
(2010) 11 CAL CK 0032
In the Calcutta High Court
Case No : S.A. No. 264 of 2004

Smt. Narayani Bala Dasi and Others

APPELLANT

Vs

Sri Durga Prasad Sen

RESPONDENT

Date of Decision : 30-11-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
West Bengal Premises Tenancy Act, 1956 — Section 13(1)

Citation : (2011) 4 CHN 452

Hon'ble Judges : Tarun Kumar Gupta, J

Bench : Single Bench

Advocate : Jiban Ratan Chatterjee, M.K. Das and Dibyajyoti Raha, for the Appellant; Pinaki Ranjan Mitra and Krishnapada Paul, for the Respondent

Final Decision : Allowed

Judgement

Tarun Kumar Gupta, J.—This Second Appeal is directed against judgment and decree dated 9th December, 2003 and 16th December, 2003 respectively passed by learned Additional District Judge and Sessions Judge, 13th Court Alipore, in Title Appeal No. 257 of 2002 reversing judgment and decree dated 29.06.2006 and 9th of July, 2006 respectively passed by learned Civil Judge (Senior Division), 3rd Court, Alipore, 24 Parganas (South) in Title Suit No. 432 of 1993.

2 The original Plaintiff Narayani Bala Dasi filed said suit for ejectment against Defendant/tenant. Defendant/tenant was in occupation of the suit shop room at a rental of Rs. 60/- per month with effect from 01.10.1965 in terms of a lease deed dated 27.09.1965 for 51 years. As per terms of said lease deed lessor had the right to terminate said lease by giving one month's notice in writing before expiry of the lease period. The Plaintiff /owner/landlord terminated tenancy of the Defendant in suit shop room by issuing a notice on the grounds of subletting illegal change of use, causing annoyance and nuisance and reasonable requirement.

3. The Defendant contested the suit by filing written statement denying material

allegations of the plaint and contending inter alia that the suit was not maintainable and that the grounds of ejection were false. It was further case of the Defendant/tenant that earlier Plaintiff got possession of one shop room but it was used for the purpose of business of her son. The suit shop room is not at all suitable for being used as bed room. The suit was liable to be dismissed.

4. On the basis of the pleadings of the parties several issues were framed. Learned Trial Court decreed the suit only on the ground of reasonable requirement. No other ground for eviction was entertained by him.

5. While Defendant/tenant preferred an appeal in the Lower Appellate Court same was allowed only on the ground that suit shop room would not fulfil the complete requirement of the Plaintiff and the same was also unfit to be used as a bed room. However, learned Lower Appellate Court was also concurred with the findings of the learned Trial Court that Plaintiff's present accommodation was quite insufficient and that Plaintiff had no other reasonable suitable accommodation elsewhere.

6. At the time of admission of the second appeal at the instance of the Appellant / Plaintiff the following substantial question of law was formulated.

7. Whether in a suit for eviction on the ground of reasonable requirement for own use and occupation, the Court can deny the relief on the ground that availability of the accommodation through eviction would not be sufficient to fulfil the requirement of the Plaintiff in that case.

8. Before filing of this second appeal original Plaintiff Smt. Narayani Bala Dasi has died and she is being represented by her two sons being her heirs and legal representatives.

9. Mr. Jiban Ratan Chatterjee, learned advocate for the Appellant/Plaintiff, has submitted that after death of original Plaintiff Narayani Bala Dasi her two sons stepped into her shoes. According to him, both the Lower Courts came to unhesitating conclusion that present accommodation of the Appellants were quite insufficient and that one of the sons of the original Plaintiff was residing in a rented house for want of accommodation and that they had no other reasonable suitable accommodation elsewhere. He has further submitted that neither any cross appeal nor any cross objection was filed by the Respondent/Defendant/tenant against said findings of learned Lower Courts and that there is no scope of interference to said findings of fact by this Court at the time of hearing of Second Appeal.

10. In this connection, he has referred case law reported in 1998 (1) CHN 521 Amal Aditya v. Ganesh Das. In said case law it was stated that nowhere in West Bengal Tenancy Act, 1956 specially in Section 13(1) it was stated that when the landlord files a suit on the ground of reasonable requirement, it has to be proved by the landlord that by getting possession of the disputed tenancy his entire requirement would be fulfilled. On the contrary it is well settled that if the Courts

finds that by getting possession of the disputed premises, the requirement of the landlord would be fulfilled to a consideration extent, or that the landlord would be in a better position to some extent in comparison with his present accommodation, the Court would not hesitate in passing the decree on the ground of reasonable requirement in favour of the landlord.

11. In the said case, decision of this Court reported in Smt. Gita Devi Shah and others Vs. Smt. Chandra Moni and Karnani and others, wherein it was decided that no decree of eviction can be passed in favour of landlord on the ground of reasonable requirement if the entire requirement of the landlord is not fulfilled by said eviction, was held to be per incuriam as the same was not backed by the statute.

12. Learned advocate has further submitted that learned Lower Appellate Court gave much reliance on said decision of Gita Devi Shah and Ors. (ibid) and came to the conclusion that though Plaintiffs required some more rooms and they had no other suitable accommodation elsewhere but the suit shop room will neither fulfil their complete requirement nor will be suitable to be used as a bed room. According to him, said observation and / or findings of learned Lower Appellate Court was utterly wrong and that same should be set aside by this Court of Second Appeal.

13. Mr. Pinaki Ranjan Mitra learned advocate for Respondent /Defendant/tenant, on the other hand, has referred case laws reported in Sri Kempaiah Vs. Lingaiah and Others, . Maqboolunnisa Vs. Mohd. Saleha Quaraishi, Amarjit Singh Vs. Smt. Khatoon Quamarain, Agasara Yallappa v. D. S. Sathyendra Rao to impress upon this Court that the alleged requirement of the landlord of the suit premises was mere desire and not reasonable. According to him, suit shop room having an area of about 66 square feet, no window and only a road faced door cannot be used as a bed room. According to him, learned Lower Appellate Court was justified in reversing the decree of eviction as suit shop room will neither satisfy the entire requirements of the landlord nor can be used as a bed room.

14. I have gone through the case laws as referred by learned advocate for the Respondent/tenant. There is no denial that reasonable requirement is something more than mere desire, but less than utmost necessity. Both the Lower Courts came to the concurrent findings on the basis of evidence on record, both oral and documentary, that present accommodation of the landlords was grossly insufficient and that they had no other reasonable suitable accommodation elsewhere. As said findings of facts were based on evidence on record the same cannot be said to be perverse by any stretch of imagination.

15. The only question that came up for determination is whether the suit shop room will serve the purpose of the aforesaid requirements of the landlords, at least to some extent, if not fully. It is also undisputed that landlord is the best judge as how to use a particular space and / or a room. It came out from evidence that landlords require not only bed rooms but also rooms for other

purposes namely store room, drawing-cum- study room etc. If landlords get possession of the suit shop room as there is dearth of accommodation of the landlords in the suit house, landlords can decide how to use the suit shop room to its best use. In this regard, neither the Defendant/tenant nor the Court has anything to say.

16. During argument learned advocate for the Respondent/tenant also referred case laws reported in : (2000) 6 SCC 604 Hamida and Others Vs. Md. Kahlil, Hamida and Ors. v. Md. Khalil to show the extent of power of this Court u/s 100 C.P.C. There is no denial that there is no scope of reappreciation of evidence on record on its factual aspects unless it can be shown that learned Lower Appellate Court's judgment was perverse, or based on no evidence or against law to cause miscarriage of justice. I have already stated that findings of Lower Courts on the point of requirement of space by the landlord are backed by evidence on record. It appears that by getting possession of the suit shop room the requirement of the landlords will be fulfilled at least to some extent if not fully. If that be the position then learned Lower Appellate Court's judgment of reversal of decree of ejectment cannot be sustained.

17. As a result, the appeal is allowed on contest. The impugned judgment and decree of Lower Appellate Court are hereby set aside by restoring the judgment and decree of Trial Court.

18. Send down L.C.R. along with a copy of this judgment to the Lower Court expeditiously.

19. Urgent xerox certified copy of this judgment be supplied to the learned Counsels of the party / parties, if applied for.

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Later

30.11.10

20. At the prayer of the learned advocate for the Appellants, let the Lower Court records be sent by special messenger at the cost of Appellant. He undertakes to deposit the cost by this week.