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Court : 04
Item : 31
Matter : SAT
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

SAT 112 of 2020
with
CAN 1 of 2020

Panchu Singh
Vs.
Sandhya Pal & Ors.

Mr. Susenjit Banik, Advocate
Mr. Amit Singh, Advocate
Mr. Mrinal Saha, Advocate

.....for the Appellant

Mr. Debaditya Banerjee, Advocate
Mr. Syed Wasim Faruque, Advocate
Mr. Srinjoy Das, Advocate

.....for the Respondent

1. The concurrent findings of fact recorded by both the Courts below is sought to be assailed in the instant Second Appeal perceiving the involvement of substantial question of law. A suit for recovery of possession was filed against the appellant upon giving notice under Section 106 of the Transfer of Property Act (hereinafter referred to as T.P. Act).
2. The plaint case proceeds simplicitor that the appellant was a tenant in respect of a suit premises and not entitled to any protection as the provisions of the West Bengal Premises Tenancy Act, 1956 is not extended to the area where the property is situated. The plaintiff/respondent issued a notice under Section 106 of the T.P. Act and filed a suit for recovery of possession on expiry of the period provided in the said notice which is one of the incidents of determination of the lease under Section 111(h) of the T.P. Act.
3. The appellant appeared in the suit and took a defence that the tenancy initially stood in the name of the

father of the defendant/appellant and on his death, his heirs and legal representatives have succeeded to the estate of the father and thus became a joint tenant. It is further alleged that the suit is bad for non-joinder of necessary parties. In course of the depositions, the plaintiff/respondent categorically stated that the rent-receipts were issued in the name of the defendant/appellant alone and he all along tendered the rent in such capacity. The defendant/appellant also did not dispute the aforesaid stand and admitted that the rent-receipts were issued in his individual name. However, he further took a stand that he was, in effect, acting as an agent of the other heirs.

4. There is no denial from the defendant/appellant that he was tendering rent for a long period of time on the basis of the rent-receipts issued in his name alone. There was a complete silence on his part when the rent-receipts were issued in his individual name. If he was of the view that he is simpliciter a co-tenant along with other heirs of his father, he should have raised such issue immediately upon receiving the rent-receipts issued in his name alone but remained silent for such long period of time which does not instill any confidence that the plea of non-impleadment of the other co-heirs shall defeat the said suit. Furthermore, a solitary rent-receipt issued in the name of the father by the first witness of the plaintiff to which he did not agree nor accepted the same and there was no other evidence which was adduced to corroborate the aforesaid facts.
5. The exhibit 5 (rent receipt books) were produced by the plaintiff's witness corroborating the stand that all along the rent receipts were issued in the name of the

defendant/appellant and, therefore, the stand of the defendant/appellant is not tenable. Apart from the same, even if for the sake of argument, it is accepted that the rent-receipts which were issued in the name of the father of the defendant/appellant and on the death of the father, the heirs succeeded the tenancy as heritable estate but the rent receipts were subsequently issued in the name of the defendant/appellant all along and the said defendant contested the suit on merit even if the other co-heirs have not been impleaded, they cannot have a better defence than the present defendant/appellant and, therefore, the estate of the deceased tenant was adequately represented.

6. It is further submitted that the Appellate Court did not consider an application under Order 41 Rule 27 of the Code of Civil Procedure filed by the defendant/appellant seeking to adduce additional evidence viz. succession certificate, heirship certificate and, therefore, the Appellate Court has not applied its judicial mind into the matter.
7. We are conscious that the application for adducing additional evidence is required to be disposed of along with the appeal. Mere filing of such application does not deserve, as argued by the Counsel for the appellant, to be allowed unless the Court finds that such document has material bearing on the merit of the case or required for effective pronouncement of the judgment. If the Appellate Court finds that such additional evidence is not material for the purpose of deciding the issue, non-mentioning of the said application can be construed as an implied disposal thereof.
8. Since both the Courts have found that the tenancy

stand in the name of the defendant/appellant alone, the question of bringing additional documents such as succession certificate and/or heirship certificate does not germane from the disputes. We thus do not think that non-mentioning of the disposal of an application under Order 41 Rule 27 of the Code raises a substantial issue involving the substantial question of law for the purpose of admission under Order 41 Rule 11 of the Code.

9. We do not find that the judgment of the both the Courts below suffer from infirmity and/or illegality.
10. The appeal being **SAT 112 of 2020** and the application being **CAN 1 of 2020** are accordingly **dismissed**.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)