

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

Present:

The Hon'ble **Justice Harish Tandon**

And

The Hon'ble **Justice Prasenjit Biswas**

**SAT 218 of 2023
With
CAN 2 of 2024**

Biplab Nandi & Anr.

-Versus-

Sri Debojit Chakraborty

For the Appellants : **Mr. Nirmalya Roy.**

Hearing Concluded on : **18.11.2024**

Delivered on : **23.12.2024**

Prasenjit Biswas, J:-

1. Both the Courts have decided the case against the appellants/defendants.

2. The plaintiff/respondent instituted a suit against the present appellant for eviction of license in respect of the case property. It is admitted position that Biman Chandra Nandi was the original owner of the suit property which he purchased from one Birendra Krishna Dutta by dint of deed of sale being no. 3194 dated 22.04.1981 and was in possession of the same. The name of Biman Chandra Nandi was duly recorded in the Record of Rights as well as in the assessment register of the local Municipality. As the said Biman Chandra Nandi used to stay abroad he executed a registered power of attorney in favour of one Smt. Manjula Debnath on 22.12.2005 and appointed her as his constituted attorney. The said power of attorney holder Manjula Debnath sold the case property on the strength of the said power of attorney in favour of the plaintiff by virtue of deed of sale executed on 27.07.2007 and by this way the respondent (herein) became the owner of the scheduled property as mentioned in the plaint. The B and C scheduled property as mentioned in the schedule of the plaint are the part and parcel of the A schedule property. It is said by the respondent/plaintiff that the appellants/defendants are licensee in respect of the B schedule property under his vendor Biman Chandra Nandi and they used to occupy B schedule property as licensee under him. After purchasing of the suit property from his vendor Biman Chandra Nandi the plaintiff/respondent asked the appellants/defendants to quit and vacate the B schedule property. As the appellants requested the plaintiff to allow them for renewal of license and the plaintiff accordingly renewed the license in favour of the respondent for a period of one year only. It is further averred by the

plaintiff/respondent (herein) that these appellants illegally and forcefully grabbed the property as mentioned in the C schedule property of the plaint. This respondent asked the present appellants to quit and vacate the B schedule property but the appellants (herein) did not pay any heed towards the words of the respondent and finding no other alternative the plaintiff/respondent instituted a suit with a prayer for eviction of these appellants from the case property.

3. The present appellants/defendants entered into the case as instituted by the plaintiff and filed written statement denying all the allegations as stated by the plaintiff in the case. It is specifically averred by the present appellants/defendants that the vendor of the present respondent/plaintiff had no right, title and interest in respect of the suit property and they never sought any permission from the said Biman Chandra Nandi to use and occupy B schedule property but they have been in possession of the suit property since for a considerable period of time. It has also been stated by the present appellants/defendants that the power of attorney holder had no right to transfer the suit property in favour of the present respondent and as such the plaintiff had no right, title, interest and possession over the suit property.

4. The deed of the plaintiff/respondent (herein) by which he purchased the suit property from his vendor Biman Chandra Nandi was proved and marked exhibit in the case. The other documents of possession like municipality tax receipts, records of rights, rent receipts were also produced and marked exhibits in the case. The power of attorney by which the said Manjula Debnath

as power of attorney holder transferred the property in favour of this plaintiff/respondent (herein) was also marked as exhibit by the Trial Court in the suit. Those documents indicate that the plaintiff became the owner of the suit property by dint of sale deed in his favour from his vendor Biman Chandra Nandi. From the power of attorney as executed by Biman Chandra Nandi in favour of Manjula Debnath it appears that the said power of attorney holder had right to transfer the suit property and by the said power of attorney she sold the suit property in favour of the plaintiff. In evidence taking process DW 1 in cross-examination categorically admitted that the property belonged to Biman Chandra Nandi. It was stated by him that he was neither tenant nor lessee in respect of the suit property. The only claim of the plaintiff appellant is that he is a licensee under Bholanath Nandi. It is established by producing the documents on behalf of the respondent/plaintiff that Biman Chandra Nandi subsequently owned and possessed the suit property. So, the contention of the defendants/present appellants that they were licensee under the said Bholanath Nandi and not under the plaintiff does not arise.

5. The another thrust of argument at the behest of the appellants/defendants is that there is dispute about the legality and validity of the general power of attorney which was executed by the Biman Chandra Nandi in favour of one Manjula Debnath. It is stated by the appellants (herein) that the said Biman Chandra Nandi has no authority by dint of that power of attorney to transfer the suit property to anyone. It has also been mentioned beforehand that the Biman Chandra Nandi executed the said power of attorney

and on the dint of such power of attorney, the said power of attorney holder transferred/sold the suit property in favour of the plaintiff and by such purchase the plaintiff became the owner in respect of the case property. On the other hand the present appellants/defendants failed to file any cogent document from which it can be said that they have right, title and interest over the property in question. So, there is no option but to presume that the present appellants have been continuing his possession in respect of B schedule property as mentioned in the plaint as licensee under the plaintiffs and after revocation of license the appellants are nothing but a trespasser in respect of the B and C schedule property. It is apparent from the materials on record that the appellants/defendants have been hopelessly failed to prove to have better title than the respondent/plaintiff has in the suit property.

6. So, we are constrained to hold that the present appellants were licensees under the respondent/plaintiff. It further appears that the present appellants have no right to be continued in possession in respect of the B and C schedule property and they are nothing but a mere trespassers in respect of the B and C schedule property after revocation of license.

7. We find there is nothing illegality or irregularity in both the decisions as passed by the learned Trial Court as well as the First Appellate Court.

8. So, we are inclined to dismiss the appeal as there is no involvement of substantial question of law.

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

10. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)