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Ct. No. 04

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S.A. 91 of 2022

CAN 1 of 2022

Badal Koley

Vs.

Sri Satyajit Chakraborty.

Mr. Anil Kumar Chattopadhyay.

...for the appellant.

A suit for recovery of possession on the ground of expiration of the period provided in the notice under Section 106 of the Transfer of Property Act, is filed by the plaintiff/respondent.

Both the Courts have held that the plaintiff is entitled to get a decree for recovery of possession and the defence taken by the defendant/appellant is unsustainable in law.

Admittedly the subject suit room is situated in an area where the provisions relating to West Bengal Premises Tenancy Act, 1997 is not extended. The plaint would reveal that the defendant/appellant is a tenant in respect of a shop room at a monthly rent of Rs.50/-, which, in fact, has not been paid despite the earlier notice for determination of the tenancy having been waived upon payment of the rent. It is averred that the defendant/appellant is a habitual defaulter and did not pay the rent, which constrained the plaintiff/respondent to file a suit for recovery of possession on determining the tenancy.

The defendant/appellant took a plea that the plaintiff/respondent is not an absolute owner but a co-sharer and in absence of other co-sharers the suit at

his behest is not maintainable. It is further stated that the rent was sent through Money Order which was not accepted by the plaintiff/respondent and, therefore, the notice under Section 106 of the Transfer of Property Act is illegal, and is issued with an oblique motive of extracting the Salami from the defendant/appellant.

Both the Courts held that the relationship between the appellant and the respondent as lessor and lessee is not disputed even the appellant has admitted to have paid rent to the respondent and later on alleged to have sent the rent through Money Order.

The moment the appellant has admitted the right of the respondent to receive the rent, he cannot retract from the said stand. So far as the plea of exclusive ownership in respect of the suit property is concerned, we do not find any impediment on the part of the co-sharer to institute a suit for recovery of possession from the tenant/lessee provided the other co-sharers did not object to it. Reference in this connection may be made to in case of *Sri Ram Pasricha vs. Jagannath & Ors.* reported in (1976) 4 SCC 184 and *Om Prakash & Anr. vs. Mishri Lal (Dead)* reported in (2017) 5 SCC 451.

Though the plaintiff/respondent has produced the deed showing that the other co-sharers have divested their right, title and interest in his favour but even if for the argument sake the contention of the appellant is accepted, in view of the ratio laid down in the above noted decisions of the Supreme Court, the suit for recovery of possession at the behest of the plaintiff/respondent cannot be said to be non-maintainable.

The only point urged by Mr. Chattopadhyay vigorously before us does not find any support from the decisions as noted above and, therefore, there is no substantial question of law involved in the instant appeal.

The appeal and connected application are thus dismissed.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)