

(2012) 04 CAL CK 0061
In the Calcutta High Court
Case No : S.A. 559 of 2008

Sm. Bishnupriya Sarkar and Others

APPELLANT

Vs

Akhil Roy Chowdhury

RESPONDENT

Date of Decision : 12-04-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Transfer of Property Act, 1882 — Section 108

Citation : (2012) 5 CHN 202 : (2012) 2 RCR(Rent) 351 : (2012) 2 RCR(Rent) 351

Hon'ble Judges : Tapan Kumar Dutt, J

Bench : Single Bench

Advocate : Sajal Kumar Chel, for the Appellant; Uttam Kr. De, Ms. Daisy Rani Poddar, Ms. Nirvika Dutta, for the Respondent

Judgement

Tapan Kumar Dutt, J.—Today the learned Advocate appearing on behalf of the appellants has completed his submissions. The learned Advocate for the respondent has made and completed his submissions and thereafter the learned Advocate for the appellants has made his submissions and reply.

2. Hearing of the appeal is concluded.

3. The Court now proceeds to deliver the following judgement :

The facts of the case, very briefly, are that the plaintiffs-appellants had filed the Suit being Ejectment Suit No. 223 of 2001 against the defendant-respondent, which was placed before the learned Presidency Small Causes Court at Calcutta, praying, inter alia, for a decree for recovery of khas possession of the suit premises being two bed rooms and one allegedly illegally constructed shed on the ground floor of the premises no. 14/B, Haralal Mitra Street, Calcutta - 700 003. The plaintiffs-appellants filed the said Ejectment Suit, inter alia, on the allegation that the defendant-respondent is a defaulter in payment of rent, the defendant-respondent is causing nuisance and annoyance to the plaintiffs-

appellants, that the defendant-respondent is guilty of violating the provisions of Clauses (m), (o) and (p) of Section 108 of the Transfer of Property Act and that the plaintiffs-appellants require the suit premises for their own use and occupation.

4. The defendant-respondent contested the said suit by filing a written statement denying the material allegations made in the plaint. It appears from the records that a learned Commissioner was appointed to hold inspection in respect of the suit holding and the said learned Commissioner has submitted his report.

5. The respective parties adduced their respective evidence and the learned Trial Court by judgement and decree dated 22.12.2006 dismissed the said Suit after having have a finding that a valid notice of the Suit was served upon the defendant-respondent by the plaintiffs-appellants and there was a relationship of landlord and tenant in between the parties. The learned Trial Court found that the plaintiffs-appellants could not prove any of the grounds taken by the plaintiffs-appellants in their plaint for eviction. It appears that the learned Trial Court did take into consideration the said learned Commissioner's report. However, the learned Trial Court found that the plaintiffs-appellants could not prove any of the grounds for eviction and as such the said learned Court dismissed the said Suit.

6. The plaintiffs-appellants, challenging the judgement and decree passed by the learned Trial Court, filed a Title Appeal No. 59 of 2007 which was placed before the learned Chief Judge, City Civil Court, Calcutta and the learned Lower Appellate Court by judgement and decree dated 26.5.2008 dismissed the said Title Appeal and affirmed the judgement and decree passed by the learned Trial Court.

7. The plaintiffs, challenging the said judgement and decree passed by the learned Lower Appellate Court, have filed the instant second appeal.

8. It appears that by order dated 30.7.2008 an Hon'ble Division Bench of this Court was pleased to formulate the following substantial questions of law for the purpose of hearing of the appeal :

(a) Whether the learned courts below committed substantial error of law in totally misreading the Commissioner's report in dismissing the suit for eviction on the ground of reasonable requirement;

(b) Whether the learned courts below committed substantial error of law in overlooking the fact that the plaintiff required at least three bed rooms, one drawing room, one dining room apart from kitchen and bath and as such the present accommodation of the plaintiff was insufficient for the above purpose.

9. In course of hearing the learned Advocate appearing on behalf of the appellants submitted that even though no substantial questions of law were formulated on the point of nuisance and annoyance at the time of admission of the appeal, the said point can be raised even in course of the present hearing u/s

100 of the Code of Civil Procedure. The said learned Advocate referred to the plaint and also the affidavit-in-chief of P.W. 1 while submitting that the plaintiffs-appellants have pleaded the point of nuisance and annoyance and the P.W. 1 has also stated in evidence the alleged acts of nuisance and annoyance committed by the defendant-respondent. He submitted that the defendant-respondent has not cross-examined the said witness of the plaintiffs-appellants on such point and, therefore, the plaintiffs-appellants have been able to establish the ground of nuisance and annoyance committed by the defendant-respondent.

10. In support of his submission that in such circumstance the allegations made by the plaintiffs-appellants with regard to the point of nuisance and annoyance have been proved, he cited the decisions reported at A.E.G. Carapiet Vs. A.Y. Derderian, and also 1987 (1) CLJ 50 (Smt. Golap Maitra -vs- Biswanath Sarkar). It appears to this Court that the aforesaid decisions cited on behalf of the plaintiffs-appellants cannot be of any assistance to the plaintiffs-appellants in view of the fact that the evidence of one of the plaintiffs has not been corroborated either by calling any local witness or the students of the plaintiff no. 2 who might have seen or heard the defendant-respondent committing any act of nuisance. The said learned Advocate cited another decision reported at Madan Lal Vs. Mst. Gopi and Another, in support of his contention that this Court can re-appreciate the evidence and come to its own conclusion. The said reported decision cannot be of any assistance to the plaintiffs-appellants in the facts and circumstances of this case as this Court has found that the plaintiffs-appellants have not been able to prove their allegations of the defendant-respondent committing any nuisance and/or annoyance in the absence of any corroborative evidence.

11. The main point on which the learned Advocate for the plaintiffs-appellants has laid much emphasis is on the point of reasonable requirement of the suit premises for the plaintiffs' own use and occupation and such point forms the very basis of the substantial questions of law formulated by this Court while admitting the appeal.

12. It is true that both the learned courts below have referred to the learned Commissioner's report while considering the question of reasonable requirement of the plaintiffs-appellants for own use and occupation but the question is whether the learned courts below have misread the Commissioner's report while dismissing the suit for eviction and as to whether the plaintiffs-appellants do have a bona fide need of the suit premises or not.

13. The learned Advocate appearing on behalf of the plaintiffs-appellants submitted that the learned courts below did not properly discuss the aspect of reasonable requirement of the suit premises and ignored the relevant pleadings. The said learned Advocate further submitted that the learned courts below overlooked the very essential fact which was supposed to be taken into consideration for the purpose of deciding the suit and/or the appeal. The said learned Advocate referred to the learned Commissioner's report and submitted

that it is a clear case where the learned courts below have misread the learned Commissioner's report and came to the erroneous findings that the plaintiffs-appellants do not require the suit premises for own use and occupation. The said learned Advocate has submitted by referring to the pleadings and also to the other materials on record including the learned Commissioner's report that the plaintiffs-appellants have well established their case of reasonable requirement of the suit premises for own use and occupation and such requirement should be held to be bona fide and genuine.

14. The learned Advocate appearing on behalf of the defendant-respondent has submitted that both the learned courts below have taken into consideration the learned Commissioner's report and the measurement of the respective rooms. He has further submitted that the defendant-respondent was inducted in the suit premises sometime in the year 1991-92 when the husband of the plaintiff no. 1 was living and all the members of the plaintiffs' family were adults at that point of time and, therefore, the requirement of the plaintiffs cannot be held to be bona fide and genuine. The learned Advocate for the defendant respondent further submitted that it is strange that the plaintiffs have shown only one room which is being used as a bedroom and all other rooms are used for different purposes when there are four plaintiffs. He submitted that both the learned courts below rightly proceeded on the basis that the requirement of the plaintiffs is not bona fide. The said learned Advocate submitted that the plaintiff no. 2 who is a school teacher cannot do private tuition under the law and, therefore, the requirement of a room for teaching students is unsustainable. He has also submitted that the plaintiff no. 4 i.e. the daughter of the plaintiff no. 1 has since got married during the pendency of the proceedings and, therefore, her requirement cannot be counted.

15. Having heard the learned Advocates for the respective parties and having considered the materials on record, this Court is of the view that a perusal of the learned Commissioner's report in its proper perspective is necessary for the purpose of deciding this appeal on merits. Even if it is assumed for the sake of argument that the plaintiff no. 4 has married in the meantime and she is residing in her matrimonial home, it cannot be disputed that she has a right to stay in her paternal house whenever she feels like. For such purpose one bedroom, one kitchen and one bath/privy must be available for the use of the plaintiff no. 4 whenever she would like to stay in her paternal house i.e. the suit holding. With regard to the occupation of the defendant-respondent in the suit premises there is no dispute. This Court will now have to see the occupation of the plaintiffs-respondents in the suit building. The learned Commissioner has reported in his report dated 1.2.2003 that the plaintiffs-appellants are in occupation of two small rooms with kitchen on the ground floor, two rooms on the first floor and a small store room under the stair case in the suit building. One of such rooms described as Room No. 1A is being used by the plaintiffs-appellants for the purpose of worshipping idol and/or prayer room. A room described as Room No. 2B is used by the plaintiffs-appellants as a bedroom. The Room No. 3C is used by the plaintiffs-

appellants as a drawing room. The Room No. 4D is used by the plaintiffs-appellants as a kitchen. The Room No. 5E is used by the plaintiffs-appellants as a dining room and there is also a store room as shown in the report. Thus, from the report it is ascertained that there is only one bedroom available to the four plaintiffs-appellants.

16. In such circumstances, it cannot be disputed that the plaintiffs-appellants require at least three more bedrooms. Even if the plaintiffs-appellants use the prayer room where the idol is kept, the drawing room and the kitchen in common, the store room which happens to be under the stair case can hardly be used for living purposes. The measurement of the said store room has been shown to be 5' 7" X 3'9" in the Commissioner's report. Thus, taking the reality as it is, as it would appear from the learned Commissioner's report, this Court comes to the conclusion that the plaintiffs-appellants do require the suit premises for their own use and occupation. The suit premises comprises of two bedrooms with one kitchen shed on the ground floor of the suit holding but the plaintiffs-appellants requirement is at least three more bedrooms and as such the question of partial eviction does not arise.

17. It is true that both the learned courts below had taken into consideration the learned Commissioner's report, but this Court is of the view that both the learned courts below misread the said learned Commissioner's report and failed to consider the said Commissioner's report in its true perspective. The argument made by the learned Advocate for the defendant-respondent that when the plaintiffs-appellants had five family members, the defendant-respondent was inducted in the suit premises and, therefore, the requirement of the plaintiffs-appellants is not genuine is an argument which cannot be sustained. There might have been more than one reasons for the plaintiffs-appellants to let out the suit premises on monthly rental basis but it does not mean that the present reality of the situation will have to be ignored only because the defendant-respondent was inducted in the suit premises at a time when there were more family members in the plaintiffs' family than it is at present.

18. The submissions made by the learned Advocate for the defendant-respondent that it is strange that the plaintiffs-appellants have shown only one bedroom during the commission work also does not improve the case of the defendant-respondent as the learned Commissioner has reported what he has found at the site and to describe such report as a strange one would not be proper. Even if the plaintiff-appellant no. 2 is prohibited under the law to do private tuition and no room is allotted for such purpose, even then the requirement of the plaintiffs-appellants for three more bedrooms would stand.

19. In view of the discussions made above, this Court is of the view that both the learned courts below failed to consider the facts and circumstances of this case in its proper perspective and the impugned judgements and decrees are required to be interfered with and set aside and the suit for eviction should be decreed. Accordingly, the present second appeal is disposed of by setting aside the

judgements and decrees passed by the learned courts below and by granting a decree for recovery of khas possession of the suit premises in favour of the plaintiffs-appellants by evicting the defendant-respondent therefrom. This Court hereby grants a decree in favour of the plaintiffs-appellants for recovery of khas possession of the suit premises from the defendant-respondent and the defendant-respondent is hereby directed to vacate and deliver up the khas and peaceful possession of the suit premises in favour of the plaintiffs-appellant within six months from the date of this judgement failing which the plaintiffs-appellants will be entitled to put the said decree into execution for recovery of khas possession of the suit premises.

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

21. Let the lower court records be sent back to the learned court concerned. Urgent certified xerox copy of this judgement, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.