. Joydeep Das, Advocate**

.....for the Appellant

1. Although the instant Second Appeal is filed against the judgment of reversal, yet we invited the learned Counsel for the appellant to make submissions on the legality and/or irregularity of the judgment passed by the First Appellate Court.
2. We hasten to add, as we perceived in course of dispensation of justice that a notion has percolated in the Members of the Bar that the moment the judgment and decree of the Trial Court is reversed by the First Appellate Court, it is a fit case where the High Court should admit the Second Appeal filed under Section 100 of the Code of Civil Procedure.
3. The language employed in Section 100 of the Code does not percolate such sense; even in case of reversal of a judgment, it is imperative on the part of the High Court to find out whether the case involves substantial question of law. We thus do not find any fetter on the part of the High Court in declining to admit the appeal filed against the judgment of reversal if it does not involve substantial question of law.
4. The genesis of litigation can be traced out when the respondent face disruption in supply of essential services and/or amenities attached to the alleged tenancy and approached the Court for declaration of

tenancy right and consequential relief in the form of permanent/mandatory injunction. It is a specific case of the respondent that he is a tenant in respect of a suit premises under the appellants at a rent as disclosed therein and also claimed to have paid rent but alleged that the rent receipts were never granted by the appellants.

5. The appellants took the stand that the respondent was under permissive occupation at the behest of the appellant no. 1 as he was known to him, with the condition that as and when he is requested to deliver the possession, he would comply such requisition. Such being the sum and substance of the respective stands taken in the pleadings, the parties went into trial and adduced evidence.
6. The respondent's first witness disclosed several rent receipts purportedly issued by one Sudhanshu Sekahar Saha and Sushil Chandra Saha for the year 1983-84 and 1984-85 which were marked as Exhibit-1 and 2 series without any objection. The said witness also produced the trade license issued by the concerned Municipality, which was also marked as Exhibit-3 series. The aforesaid documents were produced in order to show that initially he was inducted as a tenant in respect of a larger premises and the rents were collected by the then co-owners and after the partition is effected amongst the co-owners, the rent was collected not only by one Sudhanshu Sekhar Saha but the father of the present appellant as well and, therefore, the story of creating a permissive occupation is concocted for the purpose of defeating the claim of the petitioner.
7. The First Appellate Court, relying on those rent

receipts held that the tenancy of the respondents in respect of the suit premises having established, the Trial Court has committed serious error in dismissing the suit.

8. Learned Counsel for the appellant takes a plea that the evidence which is beyond the pleading cannot be looked into by the Court and, therefore, the findings made by the First Appellate Court is perverse and placed reliance upon judgment of the Apex Court in ***Bondar Singh & Ors. Vs. Nihal Singh & Ors.***, reported in ***(2003) 4 SCC 161***. It is thus submitted that the moment the respondent categorically asserted in the plaint that he is a tenant under the appellants, he is precluded from adducing any evidence that his tenancy was created by the father of the present appellant and to that effect the evidence adduced by the respondent should not be looked into.
9. Before we proceed to consider the aforesaid point, urged before us, it would be proper and profitable to consider the ratio of the decisions rendered in ***Bondar Singh & Ors. (supra)***. In the said case the plaintiff claimed title by way of adverse possession. Initially, the land was owned by one Fakir Chand who was the predecessor-in-interest of the defendants therein and subsequently the said owner sold the same to one Tola Singh, the predecessor-in-interest of the plaintiffs by an unstamped and unregistered sale deed dated 09.05.1931. Pursuant to the said purported deed of sale, the plaintiffs claimed to have taken possession and remained therein uninterruptedly, continuously and in hostility.
10. However, the defendant therein denied the

possession of the plaintiff and being such an issue, an argument was sought to be advanced at the behest of the defendant therein that the plaintiffs came into possession for a brief period as 'shikmi' i.e. sub-tenant when such plea was never raised in the written-statement. In such perspective, it was held:

"As regards the plea of sub-tenancy (shikmi) argued on behalf of the defendants by their learned counsel, first we may note that this plea was never taken in the written-statement the way it has been put forth now. The written-statement is totally vague and lacking in material particulars on this aspect. There is nothing to support this plea except some alleged revenue entries. It is settled law that in the absence of a plea no amount of evidence left in relation thereto can be looked into. Therefore, in the absence of a clear plea regarding sub-tenancy (shikmi), the defendants cannot be allowed to build up a case of sub-tenancy (shikmi). Had the defendants taken such a plea it would have found place as an issue in the suit. We have perused the issues framed in the suit. There is no issue on the point."

11. It is no longer *res integra* that the pleading must contain the relevant facts and does not require the evidence or the law to be pleaded. It is a material fact which if proved would lead to a conclusion in favour of either party and it admits no ambiguity that anything which is *de hors* such pleading, if raised, the Court is not supposed to look into the same. The case which appears to be unconnected and/or unrelated with the defence taken by either of the parties, the Court cannot permit a party to adduce evidence thereupon as the foundation thereof is lacking.
12. Precisely such principles of law has been laid down in the above-quoted decision where, in order to defeat a case of an adverse possession, a plea of a sub-tenancy for a brief period was sought to be urged without any foundation in the pleading. The ratio is to be culled out on the basis of the facts

involved therein and should not be applied in an abstract manner. A little difference or an additional fact may invite a completely different judgment and, therefore, the Court while applying the ratio should see the parity of facts.

13. In the case in hand, it is a specific case of the respondent that he is a tenant under the appellant. It is also undisputed that the appellants traced their title by way of inheritance on the death of their father namely Sushil Chandra Saha. The respondent tried to establish that he was inducted by Sushil Chandra Saha in respect of the suit premises and since the tenancy is a heritable estate, it devolves upon the heirs of the owners and such tenant becomes a tenant under them. It is misnomer that the tenancy would come to an end on the death of the landlord as the successors who derived title from such deceased shall not be bound by the act and action of the deceased. The law does not recognize such notions or principles. The successors by way of an inheritance are bound by the acts and actions of his predecessor as they derived title through him and cannot take an independent stand, which either contradict the stand of the predecessor or evaporates the action taken by him in a capacity of owner.
14. We do not find that there is any substance in the stand of the Counsel for the appellant that the moment the respondent admits the relationship of landlord and tenant between him and the appellant he is precluded from leading any evidence that his induction was at a relevant point of time, when the father of the appellant was the owner.
15. There is a fundamental distinction between an

admission relating to a relationship of landlord and tenant and the induction as a tenant in respect of a suit premises. Even if the admission is made that there is existence of a relationship of landlord and tenant between the parties to the proceeding, the evidence that how such relationship is established is inbuilt and inhered into such pleading and cannot be construed as something which is beyond the pleading and, therefore, the evidence in this regard is to be discarded.

16. We thus do not find any involvement of substantial question of law in the instant appeal.
17. The appeal being **SAT 89 of 2023** is **dismissed** as a consequence whereof the applications filed hereunder is also dismissed.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)