

D/L.17.
June 30, 2025.
MNS.

SA No. 105 of 2024
+
CAN 1 of 2024

Bishnu Shaw
Vs.
Debashis Dutta and another

Mr. Abhijit Basu, Sr. Advocate,
Mr. Arghya Kamal Das

... for the appellant.

1. The present appeal has been preferred against a judgment of affirmance whereby both the courts below decreed the respondents' suit for eviction of the appellant in respect of the suit property by holding that the lease granted to the appellant by the respondent by way of a registered deed (Exhibit- 2) had expired by efflux of time.
2. Learned senior counsel appearing for the appellant argues that the first proviso to Section 92 of the Indian Evidence Act, 1872, which was applicable at the relevant point of time, was required to be taken note of, which provides that any fact may be proved which would invalidate any document or would entitle any person to any decree relating thereto; such as fraud, intimidation etc.
3. Learned senior counsel argues that, in the present case, although the defendant no. 1/appellant specifically adduced oral evidence and proved the

allegation of fraud, which tainted Exhibit- 2, the courts below failed to advert to such issue and as such, the judgments and decrees of both the courts below are bad in law on such count.

4. Secondly, it is argued that there is patent and admitted contradiction regarding the identity of the suit property. Whereas the room which was let out in favour of the appellant was mentioned in the registered lease deed (Exhibit-2) as room no. 5 in the body thereof, the schedule thereto mentioned the same as room no. 4.
5. Again, room no. 4 was mentioned in the plaint as well as the written statement.
6. Since the plaintiff/respondent relied on the lease agreement itself, which is inherently contradictory as to the number of the let-out room, it is argued that such inherent contradiction denudes the decrees of both the courts below of legal sanctity.
7. Upon a careful consideration of the judgments of both the courts below, we find that the evidences led by both the parties were considered at length by the said courts.
8. Since the allegation of fraud was sought to be proved only by the oral evidence of the appellant himself, without any corroborative evidence, reading such evidence in conjunction with the finding of the courts below that the appellant admitted the existence of Exhibit- 2 in his evidence,

we are of the opinion that the oral evidence of the appellant as regards alleged fraud becomes redundant, in view of his admission regarding the existence of Exhibit-2.

9. That apart, the alleged discrepancy was resolved by the courts below. The first appellate court, while scrutinizing the materials at length, elaborately considered the issue. In the opinion of the said court, although the body of the registered lease deed reflected the rented room as room no. 5, it was evident that a typographical mistake occurred, since the lease agreement itself mentioned the room as room no. 4 in its schedule. Both in the plaint and the written statement also mentioned the suit room as room no. 4.

10. Hence, it was an admitted position that the stray mention of room no. 5 in the body of the registered lease deed was given a go-bye by both the parties. Even the measurement of the room-in-question was considered by the first appellate court, being the last court of facts, and it came to the finding that the defendants had admitted that they were tenants in respect of room no. 4.

11. Even the counter claim of the defendant no. 1/appellant was based on such admission.

12. Thus, the contentions sought to be raised boil down to an appreciation of the evidence of both the courts below.

13. It is trite law that in second appeal, there cannot be any re-appreciation of evidence to upset the concurrent findings on facts of both the courts below.

14. In any event, we do not find, in the light of the discussions above, that any pure question of law, let alone substantial, has been made out in the present case.

15. Accordingly, SA No. 105 of 2024 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

16. Consequentially, CAN 1 of 2024 stands dismissed as well.

17. There will be no order as to costs.

(Uday Kumar, J.)

(Sabyasachi Bhattacharyya, J.)