

**135 19.12.
2024**

Ct. No. 08

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**SAT 239 of 2024
IA No. CAN 1 of 2024**

**Pradip Chakraborty and others
Vs.
Tapati Das and others.**

**Mr. Ranjit Kumar Jaiswal,
Mr. Nandalal Pradhan.**

... for the appellants.

Mr. Tarak Nath Halder.

... for the private respondent.

Both the Courts below have concurrently held that the plaintiffs/respondents have entitled to a decree for eviction against the defendants/appellants on the ground of reasonable requirement.

Admittedly, a notice under Section 13(6) of the West Bengal Premises Tenancy Act, 1956 was issued upon the predecessors in interest of the defendants/appellants by the predecessors in interest of the plaintiffs/respondents and after the same was duly served upon the erstwhile tenant, a suit was filed in the year 1992 for eviction of a tenant on the ground of reasonable requirement and default.

The suit was initially dismissed by the Trial Court, but the first Appellate Court reversed the said judgment and decree and remanded the matter to the Trial Court to reconsider the issue. There is no difficulty in understanding that it was an open remand and not a limited one. After remand, the suit was again taken up after affording an opportunity of hearing and ultimately the Trial Court decree the suit on the ground of reasonable requirement.

For the purpose of record, both the original plaintiff and defendant died during pendency of the suit and the heirs and legal representatives were duly substituted. It appears from the record that an

application for amendment of the written statement was taken out by the defendants/appellants, which was eventually allowed by the Trial Court. By the proposed amendment, the defendants/appellants tried to incorporate the factum of divestation of right, title and interest in respect of the suit premises in favour of a third party prior to the institution of the suit. The Trial Court though returned the finding that if the said application for amendment of the written statement was allowed, but the amended written statement was filed with some additional facts, which do not find place in the application for proposed amendment.

Be that as it may, the Trial Court ultimately proceeded to decide the matter on the basis of the evidence adduced by the parties and did not find that the defendants/appellants have been able to prove the allegations brought by way of amendment in the written statement. The Appellate Court affirmed the judgment and decree of the Trial Court with categorical finding that there is no infirmity and/or illegality in the findings made by the Trial Court and the second appeal is filed by the defendants/appellants.

The Counsel for the appellants vociferously submits that once the owner of the property transferred his right, title and interest in respect of the suit premises, it is denuded of the power to institute a suit against the defendants/tenants on the ground of reasonable requirement.

Apart from the aforesaid point, no other points have been raised before us and, therefore, we feel it necessary to deal with the aforesaid point in order to ascertain whether it involves any substantial question of law.

Admittedly, the application for amendment of the written statement was allowed and the factum of alleged transfer of right, title and interest by the erstwhile owner in favour of a third party was brought into the pleading.

There is a distinction between a pleading and proof. In order to succeed on the basis of pleading, the evidence has to be adduced in support thereof and if the party fails to prove by way of cogent evidence, mere pleading does not *ipso facto* render a person entitled to a decree.

The Trial Court has held that though the facts relating to transfer of right, title and interest were incorporated in the written statement by way of amendment, but the defendants/appellants failed to give any evidence in support thereof. Precisely for such reason, mere pleading does not tantamount to the existence of a fact unless the same is proved by cogent evidence.

Interestingly, the 2nd issue framed in the instant suit relates to an existence of a relationship of landlord and tenant between the parties. The said issue was decided in favour of the plaintiffs/respondents as the learned Counsel representing the defendants/appellants did not press the said issue nor raised any dispute regarding the relationship of landlord and tenant, which would be evident from the following observations:

“Issue No. 2: Ld. Advocate appearing on behalf of the defendants does not press this issue and does not raise any dispute regarding the relationship of landlord and tenant between the plaintiff and the defendant, rather admittedly there exists the relationship of landlord and tenant in between the plaintiff and defendant. Moreover, it has been categorically adjudicated by this Court at the time of disposal of the application under Section 17(2) and 2(a) of the West Bengal Premises Tenancy Act, 1956 vide order no. 168 dated 18.08.2000, that the original defendant, since deceased, was a tenant in respect of the suit premises under the original plaintiff, since deceased, at a monthly rent of Rs. 100/- payable as per English calendar month. The present plaintiffs and defendants being the legal heirs of the deceased plaintiff and defendant, stepped into the shoes of their predecessor-in-interest as landlord and tenant.

Therefore, this issue is decided in favour of the present plaintiffs.”

Let us examine the impact of the Issue No. 2 on the plea taken by the appellants. Obviously, once the owner divested his right, title and interest in respect of the suit premises, it ceases the relationship of landlord and tenant, as the person does not have any semblance of right, title and interest after such divestation and cannot still be regarded as landlord. The moment the defendants/appellants chose to abandon his defence that there is no relationship of landlord and tenant, it *ipso facto* leads to an inescapable conclusion that there exists the relationship of landlord and tenant.

A party cannot be permitted to approbate and reprobate at the same time. Since there was no material forthcoming before the Court, which would indicate that the erstwhile owner transferred the right, title and interest in respect of the property, as such, we do not find any illegality and/or infirmity in the decision of both the Courts below in this regard.

The instant appeal does not involve any substantial question of law. The appeal and the connected application being CAN 1 of 2024 are dismissed.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

