

(2015) 02 CAL CK 0014

In the Calcutta High Court

Case No : RVW 182 of 2013 and CO 267 of 2013

Rajeev Beriwal

APPELLANT

Vs

Prabeer Seaal

RESPONDENT

Date of Decision : 04-02-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 3

Citation : (2015) 3 CHN 432 : (2015) 4 WBLR 959

Hon'ble Judges : Subrata Talukdar, J.

Bench : Single Bench

Advocate : Dhiraj Trivedi, Amit Sharma and Pankaj Ladia, for the Appellant;
Ashis Chandra Bagchi and Amitabha Roy, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Subrata Talukdar, J.—This application for review is directed against the order impugned dated 19th August, 2013 passed by an Hon'ble Single Bench in CO No. 267 of 2013. Since the Hon'ble Judge has retired, the present review application has come up for hearing before this regular Bench.

2. By the order under review dated 19th August, 2013 the Court simply recorded as follows:-

None is present on behalf of the petitioner.

Heard the learned Counsel for the opposite party who supported the impugned order.

Having a glance over it, I find no merit to interfere with the order.

Accordingly, the revision stands dismissed.

3. Shri Dhiraj Trivedi, Ld. Counsel appearing for the review-applicant submits that the order impugned is cryptic and the Hon'ble Single Bench ought to have adduced sufficient reasons for not interfering with the said order impugned No.

29 dated 8th October, 2012 in Title Suit 2435 of 2007 passed by the Ld. 11th Bench, City Civil Court at Calcutta.

4. Shri Trivedi submits that the present opposite party is the son of the plaintiff in Title Suit No. 2435 of 2007. In her suit the plaintiff claimed that she was the owner of a godown premises and granted a license for a period of 11 months in favour of the defendant. On the expiry of the period of the licence the plaintiff claims eviction of the defendant-licensee and a decree of khas possession. She also prayed for injunction restraining the defendant from transferring, assigning and/or alienating the suit premises in any manner whatsoever.

5. Upon the death of the original plaintiff an application was filed by the present petitioner, her son, under Order 22 Rule 3 CPC for substituting his name in place and stead of the original plaintiff. In the said application under Order 22 Rule 3 CPC the petitioner stated that the sole plaintiff died on 25th September, 2010 and, on her death he has become the sole owner of the suit property in terms of a duly registered Deed of Gift dated 30th January, 2004. The petitioner therefore claims substitution as plaintiff in place and stead of his mother, the original plaintiff, to proceed with the suit.

6. By the order impugned dated 8th October, 2012 the Ld. Trial Court found the suit for eviction to be maintainable and the present petitioner, in his capacity as the owner, legally entitled to be substituted in place of his mother, the original landlord. Accordingly, the petitioner's application under Order 22 Rule 3 CPC stood allowed. Being aggrieved the petitioner filed CO 267 of 2013. The Hon'ble Single Bench, as noted above, on a perusal of the order impugned dated 8th October, 2012 found merit in the same and therefore refused to interfere.

7. In addition to the point that it was incumbent on the Hon'ble Single Bench to support such refusal with reasons, Shri Trivedi, appearing in support of the review application, takes this Court to the several documents on record. He places emphasis on the fact that the Ld. Trial Court ought to have appreciated that an agreement of license is an agreement in personam. In such view of the matter, according to Shri Trivedi, the right to sue expired with the death of the original plaintiff.

8. Drawing the attention of this Court to the averments in the plaint, Ld. Counsel for the petitioner has argued that the original plaintiff specifically pleaded to be the owner of the suit premises. In that view of the matter the present petitioner cannot claim to be an owner and carry the suit forward particularly when the agreement of license was exclusive between the original plaintiff and the defendant. Ld. Counsel further asserts that with the death of the original plaintiff the right to act as the licensor stood extinguished.

9. In support of his above noted arguments Shri Trivedi relies upon Gajraj Vs. Sudha and Others, and on Deo Narain Tewari and others Vs. IIIrd Additional District Judge and others,

10. Per contra Shri Ashis Chandra Bagchi, Ld. senior Counsel appearing for the OP-substituted plaintiff has argued that the right to sue survives in contract and not in tort. He points out that in every case the landlord may not be the owner of the premises. He further submits that admittedly in the present case the petitioner became the owner of the premises after the death of the original plaintiff, his mother.

11. It is the further submission of Shri Bagchi that the right to sue vests in the original plaintiff on the strength of the contract, viz. being the Agreement for Leave and License dated 1st April, 2006 entered into between the original plaintiff-licensor and the defendant-licensee. Ld. Counsel highlights the fact that the expression owner/licensor applicable to the original plaintiff under the contract also includes her heirs, executors, administrators, representatives and assigns. Therefore, according to Shri Bagchi, the right to sue under the contract devolved upon the present petitioner as the legal heir of the original plaintiff-licensor.

12. In support of his above noted submissions Shri Bagchi relies upon M. Veerappa Vs. Evelyn Sequeira and Others, and also on S. Thangappan Vs. P. Padmavathy, .

13. Having heard the parties and considering the materials on record this Court finds that the claim of the original plaintiff stood based on the contract dated 1st April, 2006. The contract itself specified that the definition of owner-licensor would include the heirs and the successors-in-interest of the original plaintiff.

14. This Court also finds that the suit has been instituted by the original plaintiff-licensor on the basis of the said contract of license seeking a declaration that the defendant is a rank trespasser in the suit premises on expiry of the license period. To the mind of this Court the present petitioner being the heir and the successor-in-interest of the original plaintiff is entitled in law to carry the suit forward. In this connection this Court finds it useful to reproduce the provisions of Order 22 Rule 3 CPC which provides as follows:-

Procedure in case of death of one of several plaintiffs or of sole plaintiff.-(1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.

15. This Court also is in respectful agreement with the principle propounded in

AIR 1988 SC 506 (supra) that there could be no abatement in a suit founded on contract. In the opinion of this Court the substituted plaintiff is entitled to carry the suit forward to be adjudicated in its entirety particularly when the contract itself provides for the substituted plaintiff to step into the shoes of the original licensor. Furthermore, having regard to the language of Order 22 Rule 3 CPC, if the right to sue survives, substitution cannot be denied.

16. Now noticing the argument of Shri Trivedi that the order of the Hon''ble Single Bench dated 19th August, 2013 is bereft of reasons, this Court finds that it is always open to the reviewing Court to supply the reasons.

17. Therefore, on the basis of the reasons enumerated in the above noted discussion this Court does not find any error or wrongful exercise of jurisdiction by the Ld. Trial Court to allow the substitution vide the order impugned No. 29 dated 8th October, 2012. The Ld. Trial Court shall be free to proceed with the hearing of the suit after the substitution as directed by the order dated 8th October, 2012 is carried out.

18. However, this Court cannot help but take notice of the fact that the suit is of the year 2007 and by the order dated 8th October, 2012 the same was marked for peremptory hearing. In that view of the matter having regard to the age of the suit this Court finds it appropriate to direct the Ld. Trial Court to conclude such hearing within one year from the date of communication of this order on its own merits and, in accordance with its diary.

19. RVW 182 of 2013 is accordingly disposed of.

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

21. Urgent certified photocopies of this judgment, if applied for, be given to the learned advocates for the parties upon compliance of all formalities.