

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
CIVIL APPELLATE JURISDICTION

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ajay Kumar Gupta

S.A.T. 1 of 2023

Ritesh Gupta

-Vs-

Janab Ejaz Ahmed Siddique

For the Appellant : Mr. Mayank Bhandari, Adv.

For the respondent : Mr. Avrojoyti Das, Adv.
Mr. Rajdeep Das, Adv.

Heard on : 14.05.2024

Judgment on : 14.05.2024

Joymalya Bagchi, J. :-

1. Appellant/tenant has assailed the eviction decree on the concurrent of the finding courts below that the tenanted premises had used to store hazardous and inflammable articles viz., kerosene oil endangering life in the premises.

2. Case of the respondent/landlord is that the premises had been let out to the appellant/tenant on a monthly rental on the basis of an oral agreement on the following terms and conditions:-

“a) Rent of the suit property would be Rs.165/- per month payable by the 7th of every succeeding month following the month for which the rent shall become due.

b) The monthly tenancy shall always be deemed to be according to the English calendar month commencing from first day to the last day of the month.

c) Not to transfer, encumber, assign, charge, sublet, underlet or part with possession of the whole or any part of the suit premises without the previous consent in writing from the plaintiff.

d) Not to use the suit premises for the purpose of other than MR shop and not to fell or pull down or damage or alter the suit premises or make, erect or alter fixtures, structures and fittings.”

3. It was the respondent/landlord's case since 2012 appellant/tenant permitted his brother Ravi Gupta to store and sell kerosene oil in the tenanted premises. Kerosene oil is a highly inflammable and hazardous substance and its storage had put the lives of other residents at risk. No permission had been taken from the respondent/landlord nor license to store kerosene oil was obtained from appropriate authority. Respondent/landlord lodged complaint with the local Police Station as well as Controller, Food and Supplies Office, Darjeeling in August, 2012. Thereafter, he served a legal notice upon the appellant/tenant to vacate the premises and filed the suit for eviction.

4. Written statement was filed by the defendant. In paragraph '7' of the written statement, the defendant averred as follows:

“ The defendant states and submits that the defendant has not made any breach of terms and conditions allowing his brother Ravi Gupta to store and sell kerosene oil. That the defendant further submits that the defendant itself is running the MR Shop and is not selling and storing kerosene oil.”

5. However, during trial the appellant/tenant examined himself as DW 1 and made out a different case. He stated that he was running a general store in the tenanted premises and his MR Shop was situated in a different premise. Trade license of the general store was standing in the name of his brother Ravi Gupta.

6. On the other hand plaintiff deposed as PW 1 and stated that the premises had been let out to the appellant/tenant for a MR Shop to deal in rice, wheat and sugar only. But the appellant/tenant stored and sold inflammable substance kerosene oil therefrom without his permission or license from appropriate authority including fire license. Thereby, he endangered the lives of other inmates in the property. Plaintiff also exhibited the complaints lodged by him with the Controller, Food and Supplies Office and Chairman, Darjeeling Municipality (Ext.1/2 and Ext.1/3).

7. After discussing the evidence on record, the trial court came to the conclusion that the case of the respondent/landlord was more reliable than the prevaricating stance of the appellant/tenant. The trial court observed while in his written statement and affidavit evidence in-chief, the appellant/tenant stated that his brother was storing and

selling kerosene oil from the tenanted premises, during trial he tried to wriggle out from the admission by claiming that his brother was running a general store. Admittedly, no license to store kerosene oil in the premises was placed on record. Accordingly, the trial court held that the appellant/tenant had permitted the premises to store inflammable article i.e. kerosene oil endangering human life. On such finding the trial court decreed the suit in favour of the respondent/landlord.

8. In appeal, the findings of the trial court had been upheld.

9. Learned Advocate for the appellant/tenant submits the courts below erred in not considering the fact that the premises had been let out for non-residential purposes i.e. running a MR Shop. Kerosene oil is an essential commodity which may be dealt from the said MR Shop. There was no alteration or change of use of the premises or violation of the terms and conditions of the agreement. He also contended no evidence was led by the landlord that kerosene oil was found stored in the tenanted premises.

10. It is settled law a fact admitted by a party in his pleadings need not be proved. In paragraph '7' of the written statement the appellant/tenant had, inter alia, admitted he had allowed his brother to store and sell kerosene oil from the premises. This was again reiterated in his affidavit evidence in-chief.

11. In view of such clear and unequivocal admission of use of the tenanted premises for storage and selling kerosene oil, we are of the view

that the courts below did not err in law in coming to the findings that the premises had been used for storing and selling kerosene oil.

12. Appellant has argued the premises had been let out for non-residential purposes i.e. MR Shop. Storage and selling of kerosene oil did not affect the nature of use of the tenancy. It is true the premises had been let out for running a MR Shop. MR Shop carries on business of storage and distribution of essential commodities like rice, wheat and sugar. To deal in kerosene oil a separate license under the Kerosene (Control) Order and Fire License from appropriate authority are necessary. Permission of the landlord is a pre-requisite to obtain such licenses. Admittedly, no permission had been taken from the landlord to store or deal in kerosene oil from the tenanted premises. No license from appropriate authority including the Fire Department had been obtained.

13. In absence of requisite permission from the landlord and appropriate licenses under law, appellant/tenant did not have any implied right to store hazardous substance like kerosene oil under the excuse that the property had been let out as an MR Shop.

14. Hence, I am not convinced that the courts below had erred in law in coming to a finding that the tenanted premises was illegally used in violation of the terms of tenancy to store inflammable substance i.e. kerosene oil which endangered human lives.

15. In the light of the aforesaid discussion, I am of the opinion the impugned order in appeal does not suffer from any error in law and no

substantial question of law has been raised justifying admission of the appeal.

16. The appeal is accordingly dismissed.

I agree.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)

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