
(1972) 11 CAL CK 0001

In the Calcutta High Court

Case No : Appeal from Original Decree No. 445 of 1966

Royal Stationery Supply House

APPELLANT

Vs

Azizul Haque and Others

RESPONDENT

Date of Decision : 30-11-1972

Acts Referred:

Transfer of Property Act, 1882 — Section 106

West Bengal Premises Tenancy Act, 1956 — Section 13(1)

Citation : AIR 1973 Cal 363

Hon'ble Judges : Amaresh Roy, J

Bench : Single Bench

Advocate : S. Roy Chowdhury, R.C. Pyne and Durga Mohan Bhowmick, for the Appellant; G.C. Ganguly and Miss Nirmala Kumari Chaturvedi, for the Respondent

Final Decision : Dismissed

Judgement

Amaresh Roy, J.—This appeal is by the defendant against whom a decree for ejectment has been passed in a suit for recovery of possession instituted by the plaintiff on the allegations that the defendant was a tenant under the plaintiff in respect of premises in suit consisting of a shop-room with a godown in the ground floor of the premises at a monthly rent of Rs. 110/- payable according to English Calendar month. The suit was instituted on the ground that the plaintiffs required the premises in suit for their own occupation for the purpose of starting a business for their own maintenance. The notice of ejectment was given, period of notice expiring on 30th April, 1964. The suit was instituted on 23rd June, 1964. This notice was issued by a pleader on behalf of 5 brothers who claimed to be the owners of the house. One of those brothers Mukhtaru Haque died before the date of expiry of notice and a suit was instituted by the four surviving brothers and the heirs of the deceased Mukhtaru Haque.

2. The defendant contested the suit by raising several pleas. One contention was that one of the brothers on whose behalf the notice of ejectment was given having died before the date of the expiry of the notice, the suit instituted on the

basis of that notice of ejectment should fail because there was no notice of ejectment given on behalf of the plaintiffs Nos. 5 to 7 who joined as plaintiffs as heirs of deceased Mukhtaru Haque. Another contention raised on behalf of the defendant was that in a letter addressed to them by a pleader on behalf of the plaintiff described the plaintiffs as "Messrs. Azizul Haque and brothers". Relying on that letter which was brought in evidence on admission as Ext. A the defendant contended that the owner of the premises who has inducted defendant as tenant was a partnership firm and there was no relationship of landlord and tenant between the plaintiffs individually and the defendant. On the merits the defendant contested the plaintiff's claim of requirement of the suit premises for the use and occupation of the plaintiffs.

3. The learned Trial Judge held that the defect pleaded by the defendant had no substance. He held that there was no necessity of issuing a fresh notice of ejectment because the heirs of the deceased brother have been joined as plaintiffs as his legal heirs. He also held that the description of the plaintiffs as "Azizul Haque and Brothers" in the letter Ext. A did not connote a firm name, but was only abbreviation of all the brothers' names. On the merits the learned trial Judge held that evidence showed that the plaintiffs are out of employment. They have no business of their own to earn income for maintenance. The plaintiffs therefore wanted to start a business to augment their income in the business locality where the suit premises is situated. That has been held by the learned trial Judge to be correct position in fact and he held that the plaintiffs reasonably required the premises in suit for the purpose of starting business. On those findings the suit has been decreed by a judgment dated 31st January, 1966.

4. Present appeal is against that decree of ejectment. In support of the appeal only two points were urged before me. First that the notice of ejectment in the circumstances of this case should be held invalid. The learned Advocate for the appellant relied on the decision in the case of Binani Properties Private Ltd. Vs. M. Gulamali Abdul Hossain and Co. and Others, for contending that the notice is a part of cause of action and no notice having been given on behalf of the plaintiffs Nos. 5 to 7 they had no cause of action to institute the suit for ejectment. In answer to that point the learned Advocate for respondent Mr. Charu Chandra Ganguly has relied on the decision of the Supreme Court in the case of The Calcutta Credit Corporation Ltd., and Another Vs. Happy Homes (P) Ltd., . In the present case the point is completely answered by the fact that notice of ejectment was given by all the owners and the tenancy having been terminated by effect of that notice the suit has been instituted by all the owners of the suit premises including the legal heirs of the deceased brother who died in the meantime. Those heirs are heirs of the estate of their deceased father which includes the right to get possession on the basis of the notice given in the name of their dead father along with other co-sharers owners. Therefore there was no necessity of any fresh notice to be given by the heirs of the deceased brother and the suit has not suffered any defect on that score.

5. The only other argument in support of the appeal was that the test of requirement for their own use and occupation has not been properly applied inasmuch as the learned trial Judge has recorded his finding in a way which has been described in the argument of the learned Advocate for the appellant as an omnibus point. The learned Advocate also contended that by amendment in 1969 Clause (ff) of Sub-section (1) of Section 13 of the Act is applicable. But there has not been any finding to satisfy the last part of that Clause (ff) as it now stands. This contention in my view has no substance because what is now provided in the last part of Clause (ff) has always been the law even under old Clause (f) before amendment for finding the reasonableness of the requirement of the plaintiff. Evidence in this case already establishes that the plaintiffs require the suit premises which is reasonable including the fact that they have not in their possession any other accommodation to carry out the purpose for which they require the suit premises.

6. I, therefore, agree with the finding of the learned trial Judge and affirm the decree of ejectment passed against the defendant. The appeal is dismissed with costs.