

(2022) 04 CAL CK 0076

In the Calcutta High Court

Case No : RVW No. 85 Of 2020, CAN 1 Of 2012, 2 Of 2014 (Old CAN 7550 Of 2012, 6093 Of 2014), FMA 1205 Of 2012

Gita Nayek

APPELLANT

Vs

Durgapada Karmakar

RESPONDENT

Date of Decision : 25-04-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Order 47 Rule 1

Citation : (2022) 04 CAL CK 0076

Hon'ble Judges : Bibek Chaudhuri, J

Bench : Single Bench

Advocate : Pratip Mukherjee, Puspashish Gupta, Omar Faruk Gazi, Kushal Chatterjee, Debrup Choudhury

Final Decision : Dismissed

Judgement

Bibek Chaudhuri, J

This is an application for review of the judgment passed by this Court on 6th December, 2019 in FMA No.1205 of 2012 confirming the judgment and decree passed by the learned Civil Judge (Junior Division), 4th Court at Sealdah on 27th April, 2009 and 6th May, 2009 respectively in Title Suit No.240 of 1992 by allowing the prayer of the appellant/opposite party and directing the respondent/petitioner to quit, vacate and deliver peaceful possession of the suit property within two months from the date of delivery of the judgment.

It is alleged by the petitioner that she is a tenant only under the opposite party No.1 Durgapada Karmakar who purchased the specific allotted portion of the premises in suit of which the petitioner is a tenant. There is no relationship of landlord and tenant between other two opposite parties who purchased specific demarcated portion of the premises in suit over which the petitioner had also no right of tenancy and interest. Therefore, the appellants Nos. 2 and 3 are not the landlords of the petitioner. This Court while affirming the decree of eviction

passed by the learned trial Judge considered the requirement of the family members of the appellants Nos. 2 and 3. Thus, the Court made an apparent error while allowing the appeal. It is further stated by the petitioner that since there is no relationship of landlord and tenant between the petitioner and the appellant Nos. 2 and 3, tenancy was not determined in accordance with law. This Court also did not consider that no issue as to whether the plaintiff No.1/ appellant had suitable accommodation elsewhere or not, was framed by the learned trial Judge. Without consideration and adjudication of such issue no decree can be passed against the petitioner for eviction on the ground of reasonable requirement.

It is submitted by Mr. Pratip Mukherjee, learned advocate on behalf of the petitioner that this Court wrongly held that the appellants/opposite parties purchased undivided 1/3rd share each in the premises in suit with specific demarcation in the plan annexed to the deeds as plot Nos. A, B and C respectively. According to Mr. Mukherjee, this Court came to such finding on the ground that the premises in suit was not partitioned amongst the purchasers / opposite parties by metes and bounds either by a deed of partition or by a decree passed by a competent civil Court. According to Mr. Mukherjee, when the premises in suit was purchased in three well demarcated and partitioned plots, the opposite party Nos. 2 and 3 cannot be held to be the joint landlords of the petitioner. Therefore, the Court committed an apparent error by holding that all the opposite parties reasonably require the suit premises.

The opposite parties have filed an affidavit-in-opposition controverting the allegation made out in the application under Order 47 Rule 1 of the Code of Civil Procedure filed by the petitioner.

Mr. Kushal Chatterjee, learned advocate for the opposite parties submits that the Court passed the judgment in FMA 1205 of 2012 relying on a Division Bench decision of this Court in the case of Sachindra Nath Seal vs. Sudam Chandra Pal and Anr. reported in 81 CWN 739. The Court also relied on the decision of the Hon'ble Supreme Court in the case of Bhairab Chandra Nandan vs. Ranadhir Chandra Dutta reported in AIR 1988 SC 396 and came to a reasoned finding that the opposite parties were able to prove that they are the owners in respect of the whole premises. As soon as it is found that the plaintiffs are the owners of the suit premises, there will be no bar to the Court passing a decree for eviction of the tenant from the suit premises on the ground of reasonable requirement of one of the plaintiffs to whom a portion of the suit premises belongs, the remaining portion belongs to other plaintiffs. In the aforesaid decision the Division Bench of this Court held that the plaintiffs are the joint owners in respect of the premises in suit even where the premises were partitioned amongst them by metes and bounds and the defendant's tenanted portion falls within the lots of two of the plaintiffs.

In the instant case, according to Mr. Chatterjee, the premises in suit were not partitioned by and between the plaintiffs by a deed of partition. According to the

convenience of the plaintiffs they purchased specific portions of the premises in suit by three separate deeds of purchase. It is further submitted by Mr. Chatterjee that the question as to whether the plaintiff No.1 is the sole landlord of the defendant or all the plaintiffs are joint landlords is a question of fact which has been decided by the Court during trial and also in appeal up to the High Court. The said issue cannot be reagitated in an application under Order 47 Rule 1 of the Code of Civil Procedure.

Mr. Chatterjee also submits that the scope of review is absolutely limited. An application for review would be maintainable upon discovery of a new and important piece of evidence or where there exists an error apparent on the face of the record or if the same is necessitated on account of some mistake or for any other sufficient reason.

It is also submitted by Mr. Chatterjee that the words "sufficient reason" occurring in Rule 1 is to include a misconception of fact or law by a Court or even by an advocate. An application for review may be necessitated by way of invoking the doctrine "Actus Curiae Neminem Gravavit." In support of his contention Mr. Chatterjee refers to a decision of the Hon'ble Supreme Court in the case of Shanti Conductors Private Limited versus Assam State Electricity Board and Others reported in (2020) 2 SCC 677.

Having heard the learned advocates for the parties and on careful perusal of the judgment as well as the law on the issue of review, this Court most humbly records the observation of the Hon'ble Supreme Court regarding the scope of review as laid down in Shanti Conductors (supra) :-

"The scope of review is limited and under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions, which have already been addressed and decided. The scope of review has been reiterated by this Court from time to time."

"It is sufficient to refer to the judgment of this Court in Parsion Devi vs. Sumitri Devi reported in (1997) 8 SCC 751, wherein in para 9, the following has been laid down -

9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the fact of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the fact of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise."

In reply thereto Mr. Mukherjee submits that the principle laid down in Order 47 Rule 1 of the Code of Civil Procedure as well as in Shanti Conductors (supra) ought to be considered in the light of the fact that the petitioner did not get any

scope to contest the appeal before this Court.

It is needless to say that the appeal was heard *ex parte* on the ground that in spite of repeated chances having been given to the petitioner, she did not appear before the Court of Appeal to contest the same.

It is needless to say that the grounds taken by the petitioner to review the judgment passed by this Court in FMA 1205 of 2012 cannot be said to be error apparent from the face of the record. The Appellate Court considered the submission made by the appellant and the relevant law involved in the appeal and decree is allowed. The question as to whether the opposite party No.1 is the sole landlord or all the opposite parties are joint landlords of the petitioner is a question of fact which was elaborately discussed and decided by the Court of Appeal.

It will not be out of place to mention that the petitioner claimed that the opposite party No.1 Durgapada Karmakar is the sole landlord of the defendant. Even assuming that the opposite party No.1 is the sole landlord, the petitioner stated unequivocally in paragraph 8 of her written statement that the plaintiff No.1 has been residing in the premises of plaintiff No.2 and 3 with them. In view of such admission, it is clear that the plaintiff/opposite party No.1 does not possess his purchased plot in premises in suit and the same is under the possession of the petitioner. The plaintiff/opposite party No.1 is compelled to stay in the portion of plaintiff Nos. 2 and 3. Thus, in view of such clear and unambiguous admission made by the petitioner in her written statement, the opposite party No.1 is entitled to have a decree for eviction for his own reasonable requirement.

For the reasons stated above, I do not find any merit in the instant application and the application under Order 47 Rule 1 of the Code of Civil Procedure is dismissed on contest, however, without costs. All connected applications are disposed of.

Photostat certified copy of this judgment, if applied for, be supplied to the learned advocates for the parties on usual undertakings.