

(2012) 06 CAL CK 0003
In the Calcutta High Court
Case No : S.A. No. 343 of 1993

Mritunjoy Kumar Dey

APPELLANT

Vs

Anwarul Haque

RESPONDENT

Date of Decision : 11-06-2012

Acts Referred:

Transfer of Property Act, 1882 — Section 106, 108(m)

Citation : (2013) 1 CHN 147

Hon'ble Judges : Tapan Kumar Dutt, J

Bench : Single Bench

Advocate : Katick Kumar Bhattacharyya, for the Appellant; Sabyasachi Bhattacharyya and Sanjb Seth, for the Respondent

Final Decision : Dismissed

Judgement

Tapan Kumar Dutt, J.—When this appeal was called out for hearing the learned Advocate appearing on behalf of the defendant-appellant submitted that substantial questions of law have not been formulated in this appeal as yet and, accordingly, such formulation is necessary. Having heard the learned Advocate for the appellant, this Court is of the view that the appeal should be heard on the following substantial questions of law:

- (i) Whether or not the learned lower Appellate Court erred in dismissing the appeal upon finding that the notice to quit served upon the defendant was valid in law when according to the defendant, the defendant was a tenant in respect of one room and the other room had been allegedly constructed by the defendant.
- (ii) Whether or not the learned lower Appellate Court erred in holding that the notice to quit is a valid one when according to the defendant, the defendant was a tenant in respect of one room but the notice describes two rooms.
- (iii) Whether or not the learned lower Appellate Court erred in dismissing the appeal when according to the defendant there are other coowners (other than the plaintiffs) of the suit property.

2. After formulation of the aforesaid substantial questions of law, the learned Advocate appearing on behalf of the appellant proceeded to make his submissions on the merits of the appeal.

3. The learned Advocate for the appellant made and completed his submissions today. The learned Advocate for the respondents made and completed his submissions today and the learned Advocate for the appellant made his submissions in reply.

Hearing is concluded.

4. This Court now proceeds to pass the following judgment:

The plaintiffs/respondents filed a suit for eviction against the defendant-appellant. The said suit was filed under the Transfer of Property Act, 1882. It appears that the plaintiffs alleged that the defendant-appellant committed default of payment of rent, the plaintiffs required the suit premises for own use and occupation and the defendant contravened the provisions of section 108(m), (o) and (p) of the Transfer of Property Act. The plaintiffs filed the suit for recovery of possession of two rooms and the notice to quit also indicated two rooms. The defendant contested the said suit by filing written statement and denied the material allegations made in the plaint.

5. The defendant took the stand that the defendant was a tenant in respect of one room only and the other room was constructed by the defendant, which was not a part of the tenancy.

6. The defendant challenged the notice to quit and also took the stand that since there are other co-owners of the suit property the suit is not maintainable.

7. The said suit for eviction being Title Suit No. 4 of 1987 came up for hearing and the learned Trial Court being the learned 7th Court of the Munsif at Howrah by a judgment and decree dated 18th December, 1989 decreed the suit and directed the defendant to deliver up khas possession of the suit premises to the plaintiffs within the stipulated period of time and in default the plaintiffs were given liberty to put the decree into execution. The learned Trial Court found that the notice is valid and the plaintiffs are entitled to get the decree for eviction.

8. Challenging the said judgment and decree passed by the learned Trial Court, the defendant filed Title Appeal No. 30 of 1990 which was placed before the learned Fourth Court of the Addl. District Judge, Howrah and the Learned Lower Appellate Court by a judgment and decree dated 7th November, 1990 dismissed the said Title appeal and affirmed the judgment and decree passed by the learned Trial Court.

9. Challenging the impugned judgment and decree, the defendant has filed the instant second appeal and substantial questions of law have already been formulated as indicated above and the appeal has been heard on merits thereafter.

10. With regard to the point raised by the learned advocate for the appellant that all the co-owners of the suit property did not come forward to file the said suit for eviction and, therefore, the said suit for eviction is not maintainable is not a point of any substance. Even if all the other alleged co-owners have not been joined with the plaintiffs in the suit for eviction, it cannot be said that the said suit is not maintainable when the inducing land-lords have instituted the said suit for eviction of the tenant.

11. The plaintiffs' case is that the plaintiffs are the owners of the suit property. The defendant has not been able to show and/or prove that there are other co-owners of the suit property at present. In any event, even if it is assumed for the sake of argument that there are other co-owners in respect of the suit property, the suit does not become non-maintainable only because the other co-owners are not the parties to the suit, particularly, when such alleged other co-owners have not come forward to oppose the filing of the suit. Thus, this Court finds that it cannot be said that the suit is not maintainable on such alleged ground.

12. The other point raised by the learned advocate for the appellant with regard to the notice is also a point which is devoid of any substance. The said learned advocate referred to some of the rent receipts wherein it has been indicated that rent receipt is in respect of one room only.

13. The said learned advocate referred to the evidence of PW-1 where the said witness stated that the suit is only for three rooms.

14. The said learned advocate referred to the evidence of PW-2 where the said witness stated that the suit is only for one room.

15. The said learned advocate also referred to the evidence of DW-1 where the said witness stated that he was a tenant in respect of one room only.

16. It is true that there are discrepancies in evidence on record but the learned lower Appellate Court as the last Court of fact came to a finding that the room which is alleged to have been constructed by the defendant is a backside room approachable by the only gate of the room of the tenancy.

17. On a perusal of the impugned judgment, it appears that the room, which the defendant is alleged to have constructed, is just on the backside of the room with regard to which there is no dispute. It further appears that to get an entry into such backside room one has to pass through the undisputed room. Thus, effectively, the defendant is now in control of both the rooms.

18. The defendant has stated in his evidence that he has constructed the backside room but nowhere from the evidence it appears that the defendant has been able to prove that he took permission from the plaintiffs for making such construction. There is no dispute that both the rooms are within the premises owned by the plaintiffs.

19. Now, if the defendant's version of making construction of the back side room

has to be accepted, then in that event, it follows that the defendant has made such construction unauthorisedly in the plaintiffs' property.

20. The learned lower Appellate Court was not oblivious of this aspect of the matter. The learned lower Appellate Court took into consideration the existence of two rooms and has described the said backside room as an anteroom.

21. Thus, even if the plaintiffs had initially granted one room in tenancy to the defendant and the defendant has made an unauthorised construction of another room subsequently, the plaintiffs can very well pray for recovery of possession of both the rooms in one suit.

22. The learned advocate for the appellant submitted by referring to the notice to quit that at one stage the plaintiffs had described month of tenancy according to english calender month, but reading the notice as a whole it will appear that such description is only a mistake as it would appear in the subsequent paragraph of the said notice that the tenancy was according to bengali calendar month.

23. The learned Court below has taken such fact into consideration.

24. This Court is unable to come to the conclusion that the notice is not in accordance with section 106 of the Transfer of Property Act. As it appears that in the notice the plaintiffs have asked the defendant to quit and/or vacate the suit property on the expiry of the last date of the month of Agrahayan, 1393 B.S. and the tenancy shall be terminated from 1st Pous, 1393 B.S. The notice is dated 13.11.1986. It further appears that the suit has been filed on 7th January, 1987.

25. In the aforesaid circumstances, this court is of the view that section 106 of the Transfer of Property Act, 1882 has in no way been contravened by the plaintiffs. Both the learned Courts below have found that the notice was a valid one and it was served upon the defendant.

26. This Court does not have any occasion to differ from such view taken by the learned Court below.

27. In view of the discussions made above, this Court does not find any merit in the instant second appeal which is, accordingly, dismissed.

28. Interim order, if any, stands vacated. Let the L.C.R. be sent back to the learned Court concerned immediately.

There will, however, be no order as to costs.

Urgent certified xerox copy of this judgment, if applied for, shall be given to the parties as expeditiously as possible on compliance of necessary formalities.