

10th June,
2025
(AK)
22

S.A.T 265 of 2024
IA No: CAN 1 of 2025

Ananda Gopal Mukherjee
Vs.
Tapas Banerjee and others

Mr. Kushal Chatterjee
Mr. Saikat Chatterjee

...for the appellants.

1. Learned counsel for the appellant hands over photocopies of documents to indicate that the deficit court fees have since been put in.
2. The office shall furnish a revised report in that regard.
3. Insofar as the other defect is concerned, it is submitted that the name of the defendant no.5 in the suit was incorrectly recorded in the trial court's decree.
4. The records be sent down for such correction.
5. Subject to the above, we take up the appeal for hearing under Order XLI Rule 11 of the Code of Civil Procedure.
6. The present appeal has been preferred by the defendant in an eviction suit against a judgment of affirmance, whereby both the courts below granted eviction on the premise that the

defendant/appellant was a licensee in respect of the suit premises.

7. Learned counsel appearing for the appellant cites *Bharat Petroleum Corporation Limited vs. Chembur Service Station* reported at (2011) 3 SCC 710 in support of his proposition that if exclusive possession of an immovable property is given to a person, the same, although captioned as a licence, tantamounts to a lease.
8. Learned counsel further submits that as per the plaint case itself, the plaintiffs/respondents became owners of the suit property by virtue of purchase from the original owner in the year 2005, to be precise, on November 29, 2005, whereas admittedly the licence was granted by the plaintiffs to the present defendant/appellant on August 1, 2004 which is evidenced by a Bengali "Licence Patra" exhibited by the plaintiffs themselves.
9. Hence, as on the date of induction of the defendant/appellant, the plaintiffs were not owners of the property and as such, it is submitted that the plaintiffs did not have *locus standi* to evict the defendant.
10. Learned counsel further submits that the factum of exclusive possession being transferred in favour of the defendant is borne out by the "Licence Patra"

itself, which was exhibited by the plaintiffs/respondents.

11. Secondly, it is contended that there was a misdescription in the schedule of the sale deed by virtue of which the plaintiffs/respondents allegedly purchase the property.
12. In terms of the said schedule of the sale deed, it transpires that the plaintiffs only purchased a portion of the suit property.
13. It is argued by learned counsel for the appellant that unless the plaintiffs proved before the learned courts below that the plaintiffs became owners of the particular portion of the property in respect of which licence/tenancy was given to the defendant, the eviction suit could not be decreed in favour of the plaintiffs.
14. The learned courts below, it is submitted, bypassed the issue by relying on certain precedents which pertain to incorrect description in the schedule of the plaint, in contradistinction with discrepancies in the schedule of the very purchase deed of the plaintiffs themselves.
15. It is contended, thus, that the learned courts below overlooked such aspects of the matter and as such, the impugned judgments ought to be interfered with.

16. A perusal of the judgment cited by the appellant, that is, *BPCL vs. Chembur Service Station (supra)* shows that the proposition for which the same has been cited is not apt to the circumstances of the present case.
17. In paragraph no.17 of the said report, relied on by the appellant, Section 52 of the Easements Act, 1882 was quoted.
18. In supplementing the same, the Hon'ble Supreme Court observed that the definition of "licence" makes it clear that a licence granted by the owner enables a licensee a right to do or continue to do certain specified things in or upon an immovable property.
19. In Illustration-A at paragraph-22 of the said judgment, it was recorded by the Hon'ble Supreme Court that an owner of a property enters into a lease thereof but to avoid the rigours of rent control legislation, calls it a licence agreement, in which circumstance, it was held, since exclusive possession was given to the person concerned, the quality and nature of the rights in respect of the premises would be that of a lease or a tenancy and not that of a licensee.
20. However, the contention of learned counsel for the appellant, by placing reliance on the above judgment and Sections 52 and 53 of the Easements

Act, that for grant of licence the licensor has to be the owner of the property, cannot be accepted.

21. A licence can be granted by persons having different shades of rights in a property, which may form the entirety or a part of the bundle of rights associated with ownership of a property.
22. There may be a wide range of rights of a person in respect of a property which start from absolute ownership down to a rank trespasser.
23. A licensor can be placed at any discrete point in such continuum of bundle of rights.
24. In the present case, as on the date when the licence was allegedly granted, that is, in the year 2004, the plaintiffs/respondents were not owners of the property but as per their plaint case, were in possession of the property, thus having lesser rights than a full-fledged owner, more in the nature of possessory rights.
25. According to the plaint case, such possessory rights were parted to an extent in favour of the defendant.
26. Even the Supreme Court, in the reported judgment, did not lay down the proposition that for grant of a licence a person has to be an owner.
27. Rather, the Supreme Court was considering a situation where a licence is granted by an owner and proceeded accordingly.

28. Thus, the propositions laid down therein do not have any direct bearing on the present case.
29. That apart, exclusive possession, even if given, is not the sole indicator of a lease as opposed to a licence. A licence in respect of an immovable property can be given for limited user for a particular purpose or for the purpose of possession.
30. In the present case, no external aid or vague legal principle is necessary to interpret the exhibited document which was labelled as a “Licence Patra” and formed the core of the rights of the defendant in respect of the suit property.
31. A copy of the same is handed over in court today and is kept on record.
32. We find therefrom that the said document, in Bengali vernacular, was captioned as a “Licence Patra”.
33. We have to be careful even in construing the caption of the said document, since, as there is no exact counterpart of “licence” in Bengali as opposed to tenancy, the author of the document carefully captioned is as a “Licence Patra” as opposed to a “Bharatia” (tenancy) agreement.
34. That apart, from the said document itself, it is clear that the jural relationship between the parties was in the nature of permissive occupation.

35. In the said document, the licensors state that permission was granted to the defendant/appellant to use the suit property for the purpose of residence.
36. The document was mentioned as a “licence agreement” and the occupation charges payable was also captioned as “licence fee”.
37. Read in context, one of the plausible interpretations in law would be that the said document created a licence.
38. Since both the courts below have arrived at a concurrent finding by construing the same to be a licence document, we, in second appeal, do not find any scope of interference with such factual finding.
39. Insofar as the purported misdescription in the schedule of the plaintiffs’ title deed is concerned, such misdescription, even if the appellant’s case is taken to its fullest, would comprise of a transfer in respect of a portion of the suit property in favour of the plaintiffs which, in any event, would at least make the plaintiffs co-owners in respect of the suit property.
40. It is well-settled that in a suit for eviction of licensee, the plaintiffs have merely to show better title than that of the defendant.
41. While ascertaining so, it is not the point of inception of grant of licence but the date of filing of

the suit and the decree which are to be taken into consideration.

42. As on the date of filing of the suit, the plaintiffs had already purchased the properties and were owners of the property, either in its entirety or portions thereof, and thus were at least co-owners of the property.
43. As opposed thereto, apart from the licence agreement, the defendant/appellant could not show any proof of tenancy being granted to the defendant.
44. Hence, we do not find why such minor misdescription in the plaint schedule would be germane insofar as the eviction suit is concerned.
45. It is well-settled that in order to get an eviction, the plaintiffs have merely to show that they have a better title than the defendant. As opposed thereto, the defendant is to show the defendant has some right to occupy the premises.
46. There can only be certain types of capacities of an occupier in respect of a property, the primary ones being ownership, tenancy, permissive occupation and/or forcible occupation as a trespasser.
47. It is trite law that in the event either ownership or tenancy is failed to be shown by the defendant, it would automatically be construed that the

defendant is either a trespasser or a permissive occupier of the property.

48. Permissive occupation is writ large over the document which was produced before the court below, that is, the “Licence Patra”.
49. Hence, we do not find any illegality in the findings of both the courts below that the defendant was a permissive occupier/licensee and the plaintiffs, who were owners as on the date of the institution of the suit and the passing of the decree, had better title than the defendant and, thus, were entitled to get an eviction of the defendant/appellant.
50. Thus, we do not find any substantial question of law involved in the present case.
51. Accordingly, SAT 265 of 2024 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.
52. Consequentially, CAN 1 of 2025 is dismissed as well.
53. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)