

AD-19
Ct No.16
14.11.2024
(SSS)

FA 229 of 2022

Pranab Kumar Dey
Vs.
Hiralal Shaw (deceased) and Ors.

Mr. Aniruddha Chatterjee,
Mr. Rahul Karmakar,
Mr. Sounak Mukherjee, Advs.

.....For the Appellant.

Mr. Debasish Roy
Mr. Anirban Pal, Advs.

.....For the Respondents.

1. The present appeal revolves around a short question.
2. The suit was filed by the plaintiff/appellant for eviction of the defendants/respondents, inter alia on the ground that the respondents have been rendered trespassers and ceased to be tenants by virtue of the moratorium specified in Section 2(g) of the West Bengal Premises Tenancy Act, 1997.
3. The learned Trial Judge, despite holding all issues in favour of the plaintiff, refused to grant a decree of eviction on the premise that it is an admitted fact that the defendants are in possession of 609.32 sq. ft. whereas the plaintiff, by dint of a Deed of

Conveyance (Exhibit-A), purchased only 432 sq. ft. Therefore, according to the learned Trial Judge, even if a decree of eviction is passed in favour of the plaintiff, the plaintiff is entitled to get back only the area which he has purchased as per the Deed of Conveyance (Exhibit-A) which, according to the learned Judge, tantamounts to splitting the tenancy of the defendants which is not permitted by the 1997 Act.

4. Learned Counsel for the plaintiff/appellant places reliance on the relevant paragraph, i.e. Paragraph No. 2 of the plaint, and the Schedule to the plaint to indicate that the suit property, in respect of which (according to the plaintiff) tenancy was granted to the defendants, was confined to a godown on the ground floor at Premises No. 127A/1, Acharya Prafulla Chandra Road, Kolkata. Tallying the description of the property in the schedule of the plaint with Schedule-C of the Sale Deed (Exhibit-A), by virtue of which the plaintiff claims title, learned Counsel for the appellant argues that the two exactly reciprocate each other. Schedule-C of the Sale Deed clearly specifies that the measurement of the said property is 432 sq. ft. built up area with extra 20% super built up area.
5. Learned Counsel further places relevant paragraphs of the written statement of the defendants to show

that the defendants/respondents never disputed the identity of the suit property. Although, in two stray statements made in his examination-in-chief, the defendants' witness stated that the tenancy was of 609.32 sq. ft., it is argued by learned Counsel that the same being *de hors* the pleadings, could not have been looked into by the learned Trial Judge at all.

6. Learned Counsel accordingly argues that the impugned judgment and decree along with the findings supporting the same be set aside and a decree of eviction be granted to the plaintiff.
7. Learned Counsel appearing for the respondents contends that in an order dated April 29, 2003 passed in CO No. 2692 of 2002 by a Learned Single Judge of this Court in connection with a revisional application under Section 115 of the Code of Civil Procedure, it was recorded that the area of the tenanted premises was 609.32 sq. ft. The said order, having not been challenged before any superior forum, binds the parties.
8. Learned Counsel for the defendants/respondents next places reliance on Exhibit-3, the eviction notice dated February 3, 2011, which preceded the filing of the suit and furnished the cause of action for the eviction suit. It is argued that in the said

notice, the plaintiff clearly mentioned the area of the tenanted premises to be 609.32 sq. ft.

9. It is, thus, argued that both parties proceeded on the assumption that the area of the tenanted premises is 609.32 sq. ft., which is beyond the area for which eviction has been sought.
10. It is further pointed out that in the impugned judgment, the learned Trial Judge took notice of Order VI Rule 2 of the Code of Civil Procedure but nonetheless, proceeded to pass the impugned judgment and decree.
11. Upon a careful perusal of the materials on record and on hearing Learned Counsel for the parties, we arrive at the following conclusions:
12. Insofar as the description of the tenanted premises as comprised of 609.32 sq. ft. in the eviction notice is concerned, the same is palpably a mis-description, since the subsequent plaint filed by the plaintiff clearly belied the said measurement of the tenanted premises by specifically describing the suit property to exactly tally with schedule-C of the purchase deed of the plaintiff.
13. Notably, the defendants, in the written statement, did not make a single statement denying the identity of the suit property, which is the tenanted premises, as described in the plaint.

14. In the evidence-in-chief of PW1, two statements were made which may be germane in the context. In Paragraph 14 of the said examination-in-chief, it was stated that when the City Civil Court did not grant relief to the predecessor-in-interest of the defendants to raise walls in order to protect the tenancy, the Hon'ble High Court was moved, when a learned Single Judge, by an Order dated April 29, 2003, gave the predecessor-in-interest of the tenants liberty to protect his tenancy area "of 609.32 sq. ft." by constructing boundary walls on his tenancy. It was further stated in the evidence that after passing of the said order, the predecessor (father) of the tenant constructed boundary walls as permitted by this Court in order to protect his tenanted area of 609.32 sq. ft. and that the tenants still occupied the said tenancy protecting the tenanted area of 609.32 sq. ft.

15. In the very next paragraph of the examination-in-chief, it was stated that the plaintiff has alleged in his Deed of Conveyance that he has purchased only 432 sq. ft. area which is only a part of the alleged tenancy which is "admittedly" 609.32 sq. ft.

16. The first thing which strikes the eye is that the said statements made in the examination-in-chief partially rely on an order passed by a learned Single Judge of this Court and partially assert the

tenanted area to be 609.32 sq. ft. However, such assertion is palpably at variance with the pleadings as made in the written statement of the defendants.

17. In terms of the Code of Civil Procedure, the pleadings of parties comprise only of the plaint and the written statement and as such, we cannot look into other documents to cull out the pleadings of the defendants.

18. Having not challenged the identity of the suit property as described in the plaint and/or the area of the premises as depicted in the plaint schedule or Schedule-C of the purchase deed of the plaintiff in their written statement, it does not lie in the mouth of the defendants to deviate from such stand taken in the written statement and challenge the area of the tenancy.

19. Thus, the learned Trial Judge acted erroneously in law in looking into the statements made by the DW1 in evidence, which are at variance with the pleadings of the defendants in their written statement.

20. Order VI Rule 2 of the Code of Civil Procedure, which was considered by the Trial Court, merely relate to the pleadings and what they should state. The said provision has no connection with the proposition, which is well-settled in Indian Courts,

that there cannot be variance between pleading and proof.

21. Insofar as the measurement of the tenanted premises as depicted in the eviction notice is concerned, the same is obviously a mis-description, since the subsequent pleadings of the plaintiff in the plaint correctly describe the suit property to tally with Schedule-C of Exhibit-A, which is the purchase deed of the plaintiff, describing the said property to be the tenanted premises, which was never disputed in the written statement by the tenants. Schedule-C clearly depicts the measurement of the tenanted premises to be 432 sq. ft. and as such, the court could not look beyond the same in passing the impugned judgment and decree.

22. Insofar as the stray observation in the Order dated April, 29, 2003 passed by a learned Single Judge of this Court in CO No. 2692 of 2002 is concerned, the said revisional application itself arose from an interim order passed in the suit in respect of construction of a wall.

23. Such revisional application, thus, was confined to the veracity of the order impugned therein and having been passed at an interim stage of the suit, cannot have any material bearing or binding effect at the final adjudication of the suit, when the

learned Trial Judge took into consideration the entire pleadings and evidence as well as the arguments of the parties and adjudicated the issues involved finally.

24. In any event, the said Revisional Court's order does not reflect any arguments on the issue as to the actual area of the tenanted premises and as such, the said order could not have been a binding precedent on the issue of the measurement of the tenanted premises. As discussed above, the measurement of the premises was a non-issue in the suit, having not been disputed at any point of time in their pleadings by the tenants.

25. As such, the mere mis-description of the measurement in a preceding eviction notice does not affect the outcome of the suit, since in any event, it is another well-settled proposition of law that if both the parties understood the purports of a notice, a mere technical mis-description does not vitiate the same.

26. In view of the above discussions, we are of the opinion that the learned Trial Judge palpably erred in law in refusing to grant a decree of eviction against the defendants/respondents despite having decided all other issues in favour of the plaintiff/appellant. As such, the findings as to splitting of tenancy is palpably *de hors* Exhibit-A,

the purchase deed of the plaintiff, which clearly shows not only the extent of the tenanted premises to tally with the plaint description but also indicates that the plaintiff was the owner of not only 432 sq. ft. but of an area much more than that.

27. Hence, in any event, the learned Trial Judge proceeded on an erroneous footing in refusing to grant an eviction decree on the non-applicable proposition of splitting of tenancy.

28. Accordingly, the impugned judgment and decree cannot be sustained.

29. Hence, the appeal succeeds.

30. FA No. 229 of 2022 is hereby allowed on contest, thereby setting aside the judgment and decree dated September 17, 2022 passed by the learned Judge, Second Bench, City Civil Court at Calcutta in Title Suit No. 257 of 2019 and granting a decree of eviction in favour of the plaintiff/appellant and against the defendants/respondents.

31. The defendants/respondents shall hand over vacant and peaceful khas possession of the suit premises in favour of the plaintiff/appellant and/or the duly authorized representative of the plaintiff/appellant within three months from date. In default, the plaintiff/appellant will be at liberty to levy execution of the present decree, in which the trial Court's decree merges.

32. A formal decree be drawn up accordingly. Interim order, if any, stands vacated.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)