

(1997) 06 CAL CK 0015
In the Calcutta High Court
Case No : Suit NO. 119 of 1995

Rampuria Industries and Investments Ltd.	APPELLANT
Vs	
Nellimarla Jute Mills Co. Ltd.	RESPONDENT

Date of Decision : 10-06-1997

Acts Referred:

Constitution of India, 1950 — Article 176
Specific Relief Act, 1963 — Section 9
Suits Valuation Act, 1887 — Section 3
Transfer of Property Act, 1882 — Section 106, 111, 116
West Bengal Court Fees Act, 1970 — Section 11, 7

Citation : AIR 1997 Cal 366

Hon'ble Judges : Sujit Kumar Sinha, J

Bench : Single Bench

Advocate : S.K. Kapoor, Protap Chatterjee, Barrister-at-Law and and Samrat Sen, for the Appellant; Jayanta Mitra, Bahskar Sen, Barristers-at-Law and Sr. Advs., Rajan Deb, Barrister-at-Law and U.S. Menon, for the Respondent

Judgement

1. By this motion the defendant has sought inter alia an order for return of the plaint filed in this suit and for stay of all proceedings until disposal on the ground that this Court lacks pecuniary jurisdiction to entertain this suit.

2. The success or failure of the defendant on its motion really depends on the construction of the relevant provisions of the West Bengal Court-Fees Act, 1970 ("the said Act" for short) for determining the question as to whether or not this Court has pecuniary jurisdiction to entertain this Suit. The relevant provisions of the said Act as amended by the 1974 Amendment Act are set out hereunder for convenience.

"7. (vi) For recovery of possession of immovable property.-- In a suit for recovery of possession of immovable property from --

(a) a trespasser, where no declaration of title to property is either prayed for or necessary for disposal of the suit -- according to the amount at which the relief

sought is valued in the plaint subject to the provisions of section 11;"

"7. (xiii) In the following suits between landlord and tenant --

(a) to (c) x

(d) for the recovery of immovable property from a tenant including a tenant holding over after the determination of a tenancy,

(e) of (g) x

according to the amount of the rent of the immovable property to which the suit refers, payable for the year next before the date of presenting the plaint."

"11. If the Court is of opinion that the subject-matter of any suit has been wrongly valued, it may revise the valuation and determine the correct valuation and may hold such inquiry as it thinks fit for such purpose."

3. It is well-settled that as no rules have been framed by the State Government under S. 3 of the Suits Valuation Act, 1887 the value as determined by the aforesaid provisions of the said Act in respect of suits falling within the categories specified therein determines the pecuniary jurisdiction of this Court to entertain, try and determine such suits.

4. The action as laid in the plaint is for the recovery of vacant possession of the suit premises from the tenant as trespasser. It appears from the plaint that upon expiry of its lease by efflux of time and despite notice to quit served upon it the defendant "wrongfully failed and neglected to quit, vacate and deliver up vacant and peaceful possession of the suit premises to the plaintiff and since then has been and still is in wrongful and illegal possession of the suit premises as a trespasser therein."

5. For the purpose of jurisdiction the plaintiff has valued this suit on the basis of the market value of the suit premises.

6. The only question that arises for determination in this motion is as to what is the status of tenant who continues to be in possession of the suit premises after he has been served with a notice to quit. Does he upon such service become a trespasser. The learned counsel for the defendant has relied upon the following cases in support of his submission that despite such service in the notice to quit the tenant continues to be a tenant within the meaning of S. 7 paragraph (xiii) (d) of the said Act :--

(a) Govinda Kumar Sur and Others Vs. Mohini Mohan Sen and Others, . In this case the learned Division Bench of this Court held that the word "tenant" means an ex-tenant that is a person who was a tenant but has now ceased to be so within the meaning of S. 7 paragraph (xi) (cc) of the old Court Fees Act, 1870. The learned Division Bench expressly dissented from the view expressed by a learned Single Judge of this Court Cammide J. in the case of Gobinda Ram Agarwala Vs. Dulu Pada Dutta and Others, where that learned Judge observed as

follows :--

"Once the tenancy has been determined the person who was a tenant becomes a trespasser holding over and he could only be a tenant holding over provided that such holding over was with the consent express or implied of the landlord";

(b) K.K. Verma and Another Vs. Union of India and Another, . In this case Chagla C. J. speaking for the Division Bench of the Bombay High Court observed as follows (at p. 360) :--

"Whereas the trespasser's possession is never juridical and never protected by law, the possession of an erstwhile tenant is juridical and is protected by law. Therefore, as far as the Indian Law is concerned, an erstwhile tenant can never become a trespasser;"

(c) M.R.S. Ramakrishnan Vs. The Assistant Director of Ex-Servicemen Welfare (District Soldiers, Sailors and Airmen Board), Tiruchirapalli and Others, In this case a learned Single Judge of the Madras High Court observed as follows (Para 11) :--

".....under Indian laws a person continuing in possession of the property after the expiry of his tenancy, is not regarded as a trespasser for his entry was lawful and as such possession would both on principle and authority be entitled to protection under S. 9 of the Specific Relief Act (Old Act).

7. On the other hand the learned counsel for the plaintiff submitted that the tenant becomes a trespasser upon determination of his tenancy and in support of his submission relied on the decision of the Supreme Court in "Smt. Shanti Devi v. Amal Kumar Banerjee" AIR 1981 SC 1550; where in paragraph 5 of the said report (at pp. 1551) the Supreme Court held as follows :--

"5. Undoubtedly, S. 111(a) of the Transfer of Property Act, which deals with determination of a lease by efflux of time, has to be read with S. 116 of the Act. But in the present case there is no allegation by the defendant that he was a tenant holding over within the meaning of S. 116 of the Act. Now, in order that a lease should be deemed to have been continued in favour of the defendant it was necessary to show that he remained in possession of the premises demised after the determination of the lease granted to him and the plaintiff had expressly or by necessary implication assented to his continued possession. There being no such plea of holding over, the matter falls to be governed by S. 111(a) of the Transfer of Property Act. If the period of lease had expired on January 10, 1970, the relationship of landlord and tenant ceased and the defendant became a trespasser. In the present case, the respondent who was the defendant, in Ground No. 6 of his memorandum of appeal before the High Court urged that the courts below should have held on the basis of the plaintiff's case read with the lease deed that the lease would expire on January 10, 1970. There was, therefore, no question of service of any notice under S. 116 of the Transfer of Property Act."

8. The next case cited on behalf of the plaintiff is the unreported judgment of Ray J. in Suit No. 741 of 1989 (Parameswari Devi Saraogi v. Hari Prasad Poddar); In this case the learned Judge held on consideration of the authorities cited before him that the valuation of that suit under S. 7 paragraph (vi) (a) of the said Act was permissible. With respect to the learned Judge is aforesaid conclusion savours of ipse dixit.

9. The following cases were also cited on behalf of the plaintiff :--

a) R.V. Bhupal Prasad Vs. State of Andhra Pradesh and others,

b) Krishna Kishore Firm Vs. The Govt. of A.P. and others,

10. It is not necessary to examine the aforesaid cases in any detail as the same do not advance the case of the plaintiff any further.

11. At the conclusion of hearing Written Notes of Arguments were submitted by the learned counsel for the parties and the same have been directed to be kept on record.

12. The question posed supra as to whether a tenant becomes a trespasser upon service on him of the notice to quit appears to me to be concluded by the decision of the Supreme Court in the case of "Smt. Shanti Devi v. Amal Kumar Banerjee (supra); there the Supreme Court in no uncertain terms held that upon the cesser of the relationship of landlord and tenant, the tenant becomes a trespasser. Such cesser of relationship takes place on the fulfilment of any of the conditions envisaged by S. 111 of the Transfer of Property Act. The language in that Section provides that on the fulfilment of nay such condition the lease "determines". In that case the Supreme Court also held that a notice to quit under S. 111(h) was not necessary where the lease had expired efflux of time under S. 111(a) of that Act.

13. The English Law as appears from the current edition of Halsbury's Laws of England in Volume 27(1) relating to Landlord and Tenant (Article 176) is that where "a person who enters on land by lawful title, and after his title had ended, continues in possession without statutory authority and without obtaining the consent of the person then entitled, is said to be a tenant at sufferance, as distinct from a tenant at will who is in possession with the landlord's consent.", and that "once the landlord indicates his dissent at the holding over, the tenant at sufferance becomes a trespasser." (footnote 2)

14. The Indian Law is somewhat different as the tenant is considered to be holding over only where such holding over by him is assented to either expressly or impliedly by his landlord.

15. In my judgment, the defendant in this suit has been properly sued as a trespasser. Accordingly, the valuation of this suit under S. 7 paragraph (vi) (a) of the said Act has been properly made.

16. For the foregoing reasons this application fails and the same must be

dismissed.

17. There will however be no Order as to costs.

18. Petition dismissed.