

(1987) 07 CAL CK 0019

In the Calcutta High Court

Case No : Appeal From Original Decree No. 307 of 1980

Sm. Jaba Rani Guin

APPELLANT

Vs

Kartick Chandra Kundu and Others

RESPONDENT

Date of Decision : 17-07-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 1(2), Order 14 Rule 1(3), Order 14 Rule 1(5), Order 14 Rule 5(2), Order 8 Rule 5(1)
Specific Relief Act, 1963 — Section 38(3)

Citation : (1987) 1 CALLT 563 : (1987) CALLT 563 : 92 CWN 583

Hon'ble Judges : Sankari Prasad Das Ghosh, J; L.M. Ghosh, J

Bench : Division Bench

Advocate : Baidyandra Kinkar Patra and Nurunnaby Chowdhury, for the Appellant; Mukul Prokash Banerjee and Sanat Kumar Seal, for the Respondent

Final Decision : Dismissed

Judgement

Sankari Prasad Das Ghosh, J.—The suit, out of which the present appeal at the instance of the defendant No. 1 arises, was for permanent injunction for restraining the appellant and three other defendants (respondents Nos. 2, 3 and 4) from interfering with the lawful possession of the tenancy of the plaintiff and his business at the suit-premises, consisting of two rooms and a tin-shed at premises No. 24/1B, Girish Bose Road, Calcutta-14. The case of the plaintiff-respondent No. 1 was that he was a tenant under the defendant No. 1 (appellant) in respect of the suit-premises at the rent of Rs. 500 per month payable according to English calendar month. It was alleged that though the plaintiff respondent No. 1 was carrying on business in motor repairing under the name and style of "Bishwakarma Motor Works" in the suit-premises, the respondents No. 2, 3 and 4 approached him on or about 26.4.76 for giving up possession of the premises on the ground that the appellant wanted to erect a building on the land and that thereafter, when the plaintiff refused to accede to the proposal of the respondents Nos. 2, 3 and 4, the appellant, and the respondents Nos. 2 and 3 threatened the plaintiff for taking forcible possession of

the suit-premises.

2. The defence of the appellant and the respondent No. 2 was that the respondent No. 1 was a licensee and not a tenant in respect of the suit-premises and that there was no threat to the respondent No. 1 or any request to the respondent No. 1 to vacate the suit-premises on or about 26.4.76 as alleged in the plaint.

3. Four issues were framed in the suit. One of these issues, being Issue No. 2, was whether the plaintiff was a lawful tenant in respect of the suit-premises, as alleged. The plaintiff examined himself as P.W.1. The eldest son of the appellant examined himself as D.W.1. D.W.2 was an Advocate, who had prepared the draft of a deed, Ext. A, and had made an endorsement about reading over and explaining the contents of the deed to the executants. According to the appellant, the respondent No. 1 was possessing the suit-premises on the basis of this deed, Ext. A, which was a deed of licence. After considering the evidence of these witnesses and the materials on record, the learned Judge, Fifth Bench, City Civil Court, Calcutta (as His Lordship Sukumar Chakravarty, J. then was), found that the respondent No. 1 was inducted as a tenant under the appellant and was entitled to get, a decree for permanent injunction. Accordingly, a decree for permanent injunction was passed in the suit. Being aggrieved, the present appeal has been filed.

4. Mr. Patra, the learned Advocate for the appellant, has contended that the issue No. 2 ought not to have been framed in the suit and should be struck out under Order 14 Rule 5(2) C.P.C. According to him, the finding by the learned Judge regarding the issue No. 2 has not been properly arrived at and is based on irrelevant considerations. The last contention of Mr. Patra is that as the suit-premises lies outside the jurisdiction of the City Civil Court, Calcutta, the learned Judge had no territorial jurisdiction to pass a decree for permanent injunction in the suit.

5. As for the territorial jurisdiction of the court below, it is to be stated that the suit was for permanent injunction. The relief of permanent injunction sought in the suit can be entirely obtained through personal obedience of the appellant and the respondents Nos. 2 to 4. In these circumstances, the learned Judge had the territorial jurisdiction to pass a decree for permanent injunction in the suit under the proviso to Section 16 C.P.C.

6. Issues arise when a material proposition of fact or law is affirmed by one party and denied by the other. Under Order 14 Rule 1(3) C.P.C. every material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue. The material propositions are, according to Order 14 Rule 1(2) C.P.C., those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute its defence. According to Mr. Patra, the right of the plaintiff-respondent No. 1 to sue is based on his averments in the plaint about the possession of the suit-premises. As

such, Mr. Patra has contended that issue No. 2 as to whether the plaintiff is a lawful tenant in respect of the suit-premises, as alleged by the plaintiff, should be struck out under Order 14 Rule 5(2) C.P.C. To support this contention, Mr. Patra has referred us to the cases of Dandy Swami Jagan-Nath Asram Vs. Pandit Srijib Nyayatirtha and Others , Shashi Pal v. Raj Kumari (AIR 1983 Delhi 105), Tarabai v. K. P. Power (A.I.R. 1972 Mys 214) and Shantaram v. Anant (A.I.R. 1973 Goa 43). The contention of Mr. Banerjee, the learned Advocate for the respondent No. 1, on the other hand, is that the learned Judge was justified in framing the issue No. 2 in the suit as the averments in paragraphs 3 and 4 of the plaint were not specifically denied by the defendants Nos. 1 and 2 in paragraph 7 of their written statement. This contention of Mr. Banerjee cannot be accepted. In paragraph 7 of the written statement, the defendants Nos. 1 and 2 stated, with reference to paragraphs 3 and 4 of the plaint, that the statements in these paragraphs 3 and 4 of the plaint were substantially correct but the plaintiff was never granted any tenancy whatsoever by the defendant No. 1. Under Order 8 Rule 5(1) C.P.C., every allegation of fact in the plaint, if not denied specifically or by necessary implication, shall be taken to be admitted. The averment in paragraph 3 of the plaint about the alleged tenancy of the plaintiff in the suit-premises was sufficiently denied by necessary implication by the averment in paragraph 7 of the written statement that the plaintiff was never granted any tenancy whatsoever by the defendant No. 1. Be that as it may, Mr. Patra has contended that the defendants Nos. 1 and 2 had to allege in the written statement that the plaintiff was a licensee, in view of the averments in the plaint that the plaintiff was a tenant in respect of the suit-premises. According to him, if his defence about the licence would not have been taken by the defendants Nos. 1 and 2 in the written statement, the averments in the plaint about tenancy would have been, under Order 8 Rule 5(1) C.P.C., taken to have been admitted by the defendants Nos. 1 and 2. This contention of Mr. Patra cannot also be accepted, without setting forth any case of licence in the written statement, the defendants Nos. 1 and 2 were at liberty to allege in the written statement that the plaintiff was not a tenant in respect of the suit-premises and to proceed with the suit accordingly. In these circumstances, it cannot be held that the defence that the plaintiff was licensee had to be made by the defendants Nos. 1 and 2 as otherwise, under Order 8 Rule 5(1) C.P.C., the plaint case about the tenancy would have been admitted by the defendants Nos. 1 and 2.

7. The prayer for permanent injunction in the suit is based on Section 38(3) of the Specific Relief Act, 1963, under which the court may grant a perpetual injunction in the four cases enumerated in Clauses (a), (b), (c) and (d) to Section 38(3) of the Specific Relief Act, when the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property. The expression, "a right to sue" in Order 14 Rule 1(2) C.P.C. for framing issues is to be considered in the light of this provision in Section 38(3) of the Specific Relief Act. In the suit the plaintiff came out with a case of tenancy in respect of the suit-premises and prayed for permanent injunction for restraining the defendants from interfering

with the lawful possession of his tenancy and his business in the suit-premises. The right to sue of the plaintiff thus accrued from his alleged tenancy in respect of the suit-premises. The expression, "the plaintiff's right to, or enjoyment of property" in Section 38(3) of the Specific Relief Act is disjunctive in the sense that the plaintiff can pray for permanent injunction when his right to property is invaded or threatened to be invaded or his enjoyment of property is invaded or threatened. As in the suit, the plaintiff alleged invasion of his possession of the property on the basis of his right of tenancy in the suit-premises, it cannot be stated that no issue regarding the tenancy of the plaintiff in the suit-premises ought to have been framed in the suit. The object behind framing issues under Order 14 Rule 1(5) C.P.C. is not to find out what evidence should be necessary. The question of relevancy of evidence cannot be determined in the case of *Dandy Swami Jagan-Nath Asram Vs. Pandit Srijib Nyayatirtha and Others*, referred to by Mr. Patra. In the case of *Dandy Swami (supra)* the learned Judge had framed some preliminary issues and directed the parties to adduce evidence regarding those preliminary issues in order to find out, amongst other things, what evidence would be necessary in the suit. It was field by Their Lordships in that case of *Dandy Swami (supra)* that this is not the purpose of the provision in Order 14 Rule 1(5) C.P.C. On the basis of the decision in the case of *Dandy Swami*, it cannot thus be stated that the learned Judge was not justified in framing the issue No. 2. In the case of *Shashi Pal v. Raj Kumari (A.I.R. 1983 Delhi 105)*, it was held that where in a suit for recovery of money on account of licence-fees or arrears of rent, it was proved that the defendant was inducted by the plaintiff, it was not necessary to determine the status of the defendant as to whether he was a licensee or a tenant and no issue on the question of status need be framed, even if plea of status was raised in the written statement in such a suit. It was further observed in the case of *Shashi Pal (supra)* that it would be necessary to decide the question of status of the defendant as licensee or tenant in a suit for possession. Mr. Patra has contended that as the present suit was not for possession but only for permanent injunction, the issue No. 2 ought not to have been framed in the suit. This contention of Mr. Patra cannot be accepted. Had the present suit been a suit, only for recovery of money on the basis of the deed, Ext. A, by the defendant No. 1 against the plaintiff, it could have been argued that the question of status of the plaintiff, though taken by the plaintiff in a written statement filed by him in such a suit on alleging the right of tenancy in the suit-premises, was not involved, necessitating any issue in the matter. But when the plaintiff founded his prayer for permanent injunction on the basis of his right in the suit-premises as a tenant, the learned Court below was justified in framing the issue No. 2 as the right of vacancy of the plaintiff in the suit-premises was the foundation of his right to pray for permanent injunction in the Court below. In the case of *Tarabai v. K.P. Powar (A.I.R. 1972 Mys 214)*, the plaintiff had filed a suit for permanent injunction on alleging that the plaintiff was in lawful possession of the suit-lands and that the defendant was unlawfully interfering with her possession. The defence in the written statement in that suit was a denial of the plaintiff's possession in the suit-lands. The defendant had

further contended in that suit that he was a protected tenant of the suit-lands under the Bombay Tenancy and Agricultural Lands Act, 1948. In such a suit, the only question that arose for decision was whether the plaintiff was in possession of the suit-lands on the date of the suit and no question of the tenancy of the defendant arose for decision, though raised by the defendant in the written statement. In the present, suit, the plaintiff has not based his prayer for permanent injunction only on alleging his enjoyment of the suit-premises. He has brought the suit for permanent injunction on alleging his right of tenancy also in the suit-premises. In these circumstances, on the basis of the authority of the decision in the case of Tarabai (supra), it cannot be held that the learned Judge was not justified in framing the issue No. 2.

8. In the case of Shantaram v. Anant (A.I.R. 1973 Goa 43), the suit was filed by the applicant for permanent injunction for restraining the respondents from interfering with the possession of the suit-land and plea of the respondents in that suit was that they were the tenants of the suit-land. The applicant in that suit did not come out with a case of tenancy right. The tenancy right was pleaded only by the respondents in that suit. As such, on the basis of the authority in the case of Shantaram (supra), it cannot be stated that the learned Judge erred in framing the Issue No. 2 in the suit.

9. Mr. Banerjee referred us to the case of Gowardhandas Rathi Vs. Corporation of Calcutta and Another, , wherein it was decided by a Division Bench of this Court that every suit for permanent injunction must involve a declaration or determination as to the existence of a right in the plaintiff and its threatened violation or the threatened commission of an act to injure that right of the plaintiff. According to Mr. Banerjee, the suit, though merely a suit for permanent injunction, actually involved a declaration also by implication of the plaintiff's right of tenancy in the suit-premises and as such, the learned Judge was justified in framing the Issue No. 2. We are to accept this contention of Mr. Banerjee, as in the prayer for permanent injunction in the suit, the plaintiff had prayed for permanent injunction for restraining the defendants from interfering with the lawful possession of his tenancy in the suit-premises and his business in the premises. In short, as it is the option of the plaintiff to sue for permanent injunction on the basis of his right in any property or his employment of any property, the learned Judge was justified in framing the issue No. 2, as the plaintiff came out with a case of his right of tenancy in the suit-premises. The contention of Mr. Patra that the learned Judge was not justified in framing the Issue No. 2 must thus fail.

10. As regards the last, contention of Mr. Patra that the learned Judge found a right of tenancy of the plaintiff in the suit-premises on irrelevant consideration, it is to be stated that the learned Judge discussed the evidence of P.W. 1 and the D.Ws. as well as the documentary evidences on record before coming to the conclusion that the plaintiff was inducted as a tenant under the defendant No. 1 in respect of the suit-premises. In coming to this finding, the learned Judge did

not place reliance on two documents relied on by the defendants No. 1 and 2. These documents were the reverse portion of the counter-foil of a rent-receipt dated 5.1.74, Ext. B and one deed, Ext. A. These documents appeared to the learned Judge to be not genuine pieces of documents. We have carefully considered the evidences on record. We are unable to agree with the learned Judge that the deed, Ext. A is not a genuine piece of document. The learned Judge did not take the deed Ext. A, as a genuine piece of document, because there were some discrepancies in the evidences of D.Ws. 1 and 2 as to how the deed could be executed on the same date, when the stamp paper was purchased by the plaintiff on 20.12.73. The learned Judge also considered the fact of non-examination of the appellant or the respondent No. 2 as well as the fact of absence of any case in the written statement as to who had granted the license to the plaintiff, as transpiring from the deed. Ext. A. Considering the evidences on record, we cannot go so far as to say that the deed, Ext. A, is not a genuine piece of document. The discrepancies in the evidences of D.Ws. 1 and 2 going to show the improbability of the execution of the deed on the same date when the stamp paper was purchases by the plaintiff on 20.12.73 or the non-examination of the defendants No. 1 and 2 or the absence of any case in the written statement as to who granted licence, are to be weighed against the evidence of P.W. 1, the plaintiff, that he put his signatures on two pages in the deed as well as in the plan attached with the deed. No doubt, the plaintiff (P.W.1) alleged that he put these signature on blank papers, on the representation by the respondent No. 2 that a document under his signature would be necessary for getting a latrine built in the suit-premises. This evidence of P.W.1 is not worthy of credence in view of his own objection filed on 15.6.76 against the application filed under Order 39 Rule 4 read with Section 151 C.P.C. to the effect that at the time of induction of tenancy the defendant took a blank signature in a stamp paper with the understanding that the letter of tenancy would be prepared by the defendant and would be handed over to the plaintiff after duly incorporating the letter of tenancy. The aforesaid evidence of P.W.1 about his putting of signature on blank papers on two pages of Ext. A for the purpose of getting a latrine built in the suit-premises, is also contradicted by another affidavit-in-reply by the plaintiff on 26.6.76 against the objection under Order 39 Rules 1 and 2 C.P.C. In this affidavit-in-reply, the plaintiff alleged that at the time of induction of his tenancy under the defendant No. 1, he was forced to sign blank papers with the understanding that the letter of tenancy would be prepared by the defendant and would be handed over to him after duly incorporating the letter of tenancy and that nothing was given to him except the rent-bills. The very fact that the signature of the plaintiff appears below the endorsement "received copy" in the last page of the deed, Ext. A, goes to show that the plea of the plaintiff that he was not given any copy except the rent-bills cannot be correct. It is no doubt true that there are some over-writings in the deed, Ext. A. In the first page of the deed, Ext. A. the date. "29th", in the beginning of the deed, showing its execution on 29th day of December, 1973, has been over-written, though in the last page of the deed the date and year are mentioned as 20.12.73. The last two

figures of the year "1973" in the last page of the deed also appear to be over-written by different ink over some typed figures. These discrepancies and over-writings no doubt evoke some suspicion; but such suspicion is to be considered in the back-ground of the fact that by the counter-foil of the rent-receipt in Ext. 1 series granted to the plaintiff on 5.1.74, the plaintiff paid Rs. 500 as rent in respect of the suit-premises. When the plaintiff was in occupation of the suit-premises from December, 1973 and paid Rs. 500 for that purpose, the over-writing about the date in the first page of the deed or over-writing of two figures of years in the last page of the deed, are not very much material. Considering the evidence we are, accordingly, of the opinion that the deed, Ext. A, was executed by the plaintiff in December, 1973.

11. According to the averments in the Deed, Ext. A, the plaintiff was granted licence to occupy the suit-premises for a period of five years, which was to expire in December, 1978. The suit was filed on 29.4.76, prior to the expiry of the period mentioned in the deed. One of the questions involved in this suit, is whether any tenancy or any licence was created by the deed. As no finding in the matter was arrived at by the learned Judge of the court below, on a scrutiny of the deed, Ext. A, we do not propose to arrive at any finding in the matter. We, however, agree with the finding of the learned Judge on the basis of the counter-foils of the rent-receipts in Ext. 1 series, showing the payment of rent by the plaintiff in respect of the suit-premises not only for December, 1973 on 5.1.74 but also subsequently on 23.12.74 for the months from. January to June, 1974, on 16.3.75 for the months from July to December, 1974, on 4.4.75 for the period from January to March, 1975, on 9.10.75 for the period from April to July, 1975 and on 12.12.75 for the months of August and September, 1975, that the plaintiff was inducted as a tenant under the defendant No. 1 in respect of the suit-premises at the monthly rent of Rs. 500 payable according to the English calendar month. As for Ext. B, the reverse portion of the counter-foil of the rent-receipt dated 5.1.74 for December, 1973, we agree, on a consideration of the evidences on record, with the reasons given by the learned Judge that Ext.B is the counter-foil of rent-receipt and not of licence-fee receipt. In short though we consider the deed, Ext.A, as having been executed by the plaintiff in December, 1973, we do not want to interfere with the finding of the learned Judge on the basis of the counter-foil of rent-receipts that the plaintiff was inducted as tenant under the defendant No. 1 in respect of the suit-premises at the monthly rent of Rs. 500 payable according to English calendar month. In these circumstances, it cannot be stated that the finding regarding the tenancy of the plaintiff in the suit-premises was not justified by the learned Judge.

12. The suit was filed by the plaintiff on alleging that on or about 26.4.76, the defendants Nos. 2, 3 and 4 approached him for giving up possession of the premises and that on the plaintiff's refusal in the matter, the defendants Nos. 1, 2 and 3 threatened the plaintiff that they would take forcible possession of the suit-premises. Evidences were adduced by P. W. 1 to the effect that before about. 4 years of his giving evidence, the defendants Nos. 2 to 4, under the direction of

the defendant No. 1, threatened him with eviction from the suit-premises with the help of goondas. During cross-examination P. W. 1 stated that the defendant No. 1 was in side the car when the defendants Nos. 2 to 4 threatened him for eviction. As already stated, none of the defendants No. 1 and 2 nor any of the defendants Nos. 3 and 4, was examined as D. W. in the court below. Moreover, in his evidence D. W. 1, the eldest son of the appellant, stated in cross-examination that he had heard from the defendants that they did not threaten the plaintiff with eviction by force. In the circumstances, the evidence of P. W. 1 about the alleged threats by the defendants remains virtually uncontradicted. The learned Judge was thus justified in passing a decree for permanent injunction.

13. In the result, the appeal fails.

14. The appeal is dismissed on contest by the plaintiff-respondent. No. 1 and without contest by the rest. The judgment and decree passed by the court below are affirmed. In the special circumstances of the appeal, the parties to bear their own costs of this appeal.

L.M. Ghosh, J.

15. I agree.