

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

S.A. 91 of 2024

CAN 1 of 2024

Sri Shib Raj Roy & Others

Vs.

Smt. Tapasi Das & Another

With

S.A. 92 of 2024

Sri Shib Raj Roy & Others

Vs.

Smt. Tapasi Das & Another

For the appellants : Mrs. Sohini Chakraborty, Adv.
Ms. Prajaaini Das, Adv.

For the respondents : Mr. Tarak Nath Halder, Adv.
Mr. Puspendu Chakraborty, Adv.
Mr. Sayan Mukherjee, Adv.

Heard on : 30.04.2025

Judgment on : 19.05.2025

Md. Shabbar Rashidi, J.:-

1. The two appeals at the behest of the plaintiffs in the original Title Suit are in assailment of a common judgment and decree dated April 26, 2024 passed by learned 2nd Additional District Judge, Sealdeh in Title Appeal No. 7 of 2023 and Title Appeal No. 8 of 2023 arising out of judgment and decree passed by learned 2nd Civil Judge (Junior Division), Sealdeh, in Title Suit No. 172 of 2009.

2. The appeals are taken up together for disposal as the same emanate out of a common judgment. S.A. No 91 of 2024 is an appeal against judgment and decree passed in Title Appeal No. 7 of 2023 whereas S.A. No. 92 of 2024 has arisen out of judgment and decree passed in Title Appeal No. 8 of 2023.

3. The facts giving rise to the instant litigation, in a nutshell, is that the appellants/plaintiffs filed the original Title Suit No. 172 of 2009 against the respondent/defendant seeking declaration of their tenancy rights together with ancillary reliefs. According to the case made out by the plaintiffs/appellant herein, their father and predecessor in interest namely Daroga Prasad Roy was a monthly tenant under one Muktaram Roja and others in respect of 'A'-Schedule properties since 1962. It was contended that the constructions over the said properties were carried out by the tenant at his own cost with the consent of the owner/landlord.

Later on, the said Muktaram Roja and others transferred the 'A'-Schedule properties in favor of the proforma defendant in the Title Suit namely Chandan Kumar Chowdhury. After such transfer, the tenant, Daroga Prasad Roy started tendering monthly rent for the A-schedule properties to Chandan Kumar Chowdhury at the existing rate of ₹70/- per month according to English calendar.

4. It was further case of the appellants/plaintiffs that the proforma defendant, after purchase of the 'A'-Schedule properties, approached the tenant requesting them to vacate the 'A'-Schedule properties and grant 'no objection' as the said owner proposed to raise a new construction thereon upon demolition. The tenant agreed to such proposal and an agreement dated July 25, 1997, to such effect, was executed by and between the tenant Daroga Prasad Roy and Chandan Kumar Chowdhury. In pursuance of such agreement, the landlord Chandan Kumar Chowdhury provided and handed over three rooms in a newly constructed building on the back portion of suit properties, sometime in March 1998. The said three rooms described more specifically as 'B'-Schedule properties, were provided to the tenant as a temporary accommodation pending construction over 'A'-Schedule properties. Accordingly, the tenant vacated the 'A'-Schedule properties in order to facilitate proposed construction thereon by the landlord.

5. It was further case of the appellants that new construction on 'A'-Schedule properties commenced upon demolition of the existing old structure. According to the case set forth on behalf of the appellants/plaintiffs, by the agreement dated July 25, 1997, the landlord/defendant had agreed to accommodate the plaintiffs with an area of 643 sq. ft. in the newly constructed A-Schedule property as soon as the construction is completed. The area so agreed was equal to the area under occupation of the plaintiffs in the erstwhile tenancy in the 'A'-Schedule properties. According to the plaintiffs, they were passing their days in the 'B'-Schedule properties in the hope of relocation in the 'A'-Schedule properties after its reconstruction. The tenant Daroga Prasad Roy has been regularly paying rent for such tenancy.

6. The original tenant Daroga Prasad Roy expired on November 16, 2008 being survived by the three plaintiffs/appellants. According to the case of the plaintiffs, the tenancy rights, standing in the name of Daroga Prasad Roy, devolved upon the three plaintiffs/appellants which they inherited jointly from their deceased father in accordance with the law of inheritance.

7. It was also contended by the appellants/plaintiffs that sometime in March 2009, the defendant/respondent, claiming to be the owner of the suit properties, asked the appellants to quit and vacate the suit

premises. Later on, the plaintiffs were informed by the proforma defendant that he had sold the suit properties to the defendant No. 1/respondent. Following such information, the plaintiffs sent the monthly rental to the defendant No. 1 which she refused to accept. The plaintiffs/appellants filed the original Title Suit No. 172 of 2009 seeking a decree for declaration of their tenancy rights over the 'A'-Schedule properties coupled with ancillary reliefs.

8. The defendant/ respondent contested the suit by filing written statement and putting forward her counter claim therein. The respondent/defendant denied the tenancy rights of the appellants/plaintiffs. She also denied that the original tenant Daroga Prasad Roy ever made any construction over the 'A'-Schedule properties with the consent of the then landlord. However, it was the contention of the respondent that the said Daroga Prasad Roy used to reside in 'A' schedule properties as a tenant. It was also admitted that the then owner of the suit property proposed to raise a new construction over the 'A'-Schedule properties and for that purpose he approached the tenant Daroga Prasad Roy to vacate the 'A'-Schedule properties. An agreement in this regard was entered into between the parties, wherein, the tenant agreed to move into an alternative accommodation, to be provided by the then landlord. In terms of the said agreement, the tenant Daroga Prasad

Roy was provided with three rooms in 'B'-Schedule property. As per the terms of the agreement, the landlord agreed to provide 643 sq. ft. on the ground floor of the proposed new construction in 'A'-Schedule properties after the construction was completed. It is also not in dispute that upon such assurance and in terms of the agreement dated June 25, 1997, the said tenant Daroga Prasad Roy moved into the three rooms of the 'B'-Schedule property, which was provided as temporary alternative accommodation. It is also not in dispute that the original tenant Daroga Prasad Roy expired on November 16, 2008. There is no dispute as to the fact that the present respondent/defendant purchased the suit properties from its erstwhile owner i.e. the proforma defendant in the title suit.

9. The respondent/defendant came up with a counter claim in the title suit seeking eviction of the appellants/plaintiffs from the suit properties. It was the case of the respondent/defendant that the original defendant Daroga Prasad Roy died on November 16, 2008. As per the provisions contained in the West Bengal Premises Tenancy Act, 1997, the plaintiffs/defendants were entitled to stay in the suit property as legal heirs of the erstwhile tenant, for a maximum period of five years. The said five years elapsed on November 16, 2013 and on and from such date, the appellants/plaintiffs had no right to occupy the suit properties.

In view of the provisions of the Act of 1997, the right of the plaintiffs/appellants had extinguished on and from November 16, 2013. It has been noted in the impugned judgment that the wife of the original tenant Daroga Prasad Roy predeceased him.

10. On the basis of the pleadings put in by the parties in the title suit, learned Trial Court framed the following issues for adjudication of the suit:-

- “1. Is the suit maintainable in it’s present form?*
- 2. Is there any cause of action to file this suit?*
- 3. Are the plaintiffs tenants in respect of the suit property?*
- 4. Is the tenancy agreement dated 25.07.2007 valid and binding upon the defendant?*
- 5. Are the plaintiffs trespassers in the respect of the B schedule property?*
- 6. Are the plaintiffs is entitled to get a decree as prayed for?*
- 7. What other relief/reliefs, plaintiffs are entitled to get under law and equity?*

Additional issues in respect of counter claim:-

- 8. Has the defendant any cause of action to file this counter claim against the plaintiff?*
- 9. Has the defendant any right, title or interest over the suit premises?”*

11. The suit was heard by learned Trial Court, evidence was led by the parties. On the conclusion of the trial, learned Trial Court, by its

judgment dated December 20, 2022 followed by the decree dated April 26, 2024, decreed the suit being Title Suit No. 172 of 2009 declaring that the plaintiffs/appellants had subsisting tenancy rights over the 'A'-Schedule property with a declaration that the tenancy agreement dated July 25, 1997 was still subsisting and binding upon the parties. Consequently, by the said judgment and decree defendant No. 1/respondent was restrained from dispossessing the plaintiffs/appellants from 'B'-Schedule property illegally or causing any obstruction or interference in the peaceful possession and enjoyment thereof. The counter claim of defendant No. 1/respondent with regard to eviction of the appellants/plaintiffs was dismissed.

12. The landlord/defendant No. 1/respondent herein preferred two appeals against the judgment and decree passed by learned Trial Court in Title Suit No. 172 of 2009. One of the appeals was in connection with the judgment and decree passed in favour of the plaintiffs/appellants with regard to the declaration of their tenancy rights over the suit properties. The other appeal was with regard to the dismissal of the counter claim made by defendant No. 1/respondent. The two appeals being Title Appeal No. 7 of 2023 and Title Appeal No. 8 of 2023 were disposed of by a common judgment and decree being the impugned judgment and decree. By the impugned judgment and decree, learned

First Appellate Court overturned the judgment and decree passed by learned Trial Court. The two appeals were allowed, setting aside the judgment and decree passed by learned Trial Court in Title Suit No. 172 of 2009. Consequently, Title Suit No. 172 of 2009 was dismissed. It was further held in the impugned judgment and decree that the counter claim filed on behalf of defendant No. 1/respondent succeeded by granting a decree of eviction against the plaintiffs/appellants.

13. It is this judgment and decree passed in Title Appeal No. 7 of 2023 and Title Appeal No. 8 of 2023 which have been challenged in the present Second Appeal on behalf of the plaintiffs/respondents.

14. As noted above, the original tenant Daroga Prasad Roy was a tenant in respect of the suit premises since 1962 and continued to occupy the suit premises until his death on November 16, 2008. It also transpires from the materials on record that in the meantime, original landlord Muktaram Roja transferred the suit properties to proforma defendant. The said proforma defendant proposed to raise new construction over the 'A'-Schedule properties upon demolition of existing structure. For such purpose, he approached the tenant requesting him to vacate the suit properties to enable the landlord raise such construction. The landlord also proposed to provide alternative accommodation to the tenant and promised to allot 643 sq. ft. of space on the ground floor in

the newly constructed structure, once the construction work is accomplished.

15. Accordingly, the then landlord i.e. the proforma defendant, Chandan Kumar Chowdhury and the tenant, Daroga Prasad Roy entered into an agreement to such effect on July 25, 1997. As per the agreement, the tenant executed 'no objection' to the permission for new construction and moved into three rooms of 'B'-Schedule properties provided by the landlord as an alternative accommodation until construction work over 'A'-Schedule property is complete.

16. In turn, the suit property stood transferred in favour of the present defendant/respondent. When the respondent/defendant asked the appellants to quit and vacate the suit premises, the appellants asked for the document showing her title. Later, the appellants wrote a letter; through their advocate to the erstwhile owner i.e. the proforma defendant as well as the defendant No.1 on March 9, 2009 which was responded to by a letter dated April 24, 2009. By such letter from the proforma defendant, the appellants came to know that the respondent/defendant No.1 had purchased the suit property and became its owner. The said letter also indicated that the appellants/plaintiffs were defaulter in payment of rent since February 2008.

17. In the backdrop of the facts and circumstances obtaining from the materials on record, the issues which has fallen for our consideration may be summarized as:

i. Whether the appellants hold any tenancy right in respect of the 'B'-Schedule properties?

ii. Whether the learned first appellate court was justified in dismissing the original Title Suit No. 172 of 2009 and passing a decree on the basis of counter claim put forward by the defendant No.1/respondent?

18. The learned trial court, while disposing of the original Title Suit had observed that the letter dated April 24, 2009 from the proforma defendant, indicated that the original tenant had paid rent for the suit premises upto September, 2007. It also pointed out that proforma defendant received rent for the months of November-December, 2007 and January 2008 collectively, from the appellants. It is on this basis, the learned trial court came to hold that since rent was received by the proforma defendant from the appellants/plaintiffs, it amounts to creation of a new tenancy in the name of the appellants in respect of 'B'-Schedule properties. Such finding of the learned trial court was overturned in the impugned judgment and decree in appeal.

19. In our opinion, learned appellate court rightly did so. We have noted that the original tenant Daroga Prasad Roy died on November 16, 2008. Meaning thereby that when the proforma defendant is said to have received rent for the months of November-December, 2007 and January 2008 collectively, from the appellants, the original tenant was still alive and tenancy in his name was subsisting. Nothing appears to have been placed, either before the learned trial court or the first appellate court or even before us that the original tenant Daroga Prasad Roy, ever surrendered or relinquished his tenancy.

20. Admittedly, the original tenant Daroga Prasad Roy died on November 16, 2008 i.e. after the promulgation and coming into effect of the West Bengal Premises Tenancy Act, 1997. The Act of 1997 defined 'tenant' in following terms, that's to say:-

"2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

(a)

(b)

(g) "tenant" means any person by whom or on whose account or behalf the rent of any premises is or, but for a special contract, would be payable, and includes any person continuing in possession after termination of his tenancy and, in the event of death of any tenant, also includes, for a period not exceeding five years from the date of death of such tenant or from the date of coming into force of this Act,

whichever is later, his spouse, son, daughter, parent and the widow of his predeceased son, who were ordinarily living with the tenant up to the date of death of the tenant as the members of his family and were dependent on him and who do not own or occupy any residential premises, and in respect of premises let out for non-residential purpose his spouse, son, daughter and parent who were ordinarily living with the tenant up to the date of his death as members of his family, and were dependant on him or a person authorised by the tenant who is in possession of such premises] but shall not include any person against whom any decree or order for eviction has been made by a Court of competent jurisdiction:

Provided that the time-limit of five years shall not apply to the spouse of the tenant who was ordinarily living with the tenant up to his death as a member of his family and was dependent on him and who does not own or occupy any residential premises, Provided further that the son, daughter parent or the widow of the predeceased son of the tenant who was ordinarily residing with the tenant in the said premises up to the date of death of the tenant as a member of his family and was dependent on him and who does not own or occupy any residential premises, shall have a right of preference for tenancy in a fresh agreement in respect of such premises 1[on condition of payment of fair rent]. This proviso shall apply mutatis mutandis to premises let out for non-residential purpose.”

21. From the materials on record it is explicit that the tenant of ‘A’-Schedule property was moved to ‘B’-Schedule property with a view to

enable the landlord new construction over 'A'-Schedule property with a mutually agreed upon condition to provide 643 Sq. Ft. space on the ground floor in the newly constructed structure, after the construction is over. The tenant rested his claim over the original tenancy of 'A'-Schedule property. The accommodation in 'B'-Schedule property was provided as an alternative accommodation to enable the landlord make new construction and obtain a no objection for such construction work.

22. For the sake of arguments, even if we assume that the occupation of 'B'-Schedule properties was a fresh tenancy and not an alternative accommodation provided for vacating 'A'-Schedule property for the purpose of enabling new construction, such tenancy was created by an agreement between the then landlord i.e. the proforma defendant, Chandan Kumar Chowdhury and the tenant Daroga Prasad Roy in 1997. Therefore, such tenancy as well, if so considered, stood in the name of Daroga Prasad Roy who was predecessor-in-interest of the appellants/plaintiffs. No independent tenancy has been proved to be created in favor of the appellants ever. Section 2 (g) of the Act of 1997 clearly lays down that tenant includes '*any person by whom or on whose account or behalf the rent of any premises is or, but for a special contract, would be payable*'. Therefore, even if rent for certain period is tendered by the appellants, the same will be of no consequence as the original

tenancy stood in the name of their predecessor who was still alive on the date of such tender of rent.

23. In such view of the facts, learned first appellate court was quite justified in holding that no fresh tenancy was created in favour of the present appellants/plaintiffs on the basis of agreement dated July 25, 1997 and that the appellants were not a tenant in respect of the suit properties in view of the provisions contained in Section 2 (g) of the Act of 1997. The learned first appellate court was also justified in granting decree of eviction of the appellants from the suit premises on the expiry of the statutory period of 5 years, in consideration of the counter claim put forward by the respondent/defendant No.1. Accordingly, both the points formulated by us, stand decided against the appellants and in favour of the respondent/ defendant No.1.

24. Therefore, in the light of the discussions made hereinabove, we find no reason to interfere with the impugned judgment and decree passed by learned first appellate court. The same stands affirmed.

25. Consequently, the instant Second Appeals being **S.A. No. 91 of 2024** and **S.A. No. 92 of 2024** are hereby dismissed without any order as to costs and thus, disposed of.

26. With the disposal of the main matter, nothing survives. Accordingly, connected applications, if any, shall also stand disposed of.

27. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

28. I agree.

[DEBANGSU BASAK, J.]