

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

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

C.O. 1701 of 2021

Shree Shree Iswar Satyanarayanji & Ors.

Vs

**Sarad Kumar Burman, since deceased, rep. by sharada Burman &
Ors.**

For the petitioners : Mr. Sakya Sen, Sr. Adv.
Mr. Animesh Paul
Ms. Haandika Rajdeev

For the opposite parties : Mr. Haradhan Banerjee
Mr. Ayan Kumar Baral
Ms. Saswati Sengupta

Heard on : 17.01.2024

Judgment on : 14.03.2024

Ajoy Kumar Mukherjee, J.

1. Predecessor-in-interest of the plaintiffs Satya Narayan Bagla had granted a lease of 30 years w.e.f 1st April, 1966 in favour of predecessor-in-interest of the defendants by three indentures at a fixed rent per month. Said registered lease deeds embodied renewal clause for a further period of 21 years. Plaintiffs further case is since no request for renewal of the said lease deeds were received from the defendant, they served notice to quit upon the defendants to vacate the suit premises upon expiry of lease deeds. The defendant since failed to vacate the suit premises inspite of receipt of notice to quit upon expiry of the said lease deeds with efflux of

time on 31st March, 1996, the plaintiff filed T.S. No. 152 of 2000 for recovery of khas possession and mesne profit, which is now pending before learned Civil Judge (Senior Division), Howrah.

2. The defendant filed written statement in the suit, wherein they have admitted about the execution of lease deeds but the defendants by filing a counter claim prayed for a declaration that the plaintiffs or lessors are legally bound to renew the lease dated 29th April, 1967 in favour of the defendants/ lessee for another term of 21 years.

3. During pendency of the aforesaid suit the plaintiffs preferred an application under order XII rule 6 of the Code of Civil Procedure contending that the only defence raised by the defendants in their written statement is with regard to their entitlement to be granted a renewal of lease deed for a further period of 21 years upon expiry of the original tenure i.e. march 1996. Based on the contentions urged in the written statement, it would appear that the defendants have unequivocally admitted that even if the declaration sought for in the counter claim is allowed, admittedly their right to occupy the suit property under the renewal clause, would at the most, extended to the further term of 21 years from the date of expiry of the original tenure and they would cease to have any right to stay in the suit property after March, 2017 and as such plaintiff have prayed for part decree on such admission with regard to the prayer for recovery of possession only, made in terms of prayer 16(a) of the plaint. Learned court below after considering the submissions made by the parties has been pleased to reject plaintiffs aforesaid prayer for passing part decree by the order impugned.

4. Being aggrieved by that order Mr. Sakya Sen learned counsel appearing on behalf of the petitioner submits that Defendant in paragraph 10 of the written statement has admitted that Mr. Bagla leased out the suit premises in favour of defendants' predecessor for a period of 30 years w.e.f. 1st April, 1986 at an aggregate rate of Rs. 3000/- per month towards lease rent. Thereafter another lease deed was executed by Mr. Bagla in respect of the suit property dated 29th April, 1967 for a period of 30 years at a monthly rental of Rs. 500/- per month according to English calendar month and thereafter Rs. 1000/- per month from 1.12.1970 till the month of March 1997 for a further option of renewal for a period of 21 years as admitted in paragraph 21 of the written statement.

5. Accordingly Mr. Sen submits that the defence of the defendant/opposite party herein that they have exercised the option of renewal in terms of the renewal clause contained in the lease deed and accordingly he has made prayer for declaration in the counter claim and accordingly effect of the counter claim, even if, assumed to have granted, would confer a right on the defendants to occupy the suit property till march, 2017 when the period of 21 years had expired. In view of above defendants' defence read with counter claim would necessarily imply that the defendants would have no right to occupy the suit property beyond March 2017. In fact the statement made in the written statement and the counter claim constitutes unqualified and unambiguous admission, which is restricted to the time period within which the defendants can claim a right to be entitled to occupy the property, is sufficient for the purpose of passing a decree in the suit, only in respect of the prayer for delivery of possession to

the plaintiffs. However, the plaint would survive for adjudication of the other issues raised by the plaintiffs regarding mesne profit and the other issues raised by the defendant .

6. Mr. Sen further argued that the issue as raised by plaintiff in paragraph 16(a) of the plaint has now become academic, in view of the fact that the defendants have completed their possession in the suit property for the full period of the additional term of 21 years. Though in the written objection filed against plaintiffs' aforesaid prayer for part decree, defendants attempted to make out a third case that the property in question is Thika Property but it has got no relevance in the present context, since no such defence has been made by the defendant in their pleading. He further submits that while adjudicating an application under order XII rule 6, the Court is only required to see that the contents of plaint and the written statement and the documents set forth in the pleadings. Any fact which has not been pleaded in the written statement, cannot be looked into by the court while deciding said application. He further submits that defendant had made an attempt to incorporate in the written statement the plea of Thika Tenancy by way of amendment and the Trial Court though initially allowed such prayer for amendment, but it was turned down by the High Court which was affirmed upto the Hon'ble Supreme Court. Moreover the counter claim made by the defendant in the suit is directly contrary to the plea of Thika Tenancy and the defendants are estopped from disputing the title of the owner/land lord under the principle of section 116 of the Evidence Act.

7. However, learned court below relying upon certain documents shown by a third party whose application of impleadment was rejected, has passed the order impugned which is not sustainable. Court below ought to have kept in mind, the well settled principle of law that a “Debattar Property” dedicated to Shri Shri Iswar Satyanarayanji cannot be a Thika Property and unfortunately the Trial Court even proceeded to hold that the suit itself is not maintainable, which is beyond the jurisdiction conferred under order XII rule 6 of the Code. In this context and in support of aforesaid submissions petitioners relied upon following judgments:

- (i) **Charanjit Lal Mehra Vs. Smt. Kamal Saroj Mahajan** reported in **(2005) 11 SCC 279**.
- (ii) **Karam Kapahi and others Vs. Lal Chand Public Charitable Trust and another** reported in **(2010) 4 SCC 753**.
- (iii) **Payal Vision Limited Vs. Radhika Choudhary** reported in **(2012) 11 SCC 405**.
- (iv) **Raveesh Chand Jain Vs. Raj Ram Jain** reported in **(2015) 8 SCC 428**.
- (v) **Sharex Acting Through Vinod Kumar Chadha Vs. Sudeshan Suri** reported in **(2010) SCC Online Del 2233**.
- (vi) **Kaiser Begum Vs. E.D. Enterprises Pvt. Ltd. and another** reported in **2023 SCC Online Cal 766**.

8. Mr. Haradhan Banerjee learned counsel appearing on behalf of the opposite parties submits that in their written statement they have specifically averred as regards their intention of obtaining renewal of lease within 30th September 1995, in writing, in terms of the indenture of lease

dated 28th April, 1967. In the said written statement defendant also stated that the plaintiffs are not entitled to get any decree of eviction or mesne profit against the defendant. They have also stated that the lessor inspite of receipt of said request for renewal did not renew the said lease in favour of the lessee. Accordingly the defendants are entitled to have their lease renewed for a further period of 21 years in terms of clause 2 of the original lease deed. In the counter claim defendants have specifically prayed for declaration about their right of renewal of the original lease deed with a further declaration that the plaintiffs/lessors is legally bound to renew the lease in favour of defendants for further period of 21 years along with a declaration that plaintiffs have no right to evict the defendant/lessee from the suit property without making payment of compensation of the structure, godown and building constructed by the defendant/lessess on the said property, in case the lease is not renewed and also for passing permanent injunction to that effect.

9. Mr. Banerjee accordingly argued that from the pleading of the defendant it is clear that the question as to the exercise of right of renewal by the defendants is a disputed issue and when plaintiff has disputed that they have not received any notice in writing exercising right of renewal from the defendant, such issue is required to be adjudicated by trial.

10. Referring judgment reported in ***Uttam Singh Duggal & Co. Ltd. Vs. United Bank of India & others*** reported in (2000) 7 SCC 120, Mr. Banerjee contended that in case of considering prayer made under order XII rule 6, there must be a clear and unambiguous admission of facts. He further argued that in the written statement, the defendants have stated

that plaintiffs are not entitled to get any decree of eviction or mean profit against the defendants. Now the defendant's contention is that they are Thika tenant by fiction of law, in the event, the interpretation of lease deed is made in its proper perspective. His further contention is in view of changed law in 1993 under the Amendment act, the defendant claimed to be a Thika tenant in the property in view of the admitted fact on record that the lease was in respect of a vacant land and one of the condition of lease was to raise structure on it. The initial lease was upto 31st March, 1996, whereas section 6 of the Calcutta Thika Tenancy Acquisition and Regulation (Amendment Act) 1993 came into force on and from 18.01.1982. In terms of definition of 'thika tenancy' under 1949 Act if the lease is for more than 12 years, such lease does not come within the purview of thika tenancy. But under 1981 Act the definition of thika tenant has been changed and under section 3 (8) of the Act of 1981, the defendant became the post vesting thika tenant and the interest of the landlord has been vested by a statutory fiction. Accordingly plaintiffs application under order XII rule 6 is not maintainable.

11. Mr. Banerjee alternatively argued that even on an interpretation the defendants are held to be not thika tenants, even then the defendants are entitled to get a declaration of having renewal of lease for a period of twenty one years with effect from the date of decree and the court cannot presume about period occupied during the pendency of the suit, as deemed renewal in view of the judgment passed in **State of U.P. Vs. Lalji Tandon** reported in **(2004) 7 SCC 1**.

12. Accordingly the argument of the plaintiffs/revisionist seeking decree of eviction on alleged admission is neither unambiguous nor clear admission. As to the exercise of renewal of lease and to the entitlement of counter claim decree are disputed issues. In the present context interpretation of the lease deed also required to be made to adjudicate as to whether the defendants are thika tenants or not for the purpose of passing a decree and as such without trial, court cannot pass any part-decree under order XII rule 6.

13. Mr. Banerjee further argued that the alleged admission made in the pleading are subject to payment of compensation or damages for the structure raised by the defendants and as such it is a conditional one and no court can pass a decree in such case under the said provision. In fact the court below has raised question about the maintainability of the suit and unless the question of maintainability of the suit is decided, the question of passing any decree under Order XII rule 6 does not arise. Hence the trial court, has rightly rejected the plaintiffs prayer on elaborate reasons which is not a faulted one and does not require interference by this court invoking jurisdiction under Article 227 of the Code.

14. In this context the opposite party relied upon the following judgments.

- (i)** (2005) 11 SCC 279 (Charanjit Lal Mehra Vs. Smt. Kamal Saroj Mahajan) Para -8.
- (ii)** 2010 4 SCC 753 (karan Kapahi and others Vs. Lal Chand Public Charitable Trust and another) para -37 to 62.
- (iii)** 2012 11 SCC 405 (Payal Vision Limited Vs. Radhika Choudhary) Para -7 and 8.

- (iv) 2015 8 SCC 428 (Raveesh Chand Jain Vs. Raj Ram Jain) para - 8,9 and 13 to17.
- (v) 2010 SCC Online Del 2233 (Sharex Acting Though Vinod Kumar Chadha Vs. Sudeshan Suri) Para-15 and 20.
- (vi) 2023 SCC Online Cal 766 (Kaiser Begum Vs. E.D. Enterprises Pvt. Ltd. and Another) Para-14 to 19.

15. I have considered submissions made by both the parties.

16. In the context of aforesaid dispute let me reproduce first the relevant portion of averments made by the defendants in the counterclaim and also the prayer made in the counter claim. Paragraph 23 of the written statement cum counter claim runs as follows:-

“the defendants make a counter claim in the suit on the following facts and cause of action. That the defendants are a lessees in the suit property by virtue of the lease deed dated 29/4/1967 with a right of renewal of the said lease which expired on 31st March, 1996 and the defendants by their letter dated 29/9/1995 addressed to the lessor exercised their right of renewal. The said letter was sent under certificate of posting which was received by the lessor and lessor in spite of the receipt of the said letter did not renew of the said issue in favour of the lessees/defendants. The defendants further state that the defendants entitled to have the lease renewed for a further term of 21 years in terms of clause 2 at page 15 of the original lease deed dated 29/4/1967. The defendants further state that if the lease is not renewed by the lessor, the lessor can not take possession of the lease hold properties from the lessees/defendant’s without making payment of the compensation of the structures, godown, building and construction made by the lessees on the lease hold properties after making proper valuation of the same and hence the defendants file this counter claim against the plaintiff praying for a declaration and injunction”.

17. In the said counter claim defendant/opposite party has made the following prayers in paragraph 25.

- (i) “For a Decree of declaration that he defendants have exercised their right of renewal of the original lease dated 29th April, 1962.

- (ii)** For a further Decree of Declaration that the plaintiff/lessor are legally bound to renew the lease dated 29/4/1967 in favour of the defendants/lessees for another term of 21 years.
- (iii)** For a further Decree of Declaration that the plaintiff/lessor have no right to evict the defendant/lessees from the suit property without making payment of compensation of the structure, godown, and building constructed by the defendants/leasees on the suit property in case the lease is not renewed.
- (iv)** For a Decree of permanent injunction restraining the plaintiff/lessor from evicting the defendants lessees for the suit property without making payment of the compensation to the defendants for the godown, building and structures constructed by the predecessor of the defendants/lessee on the suit properties.
- (v)** For Cost.
- (vi)** For any other relief or reliefs for which the defendants are entitled to get in law and equity.”

18. In view of aforesaid averments made in the written statement and in the counter claim, Mr. Sen, argued that the defendant has not denied the ownership of the respondents in respect of the suit property and it has also been unequivocally admitted by the defendant that the plaintiff is the lessor of the suit property. The execution of the lease deed is also admitted and the rate of rent payable per month is also specifically admitted by the defendant

along with the other terms of the lease deed and all the aforesaid ingredients constitute admission within the meaning of order XII rule 6 of the Code.

19. However, learned court below in his impugned order heavily relied upon the question raised by one Jogesh Gupta, who in his application under order I rule 10(2) raised certain question contending that the entry in record of rights and some other documents issued by the authority, shows that the property in question is thika land and the defendants are thika tenant in the suit property. In this context after a prolonged discussion on some extraneous issues the court below came to follow findings:-

“From these documents prima facie it appears that the defendants are thika tenants in respect of the suit property. These are public documents which can be presumed to have been correctly recorded. The plaintiffs have not filed any documents to show that they have challenged such recordings and findings by concerned departments of the State administration. Court cannot close its eyes to these documents to give speedy judgment to the plaintiff and close the doors of justice on the face of the defendants. Plaintiffs ought to have the opportunity to rebut the presumption of these documents. These questions would come down to a nullity if the application under Order 12 Rule 6 of CPC is allowed. It is certainly against the principles of equity and justice.

On a complete analysis of the materials on record and pleadings of both parties, I do not think the plaintiffs are entitled for a judgment on admission under Order 12 Rule 6 of CPC. Rather the suit is apparently barred by law. The court would have to traverse the issue of whether the defendants are thika tenants in respect of the suit property or not and whether the suit property is thika property or not which jurisdiction lies with the Thika Controller in view of Section 5 of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001. So a preliminary issue on maintainability of the suit is required to be framed inviting both parties to make a hearing on the same.”

20. It is submitted that the prayer for adding him party under Order 1 rule 10(2) of the Code, made by one Jogesh Gupta, in the said suit had already been turned down by this High Court in a separate Proceeding. It has been further pointed out that defendants in their written statement nowhere pleaded that the property in question is thika land or they are the thika tenants in respect of the suit property. Accordingly what has not been

pleaded by the defendants in their pleading cannot be the basis of consideration while adjudicating plaintiffs aforesaid application under Order XII Rule 6 of the Code. It has further been pointed out that defendant/opposite party herein made an attempt to amend the written statement to incorporate such statement that if the lease deeds are interpreted in a meaningful manner as per law it will appear that the lessee was/is a thika tenant in respect of the suit property and as such they are owners in respect of structure and building in question and the lessees' thika tenancy on the property in question in the deeds has been created by a statutory fiction under Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981, when by virtue of the amendment in 1993 the definition of thika tenant as to the period of lease was deleted with retrospective effect from 1982 and thus by fiction of statute they have become a post vesting thika tenant by the said amendment act in view of the fact that the lease expire on 30th March, 1996.

21. Said prayer for amendments was initially allowed by the Trial Court but challenging the same, the petitioners herein preferred application before this High Court being C.O. 3226 of 2017 and this court vide order dated 06.04.2018 allowed said application with the observation that the Trial Judge has erred in law and in fact by allowing the amendment pertaining to legal plea on Thika Tenancy (Amendment) Act 1993 and the order impugned suffers for merit and accordingly interfered.

22. Against that order the opposite party herein preferred Special Leave Petition before the Hon'ble Apex Court who dismissed the Special Leave

Petition by an order dated 10.08.2018, being Special Leave to appeal (c) No. 18823/ 2018.

23. In such view of the matter, it is quite clear that the court below while disposed of petitioners aforesaid application under order XII Rule 6 has based his decision on some extraneous considerations which are beyond the pleading. While considering an application under order XII Rule 6, the admissions made in the pleading if any, by the parties are primarily germane. Accordingly the order impugned is not sustainable in the eye of law for want of propriety.

24. In such view of the matter the order impugned dated 24.02.2001 so far it relates to dismissal of petitioner's application under order XII Rule 6, is hereby set aside. Learned court below is directed to hear the petitioners' application under Order XII Rule 6 CPC afresh after giving opportunity to both the parties to contest and he will dispose of such application by a reasoned decision at the earliest.

25. C.O. 1701 of 2021 accordingly disposed of.

26. 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.)