

IN THE HIGH COURT AT CALCUTTA
(Civil Appellate Jurisdiction)
APPELLATE SIDE

Present:

The Hon'ble Justice Supratim Bhattacharya

SA 33 of 2017

Panchanan Pal

Vs

**Sikha Roychowdhury, Susmita Roychowdhury, Anita Chatterjee, Smita
Banerjee**

SA 34 of 2017

Panchanan Pal

Vs

**Sikha Roychowdhury, Susmita Roychowdhury, Anita Chatterjee, Smita
Banerjee**

For the Appellant : Mr. Biswajit Hazra

For the Respondents : Mr. Partha Pratim Roy
Mr. Samrat Chakraborty

Judgement Delivered On : 30.04.2025

Supratim Bhattacharya, J.:

1. The appellant /defendant has assailed the judgment and decree passed by the Ld. Additional District Judge, Bolpur Birbhum passed in Title Appeal No, 18 of 2016 and Title Appeal No. 16 of 2016 which have been heard analogously vide judgment dated 27.05.2016.

2. Against the judgment and decree passed in Title Suit no. 43 of 2013 by the Ld. Civil Judge Junior Divn. 2nd Court Bolpur Birbhum, dated 05.12.2015 the plaintiff had preferred the title appeal no. 18 of 2016 while the defendant had preferred Title Appeal No. 16 of 2016.

3. Facts before the Trial Court

The original respondent namely Biswanath Roychoudhury had instituted the *lis* praying for eviction of the appellant herein from the suit property that is a room situated on Plot No. 1801 and Plot no. 1800/2114 being butted and bounded on the north by Suri-Katwa pucca road, on the south by land of the plaintiff/landlord, on the east by the Stationery shop of Dhiraj and on the west by book shop of Nemai Mondal wherefrom the appellant is running a business of selling utensils made of bronze and brass.

During the pendency of the present Second appeal the original respondent expired and he has been substituted by his wife and three daughters namely Sikha Roychoudhury, Susmita Roychoudhury, Anita Chatterjee and Smita Banerjee respectively.

The appellant/defendant entered appearance in the title suit and filed his written statement denying and disputing the contentions of the original respondent /plaintiff even after admitting the demarcations mentioned in the schedule of the plaint.

The Ld. Trial Court framed the following issues which are as follows:

“1. Is the suit maintainable in its present form and prayer?”

2. Does the suit suffer from defect of parties?

3. Is the description of the suit property vague or indefinite?

4. Is the defendant a monthly tenant in the suit property under the plaintiff?

5. Whether the eviction notice is valid and legal ?

6. Is the plaintiff entitled to get relief as prayed for?

7. To what other relief or reliefs, if any, the plaintiff is entitled to ?”

4. On behalf of the plaintiff two witnesses have deposed they are

PW1- Biswanath Roychoudhury (Original plaintiff)

PW2- Khagen Chakraborty (Law clerk)

On behalf of the plaintiff the following documents have been adduced which are as follows:

“Exhibit 1 series: counter part of five rent receipts.

Exhibit 2: Reply regarding the notice of eviction

Exhibit 3 series: The a/d card and postal receipt.

Exhibit 4: Copy of notice.

Exhibit 5: L.R. Porcha”

5. On behalf of the defendant Panchanan Pal the defendant himself has adduced evidence.

No document has been produced on behalf of the defendant.

After considering the evidence both oral and documentary of both the parties the Ld. Trial Judge was pleased to pass the following:

“ Hence it is

Ordered

That the instant suit be and the same is decreed on contest.

The defendant is hereby directed to quite and vacate the room situated over plot No. 1801 and hand over its possession in favour of the plaintiff within 03 months from the date of passing of this order.

There shall be no order as to costs.

The suit is, thus, disposed of on contest. ”

6. Facts before the First Appellate court

The defendant namely Panchanan Pal being aggrieved by and dissatisfied with the judgment passed by the Trial court preferred an appeal being Title Appeal No. 16 of 2016 while the plaintiff preferred another appeal being Title Appeal No. 18 of 2016. The Ld. First Appellate Court heard both the appeals together and passed the impugned judgment:

“It is,

Ordered

that, the TA No. 18/16 be and the same is allowed on contest but without cost. The TA No. 16/16 be and the same is dismissed on contest but without cost.

Impugned Judgement passed by Ld Trial Court is hereby modified.

Consequently, the suit is decreed in full. The defendant/respondent of Title Appeal No. 18/16 and appellant of Title Appeal No. 16/16 is hereby directed to quit and vacate the suit property and to deliver peaceful possession of the same to the plaintiff/appellant of Title Appeal No. 18/16 and respondent of Title Appeal No. 16/16 within two months the plaintiff will be at liberty to put the decree into execution.

Let a copy of the Judgement be sent down to Ld Trial Court for information.”

Panchanan Pal being aggrieved by and dissatisfied with the judgment of the First Appellate Court preferred the present second appeal.

7. At the time of admission of the present appeal one substantial question of law has been framed which is as follows:

“Whether the Ld. Courts below were justified in holding that the suit for eviction of a tenant under the Transfer of Property Act on termination of tenancy by service of notice at the instance of one of the landlords without joining co-landlords as parties in the suit is maintainable ?”

8. Ld. Counsel namely Mr. Biswajit Hajra representing the appellant during his exhaustive argument has submitted that

i) The plaintiff has failed to adduce any evidence to prove that the defendant is a monthly tenant under the plaintiff in respect to the plot no. 180/2114 and the plaintiff has also failed to establish his

title in respect of the said plot as such the suit in respect to the said plot was dismissed and no eviction had been granted in respect of the said plot in favour of the respondent/plaintiff.

- ii)** He has further submitted that from the schedule of the plaint it transpires that the entire suit property lies within the plot No. 1800/2114 and not within the plot No. 1801 and the eviction which was sought for from the plot No. 1800/2114 has been refused by the Ld. Trial Court.
- iii)** He has further submitted that the direction of evicting the defendant from the plot no. 1801 does not and cannot arise at all as per the description given in the schedule as according to the respondent/plaintiff himself there is no existence of possession of the defendant's shop room.
- iv)** He has further submitted that the plaintiff though has mentioned that after the death of his father the suit property had been gifted to the plaintiff by the other sisters and brothers by virtue of the alleged registered deed of gift but no such deed of gift has been produced. As such the plaintiff has not been able to prove his title.
- v)** He has further submitted that PW1 during cross-examination has once stated that the plot No. 1801 is having an area of 8 decimal but on the other hand the said witness could not say how much area of land is in plot No. 1801 which is owned by him.

- vi)** He has further submitted that the witness PW1 has deposed that a partition deed took place whereby his father had obtained the 'Ga' schedule property but the said deed has not been produced.
- vii)** He has further submitted that the plaintiff has deposed that he will appoint a survey passed commissioner to measure the plots so that the boundary disputes can be adjudicated properly but that has not been done so.
- viii)** He has further submitted that the plaintiff has relied upon the rent receipts but in the rent receipts there is no mention of the plot numbers and the Ld. First Appellate court relying upon the rent receipts where plot no. 1801 is only mentioned held the defendant's tenancy in respect of both the plots
- ix)** He has also submitted that the plaintiff has failed to establish any right, title or interest in respect of the plot No. 1800/2114.
- x)** He has further submitted that the First Appellate Court misconstrued that there is admission of the defendant in respect of induction by the father of the plaintiff in respect of the plot no. 1800/2114 and when the plaintiff is claiming derivative title from his father in the eye of law there is no bar in challenging the derivative title in respect of plot no. 1801 particularly when the plaintiff has failed to produce the partition deed and the deed of gift.

xi) The Id. Counsel has relied upon the judgment published in *AIR 1966 SC 735* and submits that in a suit for eviction, if the relationship of landlord and tenant is not proved then if the defendant's status can be proved to be a licensee then and only then decree for eviction can be passed and as the plaintiff has neither been able to prove the landlord tenant relationship nor being able to prove the status of the defendant to be a licensee no order eviction can be passed.

xii) He has further relied upon another judgment published in *(2022) 1 SCC 115* wherein it has been stated that defect in the pleading cannot be cured it cannot be cured at any stage and as such if prayed for allowing the instant appeal by dismissing the judgment of the First Appellate Court.

9. Ld. Advocate Mr. Partha Pratim Roy being assisted by Mr. Samrat Chakraborty representing the respondent has submitted the following:

i) The respondent/plaintiff has filed the LR Record of Rights and has been able to prove his title over the suit property, so he is entitled to get a decree.

ii) He has further submitted that as regards to the defendant being a monthly tenant in respect of the suit property the Ld. Trial Court held that the plaintiff has failed to prove the relationship between the plaintiff and the defendant but from the evidence on record it transpires that the defendant has admitted that he was a tenant

under the father of the plaintiff in respect of plot no. 1801. So the plaintiff is entitled to get a decree of eviction in respect of plot no. 1801.

- iii)** He has further submitted that the Ld. First Appellate Court came to a finding that the defendant has failed to prove tht he was a tenant in respect of any shop over plot Nos. 1808, 1801 and subsequently he took a room on rent from the father of the plaintiff in plot No. 1801 and the First Appellate Court has observed that the defendant took a room on rent in plot No. 1801.
- iv)** He has further submitted that the First Appellate court has categorically observed that the defendant took room on rent on plot no 1801 and unless and until the defendant proves that he was an independent tenant in respect of plot no. 1801 and 1808 it is presumed that the suit property or the shop room is a tenanted premises of the defendant and the plaintiff and defendant are tenant and landlord respectively.
- v)** He has further submitted that the defendant witness no. 1 has admitted during his evidence that there is Suri Katwa Pukka road on the northern side of the suit shop room, on the southern side there is vacant and on the eastern side there is a stationary shop of Dhiraj and on the western side there is a book stall of Nimai Mondal. So it is admitted by the defendant that the room in respect

of which the tenancy was granted is the suit shop room as mentioned in the schedule of the plaint.

- vi)** He has further submitted that during the cross-examination it has been admitted that the defendant has no document to show that he has any tenancy over plot No. 1808.
- vii)** He has further submitted that from the aforementioned facts it appears that defendant is a tenant in respect of the suit shop room and boundary of the said shop room has also been admitted by the defendant. So the contention of the appellant/ defendant that the suit property is vague and is not at all correct as such it is unacceptable.

In this context the respondent has relied upon a judgment cited in *AIR 1963 SC 1879* and has further submitted that the Hon'ble Apex court has categorically held that where there is no doubt as to the identity of the property then the boundaries mentioned will prevail.

- viii)** He has relied upon a judgment of the Hon'ble Apex Court published in *(2006) 2 SCC 724* to stress upon the issue that a co-sharer is entitled to file a suit for eviction until and unless the other co-owners have expressed their disagreement in respect of initiation of such proceeding.
- ix)** The Ld. Counsel has further relied upon a judgment published in *(2016) 3 SCC 296* to emphasize upon the issue that the plaintiff is

entitled to a decree of eviction against the defendant in spite of the plaintiff having failed to prove the relationship between the parties as landlord and tenants as the said judgment of the Hon'ble Apex Court has laid down the differences as regards to the scope of enquiries regarding ownership in a litigation between landlord and tenant and that one in title suit.

- x)** The Ld. Counsel has also relied upon a judgment reported in *(2019) 4 SCC 397* wherein the Hon'ble Apex court has decided that the second appeal can only be decided on the question framed under Section 100 (4) of the Code of Civil Procedure and if at the time of the hearing the High Court considers that the second appeal involves any other substantial question(s) of law it has the jurisdiction to frame the question(s) but only by assigning the reasons.

Banking upon the aforesaid facts and circumstances the Ld. Counsel has prayed for dismissal of the appeal and has further prayed for passing an order in favour of the respondent to withdraw the amount deposited by the appellant before the executing court as occupational charge.

10. Decision with reasons

This Court delves into the issues including the substantial question of law.

So long as the provisions of Rent Control Acts are not made applicable to a particular area the rights and obligation of the landlord and the tenant are to be governed by the provisions of the Transfer of property Act. In this regard Section 1 (3) of the West Bengal Premises Tenancy Act, 1997 is laid down. The said provision states as follows:

“(1) ...

(3) It extends to the areas included within the limits of the Calcutta Municipal Corporation and the Howrah Municipal Corporation and to the municipal areas within the meaning of the West Bengal Municipal Act, 1993:

Provided that the State Government may, by notification, extend this Act or any provision thereof to any other area specified in the notification, or may, by notification, exclude any area from the operation of this Act or any provision thereof.”

As the suit property is situated within the panchayat area and not within the municipal area so the present lis is to be guided by the provisions of the Transfer of Property act and the said transfer of interest is lease.

As regards to the schedule of the plaint the plaintiff has in details stated about the demarcations of the suit property, that is one room. It has been stated by the respondent/plaintiff that the said room is butted and bounded on the north by Suri Katwa Pucca road on the

south by the land of the plaintiff/landlord, on the east by a stationary shop of Dhiraj and on the west by a book shop belonging to Nimai Mondal. The appellant/defendant during his cross-examination has admitted that it is fact that there is Suri Katwa Pucca road to the northern side of the suit room, to the southern side there is vacant land of landlord, to the eastern side there is stationery shop of Dhiraj and on the western side there is book shop of Nemai Monal. Thus the appellant defendant has admitted in toto the boundary/demarcations of the suit property and he has submitted that it is 'suit room'. Thus, the controversy which has been raised as regards to plot/dag number of the suit property is put to rest by the defendant himself.

It is to be seen as regards to schedule of a plaint herein the suit room as to whether it can be identified or not and whether if any order is passed that can be executable or not. In this regard this Court relies upon Paragraph No. 11 of the judgment passed by the Hon'ble Apex court in the case between **Zarif Ahmad (dead) through legal representatives and another Vs. Mohd. Farooq** and cited in **(2015) 13 SCC 673** is reproduced hereunder:

"11. Order 7 Rule 3 of the Code of Civil Procedure, 1908 (for short "CPC"), which pertains to the requirement of description of immovable property, reads as under:

"3. Where the subject-matter of the suit is immovable property.—Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be

identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.”

The object of the above provision is that the description of the property must be sufficient to identify it. The property can be identifiable by boundaries, or by number in a public record of settlement or survey. Even by plaint map showing the location of the disputed immovable property, it can be described. Since in the present case, the suit property has been described by the plaintiff in the plaint not only by the boundaries but also by the municipal number, and by giving its description in the plaint map, by no stretch of imagination, can it be said that the suit property was not identifiable in the present case.”

On overall consideration it is evident that the suit property that is the suit room is being used by the appellant/defendant for the purpose of business dealing in utensils made of bronze and brass since long which has been admitted by the appellant/defendant.

The defendant/appellant in his written statement has also stated that adjoining to a room situated on the dag No. 1808 just on its southern side he had taken a room on monthly rent of Rs. 100/- from Byomkesh Roychowdhury (who was the father of the original plaintiff) and the said room is situated on the dag No. 1801 and the said appellant/defendant had made the two separate rooms into one and has been carrying on business. It is admitted fact that the present respondent namely Biswanath Roychowdhury is a son of Byomkesh Roychowdhury from whom the appellant/defendant obtained the suit room for running his business on monthly rent.

It is neither denied nor disputed that the original plaintiff namely Biswanath Roychowdhury is the son of Byomkesh Roychowdhury, on the contrary it has been stated on behalf of the appellant that apart from the original plaintiff (Biswanath Roychowdhury) there are other legal heirs of Byomkesh Roychowdhury who are also co-sharers.

For the sake of argument if it is taken into consideration that apart from Biswanath Roychowdhury there were/are several other co-sharers in respect of the suit property then also it is settled law that one of the co-sharers landlords can sue on behalf of all praying for eviction of the tenant. In this issue this Court relies upon Paragraph 10 and 11 of the judgment passed by the Hon'ble Apex Court in the case between ***Mohinder Prasad Jain vs. Manohar Lal Jain*** published in **(2006) 2 SCC 724** which states as follows:

10. This question now stands concluded by a decision of this Court in India Umbrella Mfg. Co. v. Bhagabandei Agarwalla [(2004) 3 SCC 178] wherein this Court opined: (SCC p. 183, para 6)

“6. Having heard the learned counsel for the parties we are satisfied that the appeals are liable to be dismissed. It is well settled that one of the co-owners can file a suit for eviction of a tenant in the property generally owned by the co-owners. (See Sri Ram Pasricha v. Jagannath [(1976) 4 SCC 184] and Dhannalal v. Kalawatibai [(2002) 6 SCC 16] , SCC para 25.) This principle is based on the doctrine of agency. One co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other

co-owners. The consent of other co-owners is assumed as taken unless it is shown that the other co-owners were not agreeable to eject the tenant and the suit was filed in spite of their disagreement. In the present case, the suit was filed by both the co-owners. One of the co-owners cannot withdraw his consent midway the suit so as to prejudice the other co-owner. The suit once filed, the rights of the parties stand crystallised on the date of the suit and the entitlement of the co-owners to seek ejectment must be adjudged by reference to the date of institution of the suit; the only exception being when by virtue of a subsequent event the entitlement of the body of co-owners to eject the tenant comes to an end by act of parties or by operation of law.”

11. A suit filed by a co-owner, thus, is maintainable in law. It is not necessary for the co-owner to show before initiating the eviction proceedings before the Rent Controller that he had taken option or consent of the other co-owners. However, in the event a co-owner objects thereto, the same may be a relevant fact. In the instant case, nothing has been brought on record to show that the co-owners of the respondent had objected to eviction proceedings initiated by the respondent herein. The submission of the learned counsel for the appellant to the effect that before initiating the proceedings, the respondent was required to show that he had experience in running the business in Ayurvedic medicines, has to be stated to be rejected. There is no law which provides for such a precondition. It may be so where a licence is required for running a business, a statute may prescribe certain qualifications or preconditions without fulfillment whereof the landlord may not be able to start a business, but for running a wholesale business in Ayurvedic medicines, no qualification is prescribed. Experience in the business is not a precondition under any statute. Even no experience therefore may be necessary. If the respondent has proved his bona fide requirement to evict the appellant herein for his own purpose, this Court may not, unless an appropriate case is made out, disturb the finding of fact arrived at by the Appellate Authority and affirmed by the High Court.

The judgment published in **AIR 1966 SC 735** cited on behalf of the appellant does not help the case of the appellant as because the appellant himself has admitted that he took the suit room from the father of the original plaintiff at a rent of Rs. 100/- per month and has also admitted that the original plaintiff namely Biswanath Roychowdhury is one of the sons of Byomkesh Roychowdhury.

The other judgment published in **(2022) 1 SCC 115** cited on behalf of the appellant is also of no help to the appellant as because the boundaries of the suit property mentioned in the schedule of the plaint has been admitted by the appellant in toto as such there is no insufficiency in identifying the suit property.

This being the position this Court finds that the Ld. First Appellate Court has come to the correct conclusion hence this Court does not find any reason to interfere with the judgment passed by the Ld. First Appellate Court in the two first appeals.

- 11.** As such the present appeal being No. **SA 33 of 2017** and **SA 34 of 2017** are **dismissed** without any cost.
- 12.** The appellant is directed to handover the possession of the suit room to the respondent within three (3) months from this date of judgment.
- 13.** Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

- 14.** Urgent certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Supratim Bhattacharya, J.)