

AD- 42-43
Ct No.16
16.04.2025
(SSS)

SAT 144 of 2024
with
CAN 1 of 2025
With
SAT 145 of 2024
with
CAN 2 of 2025

Smt. Puspa Baheti and Ors.
Vs.
Dr. Bhaskar Sen

Mr. Tanmoy Mukherjee,
Mr. Ankur Banerjee,
Mr. Muhammad Obaid,
Mr. Arijit Roy

...For the Appellants.

Mr. Rajarshi Dutta,
Mr. Sayantan Bose,
Ms. Priyanka Gope

.....For the Respondent/plaintiff.

SAT 144 of 2024

1. The present second appeal has been preferred against a judgment of reversal.
2. The learned Trial Judge, despite arriving at the conclusion that the plaintiff had made out a case of reasonable requirement, dismissed the eviction suit of the plaintiff/respondent primarily on the ground that there is mis-description of the suit property as the number of rooms in occupation of the landlord were pleaded as three, whereas the same ought to have been stated to be four. The appellate court

reversed the said finding on the ground that the miniscule kitchen in occupation of the landlord cannot translate into a separate room and as such, the description of the number of rooms in the plaint was justified.

3. However, both the courts below returned concurrent findings as to the plaintiff/respondent having reasonable requirement in respect of the suit property and, as such, substantially, the present challenge is against the concurrent findings of both the courts below on the relevant factum of the plaintiff having reasonable requirement for the suit premises.

4. Learned Counsel for the defendants/appellants primarily lays stress on two grounds.

5. First, the suit was instituted and conducted by the aunt of the plaintiff on the strength of a Power of Attorney executed in her favour, which document was also exhibited in the suit, which was not signed by the Constituted Attorney, although signed by the author of the Power of Attorney (the plaintiff/respondent).

6. It is contended that Section 2 of the Powers of Attorney Act mandates that both the appointer and the appointee have to sign the Power of Attorney for it to be valid.

7. It is next argued that the admitted position is that the plaintiffs inherited undivided share on the ground floor and the fourth floor of the suit premises on the demise of one of the uncles of the plaintiffs, who was also a co-sharer. It is contended that since the rooms available on the fourth and ground floors were not disclosed and/or no local inspection was held to show the accommodation of the plaintiffs on such floors, the suit ought to have been dismissed.

8. However, we cannot agree with the contentions of the appellants on both the above counts.

9. Insofar as the effect of Section 2 of the Powers of Attorney Act is concerned, we find that the same is not mandatory but directory from its very tenor.

10. In the facts of the present case, we find that the Power of Attorney was duly signed by the appointer, that is, the plaintiff himself and was acted upon to the hilt by the Constituted Attorney, who filed the suit and conducted it all through, as well as adduced evidence as one of the witnesses of the plaintiff in the suit, thereby squarely acting on the basis of and in terms of the Power of Attorney. As such, since the Power of Attorney was acted upon and there was no challenge to the same from the quarter of the appointee, we do not find the non-signing of the Power of Attorney by the Constituted Attorney to be an impediment to deter the court from passing a

decree in the suit. We find from the findings of the courts below that they proceeded on the premise that such non-signature was a mere technicality, with which we are *ad idem* on principle.

11. Insofar as the second ground is concerned, the appellate court placed reliance on a judgment of the Supreme Court reported at (2001) 9 SCC 692 where it was held that the existence of fractional undivided share in a building under the occupation of the landlord is not a bar in his plea of reasonable requirement. Learned Counsel for the appellants seeks to distinguish the said judgment by trying to impress upon us that the same was rendered in the context of an accommodation available in a different premises whereas the alternative accommodation in the case at hand is in respect of the same property as the suit premises.

12. However, whether the alternative accommodation was situated in the same property or in a different property was not one of the relevant yardsticks of the ratio as laid down in the said report. Moreover, the courts below correctly proceeded on the premise that the existence of an undivided share of the plaintiff in a different portion of the suit property cannot translate into exclusive possession of such share by the plaintiff. As such, we cannot come to the conclusion that such availability

of undivided share itself tantamounts to suitable alternative accommodation so as to deny the plaintiff the relief of eviction on the ground of reasonable requirement.

13. In view of the above discussions, we find that there is no scope of interference with the concurrent findings of the courts below, since there is no perversity in the impugned judgments, nor is any substantial question of law involved in the matter.

14. Accordingly, SAT 144 of 2024 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure. Consequentially, CAN 1 of 2025 is also dismissed without any order as to costs.

SAT 145 of 2024

15. In view of the above discussions, since the self-same issues are involved in both the appeals, we dismiss SAT 145 of 2024 as well under Order XLI Rule 11 of the Code of Civil Procedure. Consequentially, CAN 2 of 2025 filed in connection therewith is also dismissed without any order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)