
(2012) 10 CAL CK 0061
In the Calcutta High Court
Case No : S.A. No. 74 of 2001

Smt. Minati Saha and Others

APPELLANT

Vs

Sri Sanjit Kumar Pandey and Others

RESPONDENT

Date of Decision : 04-10-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, 100, 151

Citation : (2013) 2 CHN 468

Hon'ble Judges : Tarun Kumar Gupta, J

Bench : Single Bench

Advocate : Ajeya Mitra and Mr. Supriya Ranjan Ghosh, for the Appellant; S.P. Roychowdhury and Mr. Shyamal Kumar Pandey, for the Respondent

Final Decision : Dismissed

Judgement

Tarun Kumar Gupta, J.—This second appeal is directed against the judgment and decree dated 1st of June, 2000 passed by learned Civil Judge, (Senior Division), Additional Court, Hooghly in Title Appeal No. 19 of 1997 reversing the judgment and decree dated 30th September, 1996 passed by learned Munsif, 1st Court, Hooghly in Title Suit No. 279 of 1993. The respondents as plaintiffs filed said suit for eviction on the ground that they reasonably required the suit shop room which was let out to the defendant tenant, for starting business by plaintiff No. 2 and 3 being unemployed youths. They also prayed for eviction on the ground of building and rebuilding of the suit premises after evicting the defendant therefrom as the defendant caused damage to the suit premises. Accordingly the suit was filed for eviction of the defendant tenant and also for mesne profit after sending statutory notice.

2. The defendant tenant contested the suit by filing a written statement denying the allegations of causing damage to the suit property thereby requiring vacant possession of the same for building and rebuilding, or of requiring the same for starting business by plaintiff No. 2 and 3. According to the defendant he was running a grocery shop in the suit shop room for long and that the plaintiffs were

trying to evict him so that they can induct a new tenant with high salami and higher rent. Learned Trial Court framed several issues. Learned Trial Court after contested hearing dismissed the suit.

3. In the appeal, preferred by plaintiff landlords the suit was decreed on the ground of reasonable requirement of the suit premises by the landlords for starting business of unemployed plaintiff No. 2 and 3 after setting aside the judgment and decree of the learned Trial Court.

4. Being aggrieved the defendant tenant has filed this second appeal.

5. At the time of admission of this appeal following substantial question of law was formulated.

(1) Whether the learned Lower Appellate Court was justifying in decreeing the suit in the absence of any pleadings as to the nature of the requirement of the plaintiff in respect of the suit room and also on the question as to whether the suit could have been decreed without any issue being framed as to whether the plaintiffs had any reasonable suitable accommodation elsewhere.

6. During pendency of this second appeal the appellant tenant Amal Kumar Saha died and his legal heirs were brought on record. Those appellants filed an application being CAN 5904 of 2012 under Order 41 Rule 27 read with Section 151 of the CPC praying for permission to adduce further evidence on the ground that during pendency of the suit plaintiff No. 2 has gainfully engaged in a service at Liluah, Howrah and the plaintiff No. 3 is running a business of milk by maintaining a "Khatal" within their holding at the back side of the suit premises and that the alleged requirement of the suit shop room for running business by plaintiff No. 2 and 3 is no longer subsisting. The respondent landlords filed an affidavit in opposition denying those assertions followed by affidavit in reply filed by the appellant tenant. In support of their earlier application under Order 41 Rule 27 read with Section 151 of the CPC the appellants filed a supplementary affidavit which was opposed by the respondent landlords by filing an affidavit in opposition. Those applications were taken up for hearing along with main appeal.

7. Mrs. Ajeya Mitra, learned counsel for the appellants, submits that learned Lower Appellate Court passed the decree of eviction on the ground of reasonable requirement of the suit shop room for starting a business by plaintiff No. 2 and 3 though nowhere stated in the plaint as to what will be the nature of the business or whether those plaintiffs had necessary experience for starting said business or wherefrom said alleged business will be financed. She further submits that though it came out from para 2 of the plaint that the plaintiffs inherited the suit property along with other properties from their predecessor-in-interest but said other properties were not disclosed to show that said other properties were not suitable for starting the alleged business of plaintiff No. 2 and 3. She further submits that there was no averment or evidence that there was no other reasonable suitable accommodation elsewhere for starting said alleged business and that in the absence of said evidence no decree on the ground of reasonable

requirement can be passed. In this connection she submits that the claim of reasonable requirement of the suit premises should not be passed on mere wish of the landlords. In this connection she refers case laws reported in Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta, , Baldev Singh Bajwa Vs. Monish Saini, 1987 (2) CLJ 229 (A.K. Mukherji vs. Prodip Ranjan Sarbadhikary & Ors.) and 1989 (2) CLJ 170 (Hiralal Roy vs. Sm. Arati Chatterjee & Ors.) to impress upon this Court that in order to get a decree for eviction on the ground of reasonable requirement the landlord must show that the requirement pleaded was a genuine and bona fide requirement and not a fanciful one or a mere wish.

8. Her next leg of contention is that said alleged requirement, if any, is not subsisting and that the impugned judgment and decree of eviction are liable to be set aside.

9. Mr. S.P. Roychowdhury, learned senior counsel for the respondent plaintiffs, on the other hand, submits that in a suit for eviction on the ground of reasonable requirement of the suit premises for starting a business by some of the family members of the landlord the precise nature of the business to be started need not be stated. In support of his contention he refers a case law reported in Raj Kumar Khaitan and others Vs. Bibi Zubaida Khatun and another, . In this connection Mr. Roychowdhury further submits that lack of experience in starting a business is not a ground for denying eviction on the ground of reasonable requirement if other conditions are fulfilled. In this connection he refers a case law reported in Shamshad Ahmad and Others Vs. Tilak Raj Bajaj (Deceased) through LRs. and Others,

10. Mr. Roychowdhury next submits that the connotation of the term "requirement" should not be artificially extended so as to make it impossible for the landlord to get a decree for eviction. According to him if it is proved from the evidence on record that the landlord has a need for using the suit premises for his or his family members' use and occupation then the landlord is certainly entitled to get a decree of eviction. In this connection he refers a case law reported in Mst. Bega Begum and Others Vs. Abdul Ahad Khan (Dead) by Lrs. and Others,

11. Mr. Roychowdhury next submits that once the landlord proves his bona fide requirement the choice of accommodation to satisfy his requirement should be left to him and neither the tenant nor the Court should interfere in that matter. In support of his contention he refers a case law reported in Akhileshwar Kumar and Others Vs. Mustaqim and Others,

12. Mr. Roychowdhury next submits that when both the parties knew what was the point in issue and led evidence in support of their respective claims then it mattered little whether any specific issue on that score was framed or not as non-framing of specific issue did not cause any prejudice to either of the parties. According to him, in absence of any specific evidence that the plaintiffs had any other reasonable suitable accommodation elsewhere it mattered little whether

any specific issue to that effect was framed or not. According to Mr. Roychowdhury as learned Lower Appellate Court on the basis of evidence on record came to a finding of fact that suit shop room was reasonably required by the landlords for starting a business of plaintiff No. 2 and 3, this Court while hearing the second appeal u/s 100 of the CPC should not interfere with the same.

13. Admittedly, the respondent landlord filed said suit for eviction against the original tenant on the ground of reasonable requirement of the suit shop room for starting business by plaintiff No. 2 and 3 being unemployed youth. Learned Trial Court declined to pass any decree of eviction on the ground that nature of business was not disclosed and that there was also no evidence that plaintiff No. 2 and 3 had necessary experience for starting any business. Learned Lower Appellate Court rightly held that those cannot be considerations for rejecting the claim of reasonable requirement of the suit shop room for starting a business by plaintiff No. 2 and 3 if other conditions are fulfilled. It was nowhere stated in the statute that for obtaining a decree of eviction on the ground of reasonable requirement of the suit shop room for starting a business it has to be established that the landlord has necessary experience for running a business or that the nature of the business has to be disclosed. In a suit for reasonable requirement the landlord has only to show that the requirement pleaded was genuine and not mere desire. The term "need" or "requirement" should not be artificially extended nor its language so stressed or strained so as to make it impossible or extremely difficult for the landlord to get a decree for eviction. This is the settled principles of law.

14. I have perused the case laws referred by learned counsels of the parties on this issue which are in tune with my aforesaid observations. It appears from the impugned judgment that learned Lower Appellate Court meticulously examined the evidence on record and came to a clear finding of fact that plaintiffs reasonably required the suit shop room for running business by plaintiff No. 2 and 3 and that suit shop room was on the main road and was also suitable and convenient for running a business and that back side rooms are not suitable for running any business. I do not find any infirmity in the aforesaid observations of learned Lower Appellate Court. It further appears from the impugned judgment that learned Lower Appellate Court considered entire evidence on record, both oral and documentary, and came to a finding of fact that alleged selling of cow milk by plaintiff No. 2 and 3 to some persons did not ipso facto nullify their requirement of the suit premises for running a business of their own.

15. I do not find any infirmity in the aforesaid findings of learned Lower Appellate Court. Even if it is admitted for argument's sake that landlords had some cows in their house and that they sold surplus milk to some neighbours that does not mean that they had a flourishing milk business or that on that ground their unemployed sons do not require the road side suit shop room for starting a business. The plaintiff No. 2 while deposing as P.W. 1 stated that they had no other accommodation except the suit premises to run business. There is no

evidence either oral or documentary to show that the plaintiffs had any other premises or any other suitable accommodation for running a business. As both sides adduced evidence on that point it mattered little whether any specific issue to the fact "whether plaintiffs had any other reasonable suitable accommodation elsewhere," was separately framed or not.

16. In the application under Order 41 Rule 27 read with Section 151 of the CPC the appellant tenants tried to make out a case that defendant No. 2 took an employment and that defendant No. 3 was running a milk business and that none of them required the suit premises for starting any business. Said application has strongly been opposed by the respondent landlord by denying these averments. The suit on the ground of reasonable requirement was filed in 1993 i.e., about 19 years back. One cannot expect that the landlords will sit idle during this long period. Even if plaintiff No. 2 is engaged in any job and plaintiff No. 3 starts any milk business that by itself cannot obstruct their claim for using the suit shop room situated on the road for starting a business.

17. Accordingly, I find and hold that the instant appeal has no merit and is liable to be dismissed.

18. As a result, the appeal is dismissed on contest.

19. The application being CAN No. 5904 of 2012 is also dismissed. The impugned judgment and decree of learned Lower Appellate Court are hereby confirmed. The appellant tenants should vacate the suit premises within three months from the date of this judgment failing which the respondent plaintiffs will be at liberty to put the decree into execution in the executing Court as per law.

20. However, I pass no order as to costs.

21. Send down Lower Court records along with a copy of this judgment to the Lower Court at the earliest. Urgent photostat certified copy of this judgment be supplied to the learned counsels of the parties, if applied for.