
(1975) 02 CAL CK 0023
In the Calcutta High Court
Case No : A.F.A.D. No. 427 of 1961

Amulya Ratan Mukherjee and Others	Vs	APPELLANT
Kali Pada Tah and Others		RESPONDENT

Date of Decision : 18-02-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 7

Citation : AIR 1975 Cal 200

Hon'ble Judges : R. Bhattacharya, J

Bench : Single Bench

Advocate : Dilip Kumar Banerjee, for Ganganarayan Chandra, for the Appellant;
Jnanendra Mohan De and Sankar Mukherjee, for the Respondent

Final Decision : Dismissed

Judgement

R. Bhattacharya, J.—This appeal is by some of the defendants against the decision of the 1st Additional Court of the Subordinate Judge, Burdwan in Title Appeal No. 37 of 1960 affirming the judgment and decree passed by the Court of the Munsif at Kalna in Title Suit No. 31 of 1958 in favour of the plaintiff and against the defendants.

2. In short, the plaint allegation is that on .06 acre of land appertaining to C. S. plot No. 850 under khatian No. 342 in Mouza Madhupur, the plaintiff Kalipada Tan constructed two shop rooms which are the subject-matter of the suit. The landlords in respect of the land in C. S. plot No. 850 were Manmatha Chatterjee and others. Subsequently the defendant No. 25 purchased the interest of the landlords and became the landlord of the plaintiff. The plaintiff had his own shops in the two rooms on the land in plot No. 850 upto 1340 B. S. Later on he let out the suit rooms to one Kalipada Mukherjee who carried on his sweetmeat shop there upto Chaitra, 1354 B. S. Thereafter, Kalipada left the rooms and plaintiff took possession of the same and let out the eastern room to the defendant No. 1 in Aswar, 1355 B. S at a monthly rental of Annas 8 and in Aswin 1355 B. S. he let out the western room to the defendant No. 2 at the same monthly rental of

Annas 8, According to the plaint, they occupied the rooms as tenants and paid rents to the plaintiff. Subsequently they stopped paying rents in collusion with each other. The allegation is that in conspiracy with defendants Nos. 3 to 25, the defendants Nos. 1 and 2 set up a false claim that they were tenants under the said defendants Nos. 3 to 24. The plaintiff, therefore, determined the tenancy of the defendants Nos. 1 and 2 by a notice to quit which was refused. Thereafter, the present action for eviction of the defendants Nos. 1 and 2 and for realisation of arrears of rent was started. It has been alleged by the plaintiff that the defendants Nos. 1 and 2 fraudulently got the current revisional settlement records in their favour and that the same are incorrect.

3. This suit was contested by all the defendants and their defence is more or less the same. The defendants' case is that the defendant No. 25 purchased the Mahal including the suit land and obtained possession thereof. The suit land was lying fallow and covered with shrubs. The plaintiff had already abandoned his former tenancy and the defendant No. 25 entered into the suit land in 1344 B. S. Subsequently, he settled 1/3rd share of the Mahal including the suit property to defendants Nos. 15 to 19 and 21 by a registered deed dated 5th of Chaitra, 1350 B. S. and that 2/3rd share of the Mahal also including the suit property to defendants Nos. 3 to 5 and 8 to 13 by another registered deed of the same date. The defendants' case further is that the defendants Nos. 3 to 24 possessed the suit property by virtue of the settlement and they settled a part of the lands in the north-western portion of the suit property with defendant No. 2 in Aswin, 1353 B. S. at an annual rental of Rs. 4 and another portion lying to the contiguous north with defendants Nos. 1 and 2 in Baisak, 1353 B. S. at an annual rental of Rs. 2, Annas 8. Thereafter, the defendants Nos. 1 and 2 raised one room each on the land settled at their own costs and they had been running their shops in their own rooms thus constructed. It has been further stated that to the south of the rooms built by the defendants Nos. 1 and 2, the defendant No. 25 raised a dochala about four years back from the filing of the written statement for accommodating some Santal labourers. It is stated that defendants Nos. 3 to 24 are in khas possession of the suit property not settled with the defendants Nos. 1 and 2. The defence allegation is that the plaintiff's shop was finally closed in 1336 B. S., and that his room fell down within 3 or 4 months of the closure of the shop and that since then the suit land had been lying fallow.

4. The learned Munsif after hearing the parties and on consideration of the evidence on record, held that the plaintiff's rooms are still in existence and on the question of possession he found that plaintiff was in possession of the rooms. The question of abandonment by the plaintiff of the suit land or falling down of the rooms as alleged by the defendants has been disbelieved by the learned Munsif. The story of settlement in favour of the defendants Nos. 1 and 2 alleged to have been given by the defendants Nos. 3 to 24 has also been disproved. The trial court, however, did not find that the plaintiff's case of the tenancy of the defendants Nos. 1 and 2 under him had been proved. According to the trial

court, the clear finding is that defendants Nos. 3 to 25 could not prove their possession of the suit property and that defendants Nos. 1 and 2 were possessing the suit property before 1353 B. S. According to the learned Munsif, the defendants Nos. 1 and 2 were trespassers and not tenants under the plaintiff.

5. Against that decision, an appeal was taken to the Court of the District Judge and the said appeal has been dismissed by the learned Subordinate Judge. On consideration of the materials on record, the first appellate Court also held that when the defendant No. 25 acquired the landlord's interest of the suit land by a kobala, the tenancy and the shop rooms of the plaintiff were there as they were mentioned in the kobala itself. The said Court also disbelieved the defence version that the suit rooms were constructed by the defendants Nos. 1 and 2 and that the original rooms of the plaintiff fell down. On hearing the parties, the learned Subordinate Judge also held in agreement with the learned Munsif that the plaintiff failed to prove the induction of the defendants Nos. 1 and 2 as tenants under him in respect of the suit rooms as there was no corroboration in support of the testimony of the plaintiff. The story about the jungly shrubs on the suit land has also been disbelieved by the learned Subordinate Judge. It was also found by the appellate Court below that the story of khas possession by the defendants Nos. 3 to 25 had not been proved at all. According to the court below, there was no evidence on record to prove that any of the defendants had any manner of possession upto the end of 1352 B. S. The story of tenancy given by the defendants Nos. 3 to 24 to the defendants Nos. 1 and 2 has not been accepted. It has been found that plaintiff's possession continued in the suit property upto 1353 B. S. when according to the defence version, the defendants Nos. 1 and 2 came into possession of the disputed property though as trespassers having no lawful title or right. On the question of adverse possession also the courts below did not come to the finding in favour of the defendants since it has been held that within 12 years prior to the institution of the suit, the defendants Nos. 1 and 2 had started occupying the suit rooms as trespassers. In this view of the finding, the appellate Court also gave a decree for eviction of the defendants Nos. 1 and 2 as the Munsif did. As the defendants Nos. 1 and 2 were not found tenants under the plaintiffs, no decree was passed in respect of any arrears of rent.

6. In this second appeal this Court will not interfere with the concurrent findings of fact arrived at by both the courts below unless the said findings are perverse or without evidence. In this case it has been found by both the courts that the plaintiff had been in possession of the disputed property upto the end of 1352 B. S. and upto the time when the defendants Nos. 1 and 2 as admitted by themselves occupied the disputed rooms in 1353 B. S. The courts have found that the defendants Nos. 1 and 2 are trespassers in respect of the suit properties. The alleged settlement set up by the defendants in favour of the defendants Nos. 1 and 2 has been disbelieved. The story of surrender of plaintiffs tenancy alleged by the defendants has also been disproved admittedly on the findings of the courts below. The present suit was filed by the plaintiff within 12

years from the dispossession by the defendants Nos. 1 and 2 in respect of the suit property.

7. Now, the point of law canvassed before me by Mr. Dilip Mukherjee, the learned Advocate on behalf of the appellants is that although the plaintiff wanted to have a decree for recovery of khas possession on the allegation that the defendants' tenancy was terminated by a notice to quit, the courts were wrong to hold that the plaintiff was entitled to get khas possession on the ground that the defendants 1 and 2 were rank trespassers which is nobody's case. In the present suit the plaintiff's allegation was that the defendants Nos. 1 and 2 were tenants and that their tenancy was determined by a notice to quit. It has been stated that the said defendants had become trespassers after determination of tenancy. The plaintiff has paid ad valorem court-fees on the value of the property. It has also been found that the plaintiff has title to the property but has been dispossessed by the defendants Nos. 1 and 2 for a period not more than 12 years. My attention has been drawn to Order 7, Rule 7 of the CPC which runs as follows :--

"Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative and it shall not be necessary to ask for general or other relief which may always be given as the court may think just to the same extent as if it has been asked for and the same Rule will apply to any relief claimed by the defendant in his written statement."

8. In this case according to the allegation of the plaint the defendants Nos. 1 and 2 were trespassers in possession of the disputed property, may be after termination of the tenancy but still in character the defendants Nos. 1 and 2 have been described as trespassers. The finding of the courts is that the said defendants had no right, title and interest to remain in the property. The prayer for recovery of possession is there. The plaintiff wants a declaration of his title and also injunction against the other defendants so that they may not disturb his possession. In this case, there was an issue framed by the court which runs as follows :--

Has the plaintiff, has alleged right, title and interest in the suit property and can he get a decree for recovery of khas possession as prayed for?

It appears that both the parties knew that they were to establish their respective title to the suit property. The parties adduced evidence with their eyes open and with the full knowledge of their respective case. The defendants knew that they were to show and prove that the plaintiff's tenancy right was terminated by surrender or abandonment and the plaintiff knew that he had to prove his subsisting title to the suit property. After this open contest, the courts below came to the findings that the plaintiff had his right, title and interest in the property and that the other defendants had no right, title or interest in the property as alleged by them. It has further been found that the plaintiff is entitled to get recovery of possession by evicting the defendants Nos. 1 and 2

who have been proved to be trespassers. In view of these circumstances, the court is justified to award proper and necessary decree as the facts would demand. In this case, the court felt that justice demanded that the plaintiff should be given possession of the disputed property by evicting the trespassers viz. the defendants Nos. 1 and 2. Under Order 7, Rule 7 the court is justified to pass suitable decrees. The case of Abdul Ghani v. Musammad Babni decided by the Full Bench of the Allahabad High Court reported in (1903) ILR 25 All 256 (FIB) may be referred to in this connection. In that case the plaintiff claimed possession against the defendant on the allegation that the defendants' tenancy under him was terminated by a notice to quit. The defendant denied tenancy and asserted her title by adverse possession. It was held that the plaintiff was the owner of the house but the defendants' tenancy was not proved. It was found that the defendants occupied the house with the permission of the plaintiff. The Court, therefore, allowed a decree for possession in spite of the fact that the case of tenancy had not been proved. The principles laid down in that case may be applied here. In the instant case before me, the parties fought out the case on the question of title and they led evidence at length knowing their own cases. A relevant issue as to the question of title was also framed. Plaintiff's title has been proved but the defendant has been proved to be trespasser. By the findings of the courts and also by the decree passed, the cases of the parties were not prejudiced in any manner but on the other hand proper justice has been done. Mere ineffective and unsubstantial technicality will not prevent any party from getting proper decision from the Court No injustice has been done to any of the parties. Ad valorem court-fees were paid-There is no difficulty in passing the decree for declaration of plaintiff's title and for passing a decree for recovery of khas possession of the suit property by evicting the defendants Nos. 1 and 2.

9. In the result, the appeal fails and the same is dismissed with costs against the contesting respondents. I assess hearing fees at 5 gold mohurs.