

FORM NO. J(2)

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPIGURI
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

**PRESENT:
THE HON'BLE JUSTICE HARISH TANDON
And
THE HON'BLE JUSTICE APURBA SINHA RAY**

**SAT 4 OF 2020
WITH
CAN 1 OF 2020**

**MOLLY SARKAR & ORS
Vs.
RAMESWAR ROY & ANR.**

FOR THE APPELLANT : MR. BIJAY BIKRAM DAS

FOR THE RESPONDENT : NONE

HEARD ON : MARCH 3, 2025

JUDGMENT ON : MARCH 3, 2025

THE COURT:

1. The plaintiff/respondent filed a suit for recovery of possession against the defendant/appellant on the premise that he was put in possession as a permissive occupant/licensee and does not have any title that of a

tenant or otherwise in respect thereof. The Trial Court dismissed the said suit applying the principles which are contrary to law as well as on fact. The Appellate Court reversed the judgment and decree which is now assailed in the second appeal.

2. It was a specific case of the plaintiff/respondent that the father of the present appellant was an employee under him to run his business at the stall being the subject matter of the suit. The said father died on 17.12.1996 but the appellants being the heirs and representatives of the said employee refused to hand-over the keys of the said stall. It is further averred in the plaint that such dispute was referred to the Siliguri Bidhan Market Babsayee Samiti and a consensus was arrived in a meeting dated 26.06.1997 that the appellant may be permitted to run the business in a similar manner that of his father till 31.12.1999.
3. After the expiration of the period, the possession remained and continued and in order to protect the same, the appellants approached the Civil Court by filing a Title Suit being TS 108 of 2000 seeking declaration that they are the tenant in respect of the said stall under the plaintiff/respondent and permanent injunction restraining them from evicting and/or dispossessing the appellants herein without due process of law. The said suit was contested by the plaintiff/respondent and ultimately

culminated into a final decree by which the decree for declaration was negated by the Trial Court but since the defendant/appellant was found to be in possession of the said suit property, permanent injunction was granted restraining the plaintiff/respondent from dispossessing and/or removing him from possession without due process of law. The decree of the Trial Court was challenged before the First Appellate Court but the appeal was dismissed so also the second appeal by the High Court.

4. Such being the fact discerned from the record, the only point which involves in the instant appeal is whether the judgment and decree passed in Title Suit No. 108 of 2000 would operate as *res judicata* against the present appellant.
5. The Counsel for the appellant sought to contend that exhibits 1 and 3 which were received in evidence after objection, have not been proved in accordance with provisions of the Indian Evidence Act. It is sought to be contended that exhibit 1 did not come from the proper custody and author of the said document was not examined by the plaintiff/respondent. It is further contended that the agreement which was entered into at the intervention of the said Babsayee Samiti would reveal otherwise and, in fact, creates a right into the appellant.

6. We are unable to appreciate the contention raised by the Counsel for the appellant in this regard. Even if we accept the contention that the aforesaid documents were not properly marked as exhibits yet it does not dispensed with the nuances of law, more particularly, the principle of *res judicata* having applied in the instant case. The appellant approached the Civil Court seeking decree for declaration of his tenancy right in respect of the suit property which was negated by the Trial Court and such decree is affirmed upto the second appellate stage.
7. The principle of *res judicata* is based upon the public policy as every litigation in the country is to attain finality and should not be permitted to be re-determined or re-adjudicated in the subsequent suit. The doctrine of *res judicata* has a sound principle and received recognition in the statutory form by its introduction in Section 11 of the Code of Civil Procedure. The moment the issue which was directly and substantially an issue in the earlier suit has been decided finally, such issue cannot be reopened nor be permitted to be re-agitated in the subsequent proceedings.
8. The issue relating to declaration of tenancy right received quietus the moment the suit filed by the appellant was decided against him and, therefore, cannot be reopened nor can be resuscitated in the subsequent proceeding. Once the right as a tenant is decided against the

appellant, the status become precarious and the person having a better title is entitled to seek a recovery of possession from a person having no title to it.

9. A plea is sought to be taken that the plaintiff/respondent has miserably failed to prove his title in respect of a subject property and, therefore, the Appellate Court was not justified in reversing the decree of the Trial Court.
10. We are not impressed with the aforesaid submission for the simple reason that the father of the appellant was put into the said suit property as an employee to run the business of the plaintiff/respondent and, therefore, even if it is presumed that the permission was granted, which is one of the incidents of putting a person in the property, he is stopped from contending that the person who put him in suit premises had no title in respect thereof.
11. From whatever angle we look at, do not find any involvement of substantial question of law.
12. Accordingly, the appeal being **SAT 4 of 2020** and the connected application **CAN 1 of 2020** are dismissed.

(HARISH TANDON, J.)

(APURBA SINHA RAY, J.)

