
(2006) 05 CAL CK 0007
In the Calcutta High Court
Case No : S.A.T. 4072 of 2001

Smt. Bhagawati Sureka

APPELLANT

Vs

Smt. Bijur1 Chowdhury and Others

RESPONDENT

Date of Decision : 16-05-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11, 100
Transfer of Property Act, 1882 — Section 17, 54

Citation : (2006) 2 ILR (Cal) 164

Hon'ble Judges : Pratap Kumar Ray, J

Bench : Single Bench

Advocate : Shyamal Kumar Roy, for the Appellant; Bidyut Kumar Banerjee and Dilip Kumar Mondal, for the Respondent

Final Decision : Dismissed

Judgement

Pratap Kumar Ray, J.—Heard the learned Advocates for the parties. The Second Appeal arose assailing the judgment and decree dated 31.8.2001 passed by the learned Additional District Judge, 8th Court at Alipore in Title Appeal No. 213 of 2000 affirming the judgment and decree dated 29.4.2000 passed by the learned Civil Judge (Senior Division) at Sealdah in Title Suit No. 158 of 1991 as filed by the Defendants/tenants/Appellants.

2. At the time of admission of this appeal under Order 41 Rule 11 of the Code of Civil Procedure, the Division Bench framed the substantial questions of law involved for adjudication identifying the grounds No. I and v. and additional ground for which leave was granted to add. Grounds No. I, v. and added ground read to this effect:

I) For that both the Courts below erred in law and in fact in not holding that the suit is not maintainable in law inasmuch as there was a separate tenancy since the date of induction.

V) For that the Courts below erred in law and instead in holding that the

Defendant No. 1 was actual tenant at a monthly rental of Rs. 3000/- (Rupees three thousand) per month and as such there is a single tenancy but not a separate tenancy. But both courts should have held on perusing the evidence of the parties that separate rent receipt was granted in the name of both the Defendant Nos. 1 and 2 from the date of induction, as such these should be separate tenancy but not one.

XXIII) For that the alleged agreement for tenancy is Palpably bad in law.

3. The Title Suit praying for recovery of khas possession and mesne profit was filed by the Plaintiff/ landlord alleging, inter alia, that the entire premises being a two storied building, save and except mezzanine floor and the terrace, was under the tenancy right of Defendant No. 1 following an agreement of such tenancy entered into by and between the Plaintiff and Defendant No. 1 on 27.5.1985 specifying the terms of tenancy with a condition of deposit of Rs. 9,000/- as security. After the Defendant No. 1 was inducted as tenant, he approached to split up the rental by two rent receipts namely Rs. 2000/- and Rs. 1000/- in the names of Defendant Nos. 1 and 2, which for Income Tax purpose, which the Plaintiff on good faith greed. The Defendant No. 2 is son of Defendant No. 1. the rent receipts were-granted and were issued in respect of the entire suit premises only by splitting up. the rental in the names of Defendant Nos. 1 and 2. The Defendants/tenants defaulted to pay the rental and the Plaintiff also had the need of the suit premises and accordingly, an eviction suit was filed on the ground of default of payment of rent as well as reasonable requirement of the premises.

4. The case of the Defendant Nos. 1 and 2 are the separate and distinct tenants in respect of different tenanted premises, namely, first floor and ground floor of the suit premises respectively and accordingly, rent receipts were issued in the names of Defendant Nos. 1 and 2. The agreement of tenancy as allegedly relied upon in the plaint, had no legal basis. The Defendants were not the defaulters and there was no reasonable requirement.

5. Before the Trial court the respective parties adduced evidence by production of their respective witnesses. The Defendant No. 2 deposed and one substituted Defendant on behalf of the Defendant No. 1 also deposed in support of the defence case. The learned Trial Court considering the entire matter, framed the following issues:

1. Is the suit maintainable? 2. Is the notice to quit legal valid and duly served? 3. Is the Defendant a defaulter? 4. Is the Plaintiff entitled to get decree as prayed for? 5. To what other relief or reliefs the Plaintiff is entitled?

For proper adjudication the issues are recast as follows:

1. Is the suit maintainable? 2. Is there any cause of action for the suit? 3. Whether the Defendant No. 1 (since deceased) and Defendant No. 2 were induced into the suit house as separate tenants? 4. Whether this Court has

jurisdiction to try the suit? 5. Whether any legal valid and sufficient notice to quit was served upon the Defendants? 6. Are the Defendants defaulters? 7. Does the Plaintiff reasonably require the suit premises for her own use and occupation and for the use and occupation for her family members? 8. Has the Plaintiff any other reasonably suitable accommodation elsewhere? 9. Is the Plaintiff entitled to a decree as prayed for? 10. To what other relief or reliefs if any is the Plaintiff entitled.

6. On maintainability of the suit against the Defendant Nos. 1 and 2, who were separate and distinct tenants in respect of separate tenanted premises, the issue was hotly contested and the Trial Court held that the suit was maintainable by holding that entire suit premises is under single tenant. Furthermore, it was held that even if there would have been two separate tenancies in respect of two tenants, but as the question of law involved being a common question of law arising out of common facts and since the Plaintiff filed the suit with regards to the cause of action arose out of the agreement of tenancy, one suit against two Defendants was maintainable. On the issue of the reasonable requirement, the finding was against the Defendants and ultimately the suit was decreed in favour of the Plaintiff.

7. Assailing the judgment and decree of the Trial Court, two Defendants preferred a single appeal and the same point was re-urged. The First Appellate Court having regard to the material evidence on record came to a finding that there was no necessity of filing of two separate suits, as the tenancy was a single tenancy and only rental was split up and for the purpose of Income Tax relief as per request of the Defendant No. 1, rent receipts were issued in two names by splitting up the rental only. Rent receipts were also exhibited. Considering the issue therein, ultimately, it was decided by the First Appellate Court by affirming the finding about the tenancy right of Defendant No. 1 in respect of the suit premises and affirmed the judgment and decree passed by the trial Court.

8. Assailing the judgment and decree of the First Appellate Court, this Second Appeal arose.

9. Learned Advocate for the Appellants has urged only on the point of maintainability of the suit by contending, inter alia, that the Defendant No. 2 has not been at all recognized as a tenant, though the rent receipts were issued in his name by the Plaintiff/landlord by showing the rental at Rs. 1000/- per month in respect of suit premises. Learned Advocate for the Appellants has vehemently argued that the suit was not maintainable as the tenants were completely different and distinct. Strong reliance has been placed to the judgment passed by the Allahabad High Court in the case Kali Charan v. Ganesh Prasad AIR 1971 All 601 It has been urged that unregistered document, namely, the tenancy agreement could not be the basis of consideration and reliance has been placed to the judgment passed in the case of Rambhau Namdeo Gajre Vs. Narayan Bapuji Dhotra (dead) through Lrs., . The judgment Of the Allahabad High Court has been relied upon to submit that the suit was not maintainable against two

tenants. That judgment has the distinctive feature as it appears from, a bare reading that admittedly there were two separate tenants in respect of two, premises, but the landlord instituted one suit and accordingly, the Court held that the suit was barred. This judgment has no applicability in the instant case, as the present case is completely different. The tenancy right having been considered flowed from the agreement of tenancy executed in between the Plaintiff and Defendant No. 1 and subsequently, the rental was only split up as per request of the Defendant No. 1 and rent receipts were issued not by identifying the respective tenanted premises, -but by mentioning only one premises. Furthermore, herein Defendants are related as father and son

10. In this appeal the question of reasonable requirement has not been raised. The substantial question of law as framed, namely. Ground Nos. I, v. and added grounds now has to be discussed to test whether at all those could be considered as substantial question of law involved in this appeal, which has been opposed by Mr. Banerjee, learned Senior Counsel for the Respondent. It is the submission of the learned Advocate for the Respondent to oppose this appeal that from the rent receipts as exhibited it appears that in respect of the selfsame premises without identifying any floor, rent receipts were issued by splitting up the rental to the extent of Rs. 2000/- and Rs. 1000/- in the names of Defendant Nos. 1 and 2 respectively and if the case of the Defendants is accepted, then it will lead to an absurd proposition about the concurrent lease on the selfsame premises, which concept has no applicability in India. It has been further urged that during tenure of the tenancy of any premises, there is no scope to lease it out to other, but so far as the collection of rental is concerned, any assignment, could be made by proper instrument in terms of Section 54 of the Transfer of Property Act, as it relates to the transfer and assignment of right. Reliance has been placed to the judgment passed in the case *M.E. Moolla Sons. Ltd. (In Liquidation) v. The Official Assignee of the High Court of Judicature at Rangoon* 40 CWN 1253. In that case their Lordships distinguished the concept of the concurrent lease as prevalent in England in comparison to the concept of such lease in terms of the Transfer of Property Act. The right in immovable property, if it is transferred to a third person, requires an instrument following the Registration Act u/s 17 in view of the fact that it becomes a sale in terms of Section 54 of the Transfer of Property Act. This view has been considered by the learned Single Judge of this Court in the case *Swapan kr. Dutta v. Dharam Chand Jaiswal* (2002) 2 CHN 627.

11. Having regard to the contentions of the parties, now the issues are to be resolved:

12. The substantial question of law being the ground No. 1 as framed about the maintainability of the suit, is practically within the domain of the question of law and fact and not at all a substantial question of law, as it appears that there is a concurrent finding of both the Courts below on the issue holding that the suit was maintainable as the tenancy right flowed from the agreement of tenancy in respect of the entire suit premises, wherein the Defendant No. 1 was inducted as

a tenant: at a monthly rental of Rs. 3000/- . The learned Court below also considering the evidence on record held that Rs. 9000/- as security money was deposited in terms of such agreement. On the basis of the rent receipts both the Courts below came to a finding that there was only split up of rental and there was no split up of any tenanted premises by identifying the separate and distinct premises. Since the decision about the subject matter of tenancy right, namely, the premises concerned, has been considered and adjudicated upon relying upon the oral and documentary evidence of the parties, which is within the domain of the factual matrix, I am afraid to interfere with the concurrent finding of the fact by substituting any finding upon scrutiny of the material evidence on record in contra to the finding of both the Courts below. In my view, Ground No. I is not at all ingrained with any substantial question of law following the settled judgment passed in the ease of Santosh Hazari Vs. Purushottam Tiwai (Dead) by Lrs.,

13. So far as Ground No. V, which has been considered as substantial question of law involved, it relates to adjudication of separate tenancy right on the basis of separate rent receipts. This is also within the domain of factual field for adjudication.

14. The First Appellate Court being the last Court and final Court on facts has dealt with the matter in details by holding, inter alia, to this effect:

The Appellants/Defendants in the trial court filed along with separate 17(2) applications two separate applications as to maintainability of the suit on the selfsame ground but both the learned trial court and the Hon'ble Revisional Court rejected those prayers.

...

In the instant case, there was only one tenancy agreement executed between the Plaintiff and the Defendant No. 1 and the facts and circumstances as well as the evidence on record go to establish that the Defendant No. 1 was actually inducted as monthly tenant in respect of the entire suit premises and the relationship between the Defendant No. 1 and 2 are father and son. From para 3 and 15 of the plaint it appears that the Defendant No. 1 (page 7) originally inducted as a monthly tenant in respect of entire premises on the basis of an agreement on tenancy dt. 27.5.85 market Ext. 2 at a monthly rental of Rs. 3000/- and Defendant No. 1 made a deposit of Rs. 9000/- as security. In para 13 of the written statement Defendant No. 1 denied agreement of tenancy but admitted deposit of Rs. 9000/- as security. In the cross-examination of D. W., it appears that he admitted signature of his father and agreement of tenancy also bears, signature of Defendant No 1 and in absence of any plea of manufacturing and forgery of said agreement of tenancy the said Ext. 2 cannot be disbelieved and therefore out of one transactions the Appellants/ Defendants claimed two separate tenancies and notice to quit was duly replied to by the same Id. Advocates Mr. Roy and therefore service was admitted.

...

having regard to the ratio decided in the case law referred to above and having regard to the provisions contained in Order 1 and Order 2 Code of Civil Procedure, I agree with the observation of the Id. Trial Court that if two suits were filed by the Respondent/Plaintiff against the Appellants/Defendants separately in both the suits and therefore there is nothing infirmity in the finding of the trial court that the suit as framed and instituted was quite maintainable and therefore there is nothing to be interfered with. The notice to quit, ext. 8, 8A and 8B is quite legal, valid and sufficient, there being one single tenancy but because of claim by the Appellants notices were addressed to both the received by them. Moreover, the Appellants admitted to have received the said notice by replying to through their Id. Advocate, Ext. 19 and they being acquiesced in by their reply there is no substance in the submissions of the Appellant and on this score the Id. Trial Courts findings are quite justified.

15. Having regard to such finding, whereby the First Appellate Court held that when there was a split up of rental, but the tenancy right flowed from the tenancy agreement itself, this Court is afraid to interfere with such concurrent finding of the fact. The First Appellate Court being the last Court and final Court to determine law on the fact and law. It is also a settled legal proposition that even if there was an erroneous finding, which is not touching jurisdictional field, exercising jurisdiction u/s 100 of the Code of Civil procedure, the Court should not disturb such finding. Reliance may be placed to the judgment passed in the case of Santosh Hazari(Supra) wherein in para 15 the Apex Court held to this effect:

The first appellate court continues, as before, to be a final court of facts; pure findings of fact remain immune from challenge before the High Court in second appeal. Now the first appellate court is also a final court of law in the sense that its decision on a question of law even if erroneous may not be vulnerable before the High Court in second appeal because the jurisdiction of the High Court has now ceased to be available to correct the errors of law or the erroneous findings of the first appellate court even on questions of law unless such question of law be a substantial one.

16. Furthermore, in this case there is a concurrent finding of fact on issue of maintainability of suit on the reflection of two rent receipts. In the jurisdiction u/s 100 of the Code of Civil Procedure, it could be interfered with if and only if the Courts below erred in appreciating oral and documentary evidence properly in terms of the judgment passed by the Apex Court in the case Ramlal and Another Vs. Phagua and Others, which materials is completely absent herein, it is also has been settled by the Apex Court that interference on finding of fact is not-warranted if it involves to the judgment passed in the case H.P. Pyarejan v. Dasappa (2006) 1 S.C.C. 496 relying upon the judgment passed earlier in the case Panchugopal Barua and others Vs. Umesh Chandra Goswami and others, and Kshitish Chandra Purkait v. Santosh Kumar Purkait (1947) 5 S.C.C 438.

17. So far as the added ground, which has been allowed to be taken at the time of

admission herein to consider as substantial question of law involved is concerned the same ground relates to the alleged agreement of tenancy, the tenancy agreement having been dealt with and discussed by holding that it does not require registration. Such tenancy right is created following the West Bengal Premises Tenancy Act. Had it been a case of lease agreement for more than 12 years, the question would have been different. The tenancy agreement issued upon having a nuxus of Rs. 9000/- as security money of three months' rent in terms of such agreement and the rent receipts, whereby the premises has been shown as single one and even if there was split up of rental in two names, but on findings of both the Courts below, Accepting such agreement of tenancy as valid and genuine, this Court is not inclined to interfere with such findings of fact.

18. Having regard to all materials as discussed earlier, this Court is of the view accordingly that none of the grounds is involved under the domain of the substantial question of law for consideration by this Court.

19. hence, the appeal fails and it stands dismissed.

20. There will be no order as to costs.