

D/L.30.
January 13, 2026.
MNS.

SAT No. 26 of 2024
+
CAN 1 of 2024
+
CAN 3 of 2025 (disposed of)

Nandalal Kurmi, since deceased, represented
by his legal heirs Chhaya Kurmi and another
Vs.
Ram Raj Das

Mr. Partha Pratim Roy,
Mr. Shibaji Kumar Das,
Mr. Dipendu Sarkar

... for the appellants.

Mr. Nilanjan Pal,
Mr. Atreya Chakraborty

...for the respondent.

1. The deficit court-fees shall be put in by the learned Advocate for the appellants by tomorrow.
2. The present Second Appeal has been preferred by the defendant in a suit for eviction, inter alia, on the ground of reasonable requirement as well as other grounds under the West Bengal Premises Tenancy Act, 1997 (in short, "the 1997 Act"), against a judgment of reversal. During pendency of the proceeding, the original defendant had died, upon which the present appellants were substituted as defendants as his heirs and legal representatives.
3. The learned trial Judge, while observing that the case of tenancy has not been proved and the suit does not come within the ambit of the 1997 Act, dismissed the suit.

4. On the other hand, the learned Judge of the First Appellate Court reversed such judgment by observing that in view of the admission of the DW1 in his cross-examination that he had been residing at the suit premises since 1980 as a tenant, the status of tenancy was proved.

5. Even otherwise, the First Appellate Judge proceeded to hold that the ground of reasonable requirement had been established.

6. Learned counsel for the appellants argues that the very premise of the defence case was that there was no tenancy between the parties but an agreement was executed between the appellants and the plaintiff/respondent to the effect that the plaintiff/respondent would transfer the suit property in favour of the defendants and that the defendants/appellants were put in possession of the suit property in part performance of such agreement.

7. That apart, no rent receipt or other proof of tenancy was produced by the plaintiff/respondent before either of the courts below.

8. Hence, the learned trial Judge, on such premise, had rightly dismissed the suit.

9. It is argued, by placing reliance on paragraph no. 12 of the judgment of the First Appellate Court, that the learned First Appellate Judge held that the plaintiff had contended that the original defendant is a tenant under him as per verbal understanding and the rate of rent was Rs. 500/- per month and the defendant is not as lawful

buyer, nor in adverse possession. He is also not a licensee in the suit property.

10. It is argued that merely on the ground that the defendant had failed to prove that he was a lawful buyer, by default the First Appellate Court held that the defendants were tenants, despite the plaintiff having failed to prove such fact.

11. It is argued that since the suit was framed under the 1997 Act on the cause of action that the defendant was a premises tenant, within the frame of such suit, no eviction decree could be passed on the ground that the defendant was not a valid title holder but a mere licensee.

12. Learned counsel places reliance on a judgment in the case of *Biswanath Agarwalla Vs. Sabitri Bera and others* reported at (2009) 15 Supreme Court Cases 693 and in the case of *Tribhuvanshankar Vs. Amrutlal* reported at (2014) 2 Supreme Court Cases 788 in support of such proposition.

13. Although the Court, while hearing an appeal under Order XLI Rule 11 of the Code of Civil Procedure, is not bound to give a hearing to the respondent, since there is no such bar in law if the Court is of the opinion that for factual clarification, hearing may be given to the respondent, we decide to hear the learned Advocate for the respondent on the limited question as to whether the Appellate Court could have passed such decree despite the tenancy having not been proved.

14. At this, learned counsel for the caveator/respondent points out to the very next sentence in paragraph 12 of the judgment of the First Appellate Court, where it was observed that the original defendant, during his cross-examination as DW1, clearly admitted that he was a tenant since 1980 in respect of the suit property.

15. The judgments cited by learned counsel for the appellants are not apt in the context of the present case.

16. In so far as *Tribhuvanshankar* (supra) is concerned, the Hon'ble Supreme Court held that the appellant therein had filed a suit for eviction and the relief sought in the plaint was for delivery of possession and as such it was not a forum that lacked inherent jurisdiction to pass a decree for delivery of possession. It was also held that the intention of the plaintiff was to act and to take back the possession, under which circumstances it was held that after the institution of the suit, the time for acquiring title by adverse possession had been arrested or remained in the state of suspension.

17. Although, in paragraph no. 30, it was held by the Hon'ble Supreme Court that on a seemly analysis of the principle stated in the authorities discussed therein, it was quite vivid that there is a difference in exercise of jurisdiction where the civil court deals with a *lis* relating to eviction brought under the provisions of the Transfer of Property Act and one under any special enactment pertaining to eviction, in the final analysis, the Hon'ble Supreme Court clearly observed that in a suit for eviction,

the relief of delivery of possession could be granted despite the frame of the suit.

18. In so far as *Biswanath Agarwalla* (supra) is concerned, the observations of the Hon'ble Supreme Court therein cannot be held to be a precedent in the present context.

19. In the said case, the suit was filed under the Rent Control Act. In paragraph no. 24 of the judgment, the Hon'ble Supreme Court observed that a simple tenancy can be terminated by service of notice under Section 106 of the Transfer of Property Act and once a valid notice is served, the tenant becomes a trespasser, whereas under the Rent Control Act, the tenant, upon termination of tenancy, does not become a trespasser but becomes a statutory tenant, in such context, the Hon'ble Supreme Court asserted that the principle of moulding of relief could not be applied, since no issue was framed specifically as to whether the defendant was a trespasser therein or not.

20. Undoubtedly, the said judgment would acquire relevance in the present case if the learned Appellate Judge had observed that the case of tenancy was not proved.

21. In such circumstances, it might have been argued by the appellants that since the suit is couched and framed under the 1997 Act, a specific Rent Control statute, a decree of eviction on the ground of licence might not have been passed.

22. However, in paragraph no. 12 of the impugned judgment of the First Appellate Court, it was categorically observed that the defendant had no other status but that of a tenant, which fact had been admitted by the defendant during his cross-examination while disposing as DW1, where he had clearly admitted that since 1980 he had been residing in the house of Ram Raj (the plaintiff) at Bidhanpally as a tenant.

23. Thereupon, the First Appellate Court applied the principle embodied in Section 116 of the Evidence Act and held that the tenant is not permitted to deny the title of the landlord.

24. Thus, in the present case, it is not that the case of tenancy was disbelieved but still an eviction decree was passed under the Rent Control statute.

25. The First Appellate Court, in the present case, categorically observed, on the premise of the admission of the original defendant as DW1, that he was a tenant in respect of the suit property and as such passed a decree under the 1997 Act.

26. In the process, although the First Appellate Court had observed in the passing that the defendant had failed to prove his case of being a lawful buyer or any other status in respect of the property, such findings are more in the nature of *obiter dicta* insofar as the crux of consideration before the courts below was concerned, which was whether the tenancy of the original defendant was proved.

27. Hence, in the present case, the trappings of the 1997 Act were fully applicable in view of the factual finding of the First Appellate Court, on an appreciation of the evidence, that the defendant had admitted his status as a premises tenant.

28. Furthermore, the First Appellate Court (being the last court of facts), upon consideration of the evidence on record, came to the conclusion that the ground of reasonable requirement was proved.

29. In such view of the matter, the eviction decree under the Rent Control Act, that is, the 1997 Act was perfectly justified and the arguments of the appellants cannot be accepted.

30. Thus, no substantial question of law is involved in the appeal.

31. Hence, SAT No. 26 of 2024 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

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

33. There will be no order as to costs.

34. Urgent certified copy of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Supratim Bhattacharya, J.) (Sabyasachi Bhattacharyya, J.)