
(2019) 04 CAL CK 0057

In the Calcutta High Court

Case No : Civil Order/Misc. Cas (CO)No. 870 Of 2019

J. R. Aggarwal @ Joginder Raj Aggarwal

APPELLANT

Vs

Subimal Kundu And Others

RESPONDENT

Date of Decision : 22-04-2019

Acts Referred:

West Bengal Court Fees Act, 1970 — Section 7(vi)(a), 7(xiii)(d), 11
Court Fees Act, 1870 — Section 7, 7(v) , 7(xi)(cc)
West Bengal Premises Tenancy Act, 1956 — Section 17(2), 17(2A)
West Bengal Premises Tenancy Act, 1997 — Section 6

Citation : (2019) 04 CAL CK 0057

Hon'ble Judges : Sabyasachi Bhattacharyya, J

Bench : Single Bench

Advocate : Siddhartha Banerjee, Bikramaditya Ghosh, Avishek Banerjee

Final Decision : Allowed

Judgement

The present challenge has been preferred at the instance of the defendant in a suit for eviction.

In the said suit, the plaint case was primarily that there was a lease between the parties, which had come to an end on January 31, 1989 on efflux of time and by a notice dated December 19, 1988, the plaintiff, through his advocate, called upon the defendant to quit, vacate and deliver up peaceful and vacant possession of the suit premises.

By the impugned order, the trial court rejected the application filed by the defendant/petitioner under Section 11 of the West Bengal Court-Fees Act, 1970 and gave the defendant the liberty to raise the question of the appropriate suit valuation and court-fees at the final hearing of the suit.

Learned counsel for the defendant/petitioner argues that, in view of the plaint case being that the defendant/petitioner was a tenant at sufferance after the termination of the lease, the provisions of Section 7(vi)(a) of the 1970 Act ought

to have been applicable.

It is argued that the provisions of Section 7(xiii)(d) of the 1970 Act, as applied by the trial court, could not be invoked in view of the scope of the plaint.

Learned counsel, in this context, cites a judgment reported at (1998) 7 Supreme Court Cases 184 (Raptakos Brett & Co. Ltd. Vs. Ganesh Property), wherein it was clarified that after the expiry of lease, the position of a lessee is that of a tenant at sufferance. Since the said concept is foreign to Indian law, the position of such a tenant at sufferance, according to the said judgment, is akin to that of a trespasser.

Learned counsel also cites a judgment reported at (2009) 15 Supreme Court Cases 693 (Biswanath Agarwalla Vs. Sabitri Bera and others). It was held therein, inter alia, that in the suit from which the said matter arose, a decree for eviction of the defendant was sought, presumably on the premise that the same was covered by Section 7(xi)(cc) of the Court-Fees Act, 1870. However, the court found that for obtaining a decree for recovery of possession, court-fees were required to be paid in terms of Section 7(v) of the Court-Fees Act, 1870 (the Central Act), that is, according to the valuation of the suit.

Learned counsel rightly points out that the language of Section 7(v) of the Central Act is similar to the same provision in the State Act, that is, the West Bengal Court-Fees Act, 1970.

It is, thus, argued that the trial judge acted without jurisdiction in applying Section 7(xiii)(d) instead of Section 7(vi)(a) of the 1970 Act.

Learned counsel for the plaintiffs/opposite parties argues that the question as to whether the defendant/petitioner is a tenant or not was tentatively decided by previous order of a co-ordinate Bench of this Court dated January 21, 2002 passed in C. O. No. 3026 of 1995.

A copy of the said judgment is placed before this Court. It is seen that the matter had arisen from an order passed by the trial court in connection with applications under Sections 17(2) and 17(2A) of the West Bengal Premises Tenancy Act, 1956 in connection with the present suit. The co-ordinate Bench was pleased to hold that, having regard to the nature of the suit, the said applications were not maintainable.

Learned counsel for the plaintiffs/opposite parties next cites a judgment reported at (2009) 1 WBLR (Cal) 227 (Smt. Bina Roy Vs. Smt. Basanti Bhattacharya & Ors.), for the proposition that an enquiry under Section 11 of the 1970 Act could only be initiated in the event the court was of the opinion that the subject matter of any suit had been wrongly valued and not otherwise. It was further held that the said question was primarily between the plaintiff and the State and the defendant, who may believe and even honestly, that proper court fees had not been paid by the plaintiff, still had no right to move the superior court of appeal or revision against the order adjudging payment of court fees payable on the

plaint. Since it was held to be the consistent view laid down for decades by our Courts, the co-ordinate Bench found no reason to digress therefrom.

Learned counsel for the plaintiffs/opposite parties next cites a judgment reported at AIR 1972 SC 819 (Bhawanji Lakhamhi & Others Vs. Himatlal Jamnadas Dani & Others and argues on the basis of the said judgment that if a tenant remains in possession after the determination of the lease, the common law rule is that he becomes a tenant on sufferance. A distinction should be drawn between a tenant continuing in possession after the determination of the term with the consent of the landlord and a tenant doing so without his consent. One was held to be a tenant at sufferance in English Law and the other a tenant holding over or a tenant at will. It was, further, held in the said judgment that no holding over by the appellants had occurred in the said case, on the facts of the case.

It is, thus, argued on behalf of the opposite parties that the trial court was justified in rejecting the application under Section 11 of the 1970 Act filed by the defendant/petitioner, since there was no doubt that the suit was correctly valued.

Even following the judgment rendered by a co-ordinate Bench of this Court at (2009) 1 WBLR (Cal) 227, a court is precluded from initiating an enquiry under Section 11 of the 1970 Act only when there is no doubt that the suit is correctly valued.

In the instant case, however, a palpable doubt has been raised by the defendant/petitioner as to whether the valuation of the suit was correct. The judgment of the Supreme Court cited by both sides corroborates the legal proposition that, in the Indian context, a tenant who is continuing in possession without the consent of the landlord is not a tenant by holding over, but a tenant at sufferance, which is akin in status to that of a trespasser. If the plaint case is taken in the present lis, it is clearly seen from the allegations made in the plaint that the defendant/petitioner was described to be a lessee initially in respect of the suit premises. The lease was subsequently terminated by issuance of a quit notice and had expired on efflux of time as well, as per the plaint case itself. No case of holding over was made in the plaint.

It is well-settled that the basis of valuation of a suit and payment of court-fees has to be the plaint averments initially.

Considering the scope and ambit of the suit, the same is one for eviction of a person who was initially a lessee, but subsequently was rendered a tenant at sufferance on termination of the lease, which is similar to being a trespasser.

Section 7(xiii)(d) of the 1970 Act says that, in a suit between the landlord and the tenant for the recovery of immovable property from a tenant, including a tenant holding over after the determination of a tenancy, the suit should be valued according to the amount of the rent or the immovable property to which the suit refers, payable for the year next before the date of presenting the plaint.

However, the present suit is not one between a landlord and a tenant, pleading

the continuance of the tenancy, contractual or statutory, as for example, would be a suit under Section 6 of the West Bengal Premises Tenancy Act, 1997.

In the present case, the defendant/petitioner was categorically described to be a lessee at inception, later on rendered a tenant at sufferance, without expressly saying so, thereby giving the defendant the status of a trespasser.

Section 7(vi)(a) of the 1970 Act stipulates that in a suit for recovery of possession of immovable property from a trespasser, where no declaration of title to property is either prayed for or necessary for disposal of the suit, courts fees are payable according to the amount at which the relief sought is valued in the plaint, subject to the provisions of Section 11 of the 1970 Act.

The incorporation of the phrase "subject to the provisions of Section 11", which is not there in all the other provisions of Section 7, ipso facto is an indicator of the fact that the whims of the plaintiff in evaluating the suit could be the sole determinant of the valuation of the suit and consequentially the court-fees.

In the present case, since the defendant has virtually being described as a trespasser, an enquiry under Section 11 of the 1970 Act is immediately required so that the parties are not compelled to litigate before a forum incompetent in pecuniary jurisdiction, where the hearing of the suit may be rendered futile ultimately upon a belated adjudication on the appropriate valuation of the suit and court-fees payable.

The provisions of Section 7(vi)(a) is squarely applicable in the present case and not Section 7(xiii)(d) of the 1970 Act.

As such, the trial judge refused to exercise jurisdiction vested in him by law in relegating the adjudication of the valuation of the suit and court-fees payable, to the end of the litigation and rejecting the application under Section 11 of the 1970 Act filed by the defendant/petitioner.

Accordingly, C. O. No. 870 of 2019 is allowed on contest, thereby setting aside the impugned order and directing the trial court to commence enquiry under Section 11 of the 1970 Act in the light of the observations made above and to complete such exercise within one month from the date of communication of this order to the court below.

It is made clear that any observation made in the impugned order or herein will not be an impediment or an influence on the trial court to decide such question independently on its own merits and in accordance with law.

There will be no order as to costs.

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