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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

CORAM:

THE HON'BLE JUSTICE DEBANGSU BASAK
AND
THE HON'BLE JUSTICE MD. SHABBAR RASHIDI

APO/52/2025
WITH CS/123/2019
IA NO: GA/1/2025, GA/2/2025
HARISH CHANDRA JAISWAL
VS
RAM CHANDRA SHAW AND ORS.

Mr. Anshunath Chakraborty, Adv.

...for appellant.

Mr. Meghnad Dutta, Adv.

Mr. ARindam Paul, Adv.

Ms. Sohini Choudhury, Adv.

...for respondent.

HEARD ON : 06.11.2025.

DELIVERED ON : 06.11.2025.

DEBANGSU BASAK, J:

1. Appeal is at the behest of the plaintiff and directed against order dated February 27, 2025 disposing IA.GA/2/2020 by which, the plaintiff prayed for a judgment on admission.

2. Learned advocate appearing for the appellant draws attention of the Court to the effect that, the appellant filed a suit for

eviction. He points out that there are five defendants in the suit. He submits that, the defendant nos. 1 and 2 are trespassers in the suit at the time when, the suit was filed. Defendant nos.3, 4 and 5 are co-owners of the immovable property concerned in which, the defendant nos.1 and 2 are trespassers. He submits that, the plaintiff is co-owner of the immovable property.

3. Learned advocate appearing for the appellant points out that during the pendency of the suit, the defendant nos.1 and 2 stated in their application that, there was an arrangement between the defendant nos.1 and 2 and the defendant no.4 with regard to the immovable property. He draws attention of the Court to the averments of the defendant nos.1 and 2 in this regard. He submits that, the defendant nos.1 and 2 acknowledged that there was a leave and licence agreement for a particular period with regard to the immovable property concerned. He points out that, the defendant no.4 also acknowledged the arrangement of leave and licence agreement between the defendant no.4 on one part and the defendant nos.1 and 2 on the other part with regard to the suit property. He submits that, the defendant no.4 also stated that, the defendant no.4 terminated the leave and licence agreement.

4. Learned advocate appearing for the appellant submits that, since, the period of leave and licence agreement expired, the appellant is entitled to a decree on admission.

5. The defendant nos.1 and 2 are represented.

6. We find from the impugned order that, the learned single Judge proceeded on the basis of the quality of possession of the defendant nos.1 and 2. Learned Judge did not find any unequivocal admission on the part of the defendant nos.1 and 2 with regard to the immovable property concerned. Learned single Judge, therefore, proceeded not to allow the application for judgment on admission, after returning a finding that there was no unequivocal admission on the part of the defendant nos.1 and 4.

7. As noted above, the suit for eviction filed by the appellant against the defendants on the basis of that, the defendant nos.1 and 2 are trespassers of the immovable property concerned. Developments subsequent to the filing of the suit are pressed into service to seek a decree of eviction on the basis of admission. The admission claimed is the averment of the defendant nos.1 and 2 with regard to the creation of a leave and licence agreement in respect of the suit property.

8. Our attention is also drawn to the effect that, there subsists an order of injunction passed in the suit. There is an order of injunction restraining the parties from creating any third party rights over and in respect of the immovable property concerned.

9. On one hand, if it is contended that, the leave and licence was in breach of the order of injunction, then, in law, there cannot be any leave and licence as claimed by the appellant. On the other hand, after, the leave and licence is construed to be not in violation of the order of injunction passed in the suit, then also, the so-called leave and licence is

with regard to the defendant nos.1 and 2 and the defendant no.4. Defendant no.4 did not take any step for eviction of the defendant nos.1 and 2 subsequent to the expiry of the leave and licence period.

10. Significantly, the claim of recovery of possession of the appellant is on the basis of the defendant nos.1 and 2 being a trespasser of the immovable property concerned. The so-called acknowledgement of the leave and licence agreement, is not between the appellant as the plaintiff in the suit and the defendant nos.1 and 2. Apparently, it is an arrangement between the defendant nos.1 and 2 and the defendant no.4. We do not pronounce the quality of such arrangement or the legality or validity thereof between the parties.

11. We do not find that there is any categorical admission on the part of the defendant nos.1 and 2 warranting a decree for eviction on the basis of a judgment on admission to be passed in favour of the appellant as the plaintiff in the suit.

12. In such circumstances, APO/52/2025 along with all connected applications are dismissed without any order as to costs.

(DEBANGSU BASAK, J.)

13. I agree.

(MD. SHABBAR RASHIDI, J.)