
(1997) 08 CAL CK 0003
In the Calcutta High Court
Case No : Civil Order No. 2894 of 1993

Lalmoni Devi Jaiswal

APPELLANT

Vs

Ram Bilas Singh

RESPONDENT

Date of Decision : 12-08-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
West Bengal Premises Tenancy Act, 1956 — Section 17(1), 17(2), 17(2A)

Citation : (1998) 1 ILR (Cal) 196

Hon'ble Judges : D.P. Sarkar-II, J

Bench : Single Bench

Advocate : Tapan Dutta, for the Appellant; Haradhan Banerjee and Amitabha Pyne, for the Respondent

Final Decision : Dismissed

Judgement

D.P. Sarkar-II, J.—This revisional application u/s 115 of the CPC is directed against the order No. 49 dated September 16, 1993 passed by the learned Munsif, 5th Court, Howrah in Title Suit Nos. 148 of 1990.

2. The suit was filed for recovery of possession by evicting a trespasser and for damages.

3. The Plaintiff-Petitioner got the property by purchase vide a Deed of Sale dated February 3, 1979. The Plaintiff-Petitioner served a notice of 70 days directing thereby the Defendant-opposite party to vacate after expiry of 70 days, in the alternative the prayer was made that if the Defendant be found to be a premises tenant by the Court, his tenancy would be terminated with the expiry of the month of his tenancy. He claimed damage @ 20 per diem. The third alternative case was that if the Defendant-opposite party be found a licensee then he be also evicted on termination of the license. After filing of the suit naturally the Defendant-opposite party filed a petition u/s 17(2) and (2A) of the Premises Tenancy Act. That was hotly contested by the present Petitioner on the ground that it was not maintainable as it was a suit for eviction of a trespasser. But the

Court incidentally found that there was relationship of landlord and tenant between the parties and directed the opposite party - tenant to pay the arrear rent by instalments and their application under Sections 17(2) and (2A) of the Premises Tenancy Act were thus disposed of by the learned Trial Court and against that order the present revisional application has been filed by the Plaintiff-Petitioner on the ground that the learned trial Court committed mistake in allowing the Petitioner under Sections 17(2) and (2A) of the West Bengal Premises Tenancy Act and on the ground that the learned Trial Court ought to have rejected the petition not being maintainable.

4. The opposite party has contested this revisional application and the learned advocate appearing on both sides have made their respective submissions before the Court supported by earlier decisions.

5. The first question is how far this incongruous pleading is permissible under the law. There is no doubt that the law permits the parties to a suit to set up alternative grounds or in other words alternative cases. But in my considered opinion, each alternative case must have the merits of its own to succeed. Inconsistency in the alternative case is permissible under the law undisputedly, but impracticability and absurdity cannot be allowed to be pleaded before a Court of Justice. The distinction between absurdity and inconsistency should not be overlooked.

6. Inconsistent cases mean lack of cohesion in the cases pleaded alternatively in the pleading. But absurdity is something which cannot be explained out or brought to a rational conclusion.

7. The matter before this Court under revision is whether the impugned order passed by the learned trial Court under Sections 17(2) and (2A) of the West Bengal Premises Tenancy Act is maintainable on the background of the pleadings or in short, the plaint.

8. If the Plaintiff files a suit, for recovery of possession by evicting a tenant and the case of tenancy fails the position of the so-called tenant turns into that of a trespasser and the Plaintiff can get a decree for eviction against that trespasser.

9. Again, if the suit is filed for recovery of possession by evicting a licensee and the story of licence fails the position of the so-called licensee turns to be that of a trespasser and the Plaintiff in the suit is entitled to get a decree for recovery of possession by evicting such trespasser.

10. In the instant matter, the Plaintiff filed a suit for eviction of a trespasser. In the alternative the Plaintiff has prayed for recovery of possession by evicting the Defendant, if he is found to be a tenant or a licensee. The Plaintiff has got the property in suit by purchase. The purchase Deed has not been produced, as I find, before the learned trial Court. It could throw some light as to whether the Defendant has been mentioned as a trespasser or as a licensee or as a tenant in that Deed by the original owner or at least it could be ascertained if there was

any statement or not regarding the status of the Defendant in the said Deed. Whatever it may be, when the alternative case is the eviction of the Defendant if he is found by the Court to be a tenant, in that event, the Defendant definitely has the right to pursue the remedies which are provided by the Statute namely under Sections 17(2) and (2A) of the West Bengal Premises Tenancy Act. The Defendant cannot wait for the finding of the Court if he is a tenant or not, and then to pursue the remedies provided by Sections 17(1), 17(2) and 17(2A) of the West Bengal Premises Tenancy Act. Such an idea is preposterous and absurd.

11. Accordingly, the Defendant-opposite party has exercised its right provided by the Statute by filing the petition under Sections 17(2) and (2A) of the West Bengal Premises Tenancy Act, in view of the notice, although the notice appears to be hypothetical in nature.

12. If the Defendant as such files petition under Sections 17(2) and (2A) of the West Bengal Premises Tenancy Act being prompted by the alternative notice terminating the tenancy, the learned trial Court was duty bound to dispose of those two petitions and we find that the learned trial Court actually disposed of those petitions after contested hearing and directed the Defendant-opposite party to deposit the arrears of rent. At the time of hearing before this Court the learned Advocate for the opposite party has drawn my attention to the oral evidence that was recorded by the learned trial Court at the time of disposal of the petitions under Sections 17(2) and (2A) of the West Bengal Premises Tenancy Act. There on behalf of the Plaintiff-Petitioner it was mentioned categorically that the Defendant-opposite party was a defaulter in payment of rent. The question of default does not arise in case of a trespasser; nor a trespasser deserves any notice for eviction. The filing of the suit itself a notice to a trespasser and also to a licensee. But notice is necessary in case of eviction of a tenant whether under the Transfer of Property Act or West Bengal Premises Tenancy Act. It is very much confusing that the notice to a trespasser has mentioned the limit of 70 days for vacating the disputed property. It is really difficult to find out the logic behind such a notice of 70 days. Whatever it may be, in view of the alternative case of tenancy as asserted in the plaint as well as the alternative notice terminating the tenancy there was no scope for escape of the Defendant-opposite party, but to file the petitions under Sections 17(2) and (2A) of the West Bengal Premises Tenancy Act, irrespective of the result of the suit on the alternative ground of tenancy.

13. No illegality or irregularity is found in the impugned order passed by the learned trial Court. It is not possible in the above circumstances, to share the submission of the learned Advocate for the Petitioner that the petitions under Sections 17(2) and (2A) of the West Bengal Premises Tenancy Act before the learned trial Court were not maintainable.

14. In short, the Revisional Application has no merit and accordingly, it is dismissed on contest but without cost. The findings above share remain confirmed to the merits of the petition without prejudice to the rights and

contentions of the parties to the suit.