

18.05.2026.
Court No. 13
Item No. 34
sp

F.M.A. No. 2147 of 2014
With
CAN 4 of 2025
Sri Tirath Singh
Versus
Mr. Satish Kr. Agarwal & Ors.

Mr. Subrata Basak.
Ms. Jayasree Ghosh.

..for the appellant.

Mr. Shibendra Nath Chattopadhyay.

..for the respondents.

1. The instant appeal is directed against a judgment and order dated 10th August, 2011 passed by learned 9th Bench, City Civil Court at Calcutta in Title Appeal No. 37 of 2006.

2. The appellant before us is the tenant. The respondent/landlord filed a suit for ejectment of the appellant/tenant that was originally numbered as 282 of 1989. The said suit was transferred from the City Civil Court at Calcutta to be heard by the Presidency Small Causes Court, Calcutta where it was renumbered as Ejectment Suit No. 2696 of 2000.

3. The First Court, namely, 4th Judge of the Presidency Small Causes Court at Calcutta dismissed the suit by judgment and decree dated 22nd December, 2005. The Trial Judge found that the appellant/tenant is the son and successor-in-interest of the original tenant which was let out the premises for running a godown thereat since 1960 onwards. It further

transpires that there are several other tenancies in favour of third parties who are running the suit premises for commercial purposes and business. The Trial Judge found that the allegation of the respondent/landlord that the appellant/tenant had altered the nature and character of the premises from residential to commercial to be misplaced. The Trial Judge found that the premises was being run as a godown and for storing and repairing of almirahs for a substantial period of time, even during the lifetime of the appellant's father.

4. The decision of the Trial Court is based on the order and documentary evidence on record. The findings are sound and logical. This Court is in complete agreement with the same.

5. The next ground urged by the respondent/landlord against the appellant/tenant is that there was nuisance being carried out by the appellant/tenant at the subject premises. The nuisance, according to the respondent/landlord, was the use of spray paint on repaired almirahs. This was causing nuisance emission of a pungent smell, effecting the health and life of the persons living thereat, particularly, the respondent/landlord.

6. The First Court (Presidency Small Causes Court) found that the respondent/landlord has not led any cogent or scientific or medical evidence in supporting its claims. Even local inspection was not applied for

before the Trial Court to establish such allegation of nuisance. The notices and proceedings before the West Bengal Pollution Control Board were of the year 1998 and 1999, well after institution of the suit in question.

7. It is true that an analysis report of the alleged nuisance could have been post or pre institution of the suit. The orders of the West Bengal Pollution Control Board being subsequent to the institution of the suit, could not have been rejected by the Trial Court.

8. It is, however equally true that apart from the orders of the West Bengal Pollution Control Board, the respondent/landlord has not brought any other evidence to establish a private cause of action of nuisance against the appellant/tenant.

9. It is now well-settled that it is for the plaintiff to bring appropriate evidence to prove its claim against a defendant, particularly, when the claim is in the nature of a tort of nuisance. It is not for a Civil Court to educate a landlord as to what evidence it has to bring to drive home and prove or sustain a claim for nuisance. This Court is, therefore, of the view that that the impugned judgment passed by the lower Appellate Court being the 9th Bench of the City Civil Court at Calcutta in Title Appeal No. 37 of 2006 is erroneous.

10. When a plaintiff is unable to prove its claim with appropriate evidence, it is not for a lower Appellate Court to remand the matter back to the First Court to enable the party concerned to bring proper evidence.

11. In the event the respondent/landlord before the Court below was desirous of producing any additional evidence, he should have applied under Order 41 Rule 27 of the C.P.C. for leave to do so. It is only thereafter that the lower Appellate Court could have either dealt with fresh evidence on its own or remanded the matter back to the First Court for consideration of the new evidence. No such new evidence was brought by the respondent/landlord before the lower Appellate Court in the subject title appeal being No. 37 of 2006.

12. Since nuisance is a continuing cause of action, the respondent/landlord shall be entitled to institute any suit or proceeding in accordance with law to establish and prove such nuisance, if any, by the appellant/tenant.

13. For the reasons stated above, the impugned judgment dated 10th August, 2011 passed by the learned 9th Bench, City Civil Court at Calcutta in Title Appeal No. 37 of 2006 shall stand set aside. The decision of the First Court (Presidency Small Causes Court) dated 22nd December, 2005 passed in Ejectment Suit No. 2696 of 2000 is affirmed.

14. With the aforesaid observations, FMA 2147 of 2014 shall stand disposed of.

15. Consequently, CAN 4 of 2025 shall also stand disposed of.

16. There shall be no order as to costs.

17. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Rai Chattopadhyay, J.)