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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

SA 64 OF 2024
with
CAN 1 OF 2024

SK. PIAR ALAM @ BAKUL @ PYARE ALAM
Vs.
MD. ANOWAR

Mr. Prantik Ghosh, Advocate

.....for the Appellant

Mr. Gopal Chandra Ghosh, Advocate

.....for the Respondent

1. The suit for recovery of possession against the appellant on the revocation of license was decreed by the Trial Court and such decree is affirmed by the First Appellate Court.
2. According to the plaintiff/respondent, one Meherjan Bibi, was the owner of 6 cottahs of land comprised in Sabek Dag No. 398, Hal Dag No. 433 and Sabek Dag No. 399 and Hal Dag No. 420 along with the structure. The said admitted owner sold, transferred and conveyed the aforesaid property on the basis of a Deed No. 3359 dated 14.12.2004 for a valuable consideration mentioned therein.
3. It is further averred in the plaint that the suit property comprised of two residential rooms where the appellant being the son of the said admitted owner, used to reside.
4. After the execution and registration of a deed of sale, the admitted owner along with the plaintiff respondent was approached so that the appellant

may remain in possession of the suit property as permissive occupant for a limited period of 6 months and an undertaking in writing was also given in presence of the witnesses.

5. Subsequently, the appellant refused to vacate the subject property which constrained the plaintiff respondent to institute a suit for recovery of possession.
6. On the other hand, the appellant took a plea that though the property stood in the name of the mother but he infact, contributed a considerable amount for construction of a structure therein, and therefore, he has acquired an unequivocal right in respect of the suit property. It is further averred that the deed of sale in question is a collusive one as the considerations mentioned therein is abysmally low and not in commensurate with the market price prevalent at the relevant point of time.
7. On the basis of the aforesaid pleadings of the parties, the suit was decided after full-fledged trial and the Trial Court did not find any material and/or evidence, which would justify the stand of the defendant/appellant. The Trial Court, thus, decreed the suit which was further assailed before the First Appellate Court. The First Appellate Court affirmed the decree and the same is further challenged in the instant appeal.
8. The counsel for the appellant submits that the mother, who was the recorded owner of the plot of land, did not have the sufficient resources to make

any construction thereat and being a son, he contributed a considerable amount for such construction. It is thus, averred that since he contributed the money for construction of her house, he has got an indefeasible right to occupation and the stand of the plaintiff respondent that he is the licensee is concocted and set up to evict the appellant from thereat.

9. We do not find any substance in the aforesaid submissions advanced before us, nor do we find that it involves a substantial question of law. The gamut of the defense is sheltered under the contribution made for construction of a structure over the plot of land, admittedly belonged to the admitted owner. What the appellant tried to project before this Court is that the mother was merely a namelender, actually, the appellant being the owner in respect of the property having contributed the money, he has acquired the status of a title-holder and not as a licensee. The suit was admittedly instituted in the year 2005 after the acquisition of right, title and interest in respect of a property by the plaintiff/respondent.
10. After the promulgation of the Benami Transactions (Prohibition) Act, 1988, the plea of *benami*, either as a point of attack or a defense has been taken away and the Court shall not permit such defense to be tenable in law. The moment the bar is created in the statute, it is not open to the parties to take such plea and therefore, we do not find that both the Courts below have committed any error in

rejecting such contentions.

11. A person who is found in permissive possession without any title behind it is regarded as the licensee, and therefore, the institution of suit itself tantamount to revocation of license. The moment the plaintiff has proved his title on the basis of a valid document and the defendant could not prove the same, there is no impediment in passing a decree against the defendant which, in fact, has been done by the Trial Court and such decree is affirmed by the Appellate Court.
12. In view of the findings made hereinabove, we do not find any substantial question of law having involved in the the instant appeal.
13. The appeal being **SA 64 of 2024** is **dismissed** under Order LXI Rule 11 of the Civil Procedure Code. The connected application being **CAN 1 of 2024** also stands **dismissed**.

(HARISH TANDON, J)

(PRASENJIT BISWAS, J)