

(2009) 09 CAL CK 0077
In the Calcutta High Court
Case No : F.A. No. 259 of 2002

Smt. Purabi Ghosh and Another		APPELLANT
	Vs	
Mr. Asoke Kumar Ghosh and Others		RESPONDENT

Date of Decision : 23-09-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
West Bengal Premises Tenancy Act, 1956 — Section 13(1), 13(6)

Citation : (2009) 09 CAL CK 0077

Hon'ble Judges : Jahar Chakraborty, J; Ashok Kr. Mondal, J

Bench : Division Bench

Advocate : Harish Tandon and Gautam Das, for the Appellant; Jahar Chakraborty and Ashok Kr. Mondal, for the Respondent

Judgement

Prasenjit Mandal, J.—This first appeal is directed against the judgment and decree dated February 15, 2001, passed by the learned Judge, Eighth Bench, City Civil Court, Calcutta, in Title Suit No. 1259 of 1985 thereby decreeing the suit.

2. The short fact of the plaint case is that the plaintiff and the defendant No. 2 are two brothers and the defendant No. 3 is their sister while the defendant No. 1 is the wife of the defendant No. 2. The plaintiff and the defendant No. 3 jointly purchased the premises No. 2/2, Ratan Sarkar Garden Lane, under P.S. - Burrabazar, Calcutta - 700 007 (henceforth shall be called as the "said premises") at a consideration of Rs. 35,000/- only. The plaintiff paid 3/4th share of the consideration money and the defendant No. 3 paid the rest amount of the consideration money. Thus, the plaintiff became owner of the said premises to the extent of 3/4th share. After purchase, the defendant No. 3 wanted to effect partition of her undivided 1/4th share but it was found that the said premises was incapable of being partitioned in any manner and then, the two owners made an amicable partition by dividing the said premises into two halves by raising a demarcating partition wall dividing the said premises into North and

South blocks. The plaintiff got the northern side of the said premises. It was decided that the defendant No. 3 would collect rents from the existing tenants and would pay the share thereof to the plaintiff at his residence in Calcutta. Thereafter, the plaintiff and the defendant No. 3 applied jointly to the Calcutta Municipal Corporation for mutation of their names as owners. They also applied for raising construction in terms of the sanctioned plan. Thereafter, they raised construction upon the said premises and they decided to divide the rents and profits earned from the said premises amongst themselves. After raising such construction from third to sixth floors, the plaintiff was considered as owner of the northern portion of the said premises and they were jointly entitled to make amicable partition of the southern portion and that they would enjoy and induct tenants in the said southern portion. According to such arrangement, the defendant No. 3 collected rents from the tenants of the southern side of the said premises on behalf of herself and the plaintiff and she was bound to make payments of the half share of such rents and advances to the plaintiff. But the defendant No. 3 refused to pay and furnish accounts with regard to the realization of rents and so the plaintiff was compelled to file a suit being numbered T.S.385 of 1977 in the City Civil Court at Calcutta for accounts. The suit was decreed against the defendant No. 3 on June 11, 1985. In the meantime, by a deed of conveyance dated June 4, 1985 the plaintiff purchased the rest 1/4th share of the said premises from the defendant No. 3. By such purchase, the plaintiff became the owner of the said entire premises.

3. The defendant No. 1, the wife of the defendant No. 2, was a licensee under the defendant No. 3 before the date of sale on June 4, 1985 in respect of two rooms on the fifth floor. Such licence was granted to the defendant No. 1 in January, 1976. Such accommodation was given to the defendant No. 1 for a limited period of one year only without payment of any licence fees or any other charge. After completion of one year, the defendant No. 1 refused to vacate such portion of the premises. So the plaintiff was entitled to take possession of such portion of the premises after purchase on June 4, 1985. The plaintiff asked her to vacate the said portion in vain. This portion is described as schedule - A to the plaint. Thereafter in January, 1977, the defendant No. 1 in collusion with the defendant No. 2 and thereafter, the defendant No. 7 trespassed into the other vacant southern partitioned portion of the said premises excluding the tenanted portion of the defendant Nos. 4, 5 and 6. The portion trespassed by the defendant Nos. 1 and 2 has been mentioned in schedule - B to the plaint and the portion trespassed by the defendant No. 7 has been mentioned in schedule - C to the plaint. After sale, the defendant No. 3 gave a letter of attornment to the defendant Nos. 4, 5 and 6 in June, 1985 and one tenant, namely, Gour Mohan Sadhukhan (defendant No. 4), received the said letter but the other letters were not returned to the plaintiff after signature. The plaintiff being the owner of the entire premises is entitled to take rents from the defendant Nos. 4, 5 and 6 as tenants under him and the defendant Nos. 1 and 2 have no right to collect rents at all. The plaintiff also stated that during the pendency of the suit, the

defendant No. 7 who was a trespasser in respect of the entire fourth floor of the said premises amicably delivered vacant possession of the portion under his occupation on June 7, 1989 and the plaintiff was in occupation of the same. But during pendency of the suit, on June 15, 1989, the defendant Nos. 1 and 2 in collusion with others trespassed into the said fourth floor of the said premises, which is described in schedule - C to the plaint. Thus, the defendant Nos. 1 and 2 are in wrongful occupation of the fourth floor of the southern portion of the said premises. So the plaintiff is also entitled to recover possession of the schedule-C property by evicting the defendant Nos. 1, 2, their agents and servants there from. So the plaintiff has filed the suit for decree for recovery of possession of the suit premises as described in schedule - A to the plaint against the defendant No. 1 and also recovery of possession of the properties mentioned in Schedule - B and C to the plaint against the defendant Nos. 1 and 2 and also permanent injunction restraining the defendant Nos. 1 and 2 from collecting or realizing any rent from the defendant Nos. 4, 5 and 6 including the other tenants and also for other relief's.

4. The defendant Nos. 1 and 2 contested the suit by filing a written statement denying all the material allegations of the plaint. They have stated that the suit is not maintainable in its present form and that the City Civil Court, Calcutta has no pecuniary jurisdiction to try the suit. The suit is not properly valued on the basis of the relief's claimed in the plaint. The valuation of the suit should be beyond the pecuniary jurisdiction of the City Civil Court, Calcutta. It is also barred by limitation. In fact, the defendant No. 1 was inducted into the half portion of the said premises by the defendant No. 3 as tenant in respect of two old rooms - one on the ground floor and the another on the first floor and one staircase being the southern portion of the said premises at a rental of Rs. 250/- per month since March, 1976. The terms and conditions of the tenancy were recorded in the deed of agreement dated February 28, 1976, executed between the defendant Nos. 1 and 3. In terms of the said deed of agreement, the defendant No. 1 constructed other floors up to six stories to the southern side of the said premises. The defendant No. 1 has been enjoying the said demarcated southern portion as a tenant without any interruption. He was also entrusted to induct sub-tenants by the defendant No. 3 on the basis of the agreement with her and in fact, the defendant No. 1 inducted the defendant Nos. 4 to 7 as tenants in respect of different portions of the demarcated southern portion of the said premises. If the right, title and interest of the defendant No. 3 were transferred in respect of the said premises, the plaintiff is still bound to follow the terms of the tenancy recorded on February 28, 1976. Upon refusal to accept rents by the plaintiff at the rate of Rs. 250/-per month, the defendant No. 1 has been depositing the rents regularly with the rent controller. It is not true that the defendant Nos. 5 and 6 were tenants prior to the purchase by the defendant No. 3, as alleged. It is also not true that the defendant No. 4 was inducted by the defendant No. 3 after purchase. The defendant No. 1 was not at all a licensee under the defendant No. 3 at any point of time and so the question of revocation of licence did not arise at

all. It is not true that the defendant No. 7 surrendered tenancy to the plaintiff and thereafter, the defendant No. 1 took forcible possession of the said premises. So the suit should be dismissed.

5. The defendant No. 4 filed a written statement supporting the plaintiff case. The defendant Nos. 5 & 6 filed a separate written statement supporting the stand of the defendant Nos. 1 & 2.

6. Upon consideration of the evidence on record, the learned Trial Judge decreed the suit. He passed the decree for recovery of possession against the defendant Nos. 1, 2 and 7 in respect of the premises mentioned in schedule A, B and C to the plaintiff. The learned Trial Judge also granted the decree of permanent injunction restraining the defendant Nos. 1 and 2 from realizing rents from the defendant Nos. 4, 5 and 6 and also from other tenants.

7. Mr. Tandon, learned Advocate for the appellants, contended that suit was not maintainable in its present form. The plaintiff did not properly value the relief claimed in the suit and if proper valuation was given, the City Civil Court at Calcutta would not have the pecuniary jurisdiction to entertain the suit whose pecuniary limit is up to Rs. 10 lakh. However, the defendant No. 7 being inducted by the defendant No. 1 as a tenant in respect of the portion of the premises mentioned, he could not be evicted without due service of notice to quit on any of the grounds as stated in Section 13(1) of the West Bengal Premises Tenancy Act, 1956. He also contended that whenever any relief was claimed in respect of any premises describing the defendants as trespassers in respect of the said premises, the valuation should be made on the basis of the market value of the property and the suit property being situated in Burrabazar area, its valuation should be more than the pecuniary limit of jurisdiction of the Court. So the suit should have been dismissed by the learned Trial Judge.

8. On the other hand, Mr. Chakraborty, the learned Advocate for the plaintiff/respondent submitted that the suit had been properly valued in view of the relief as sought for in the plaintiff and so the suit was quite maintainable before the City Civil Court, Calcutta. He supported the judgment and decree passed by the learned Trial Judge.

9. Therefore, the points to be decided in this appeal are (i) whether the suit as framed is maintainable and (ii) whether the judgment and decree passed by the learned Trial Judge can be sustained.

10. Upon hearing the submission of the learned Advocates of both the sides and on perusal of the materials on record, we find that admittedly, the plaintiff and the defendant No. 2 are two brothers and the defendant No. 3 is their sister. Admittedly, the defendant No. 1 is the wife of the defendant No. 2. Admittedly, at the time of purchase of the said premises, the plaintiff contributed 3/4th of the consideration money and the defendant No. 3 paid the rest portion of the consideration money meaning thereby the plaintiff acquired the right, title and interest over 3/4th share of the said premises and the defendant No. 3, 1/4th

share of the said premises. Admittedly, the plaintiff purchased the share of the defendant No. 3 and thus, he became 16 annas owner of the said premises.

11. The plaintiff prayed for a decree for recovery of possession by evicting the defendant No. 1 from the suit premises as described in schedule - A to the plaint after revocation of licence granted to him by the defendant No. 3 on the ground that after purchase he became the full owner of the said premises. The plaintiff described the defendant No. 1 as a licensee in respect of the suit premises No. 1 as a tenant in respect of the portion of the suit premises at the rental of Rs. 250/- a month. The plaintiff subsequently having purchased the remaining share from the defendant No. 3 is bound by the acts of the defendant No. 3 during her ownership. In this case, in order to dispute the allegation of the defendant No. 1 regarding her status, it was the duty of the plaintiff to bring the defendant No. 3, his vendor of one-fourth share, as his witness if he intended to rely upon the statement made in the deed of sale or requisition of title which was inconsistent with her earlier statement in Ext-9 and to permit the defendant No. 1 to cross-examine her to dispute her subsequent version. In the absence of defendant No. 3 as a witness of the plaintiff to face cross-examination of the described in schedule - A to the plaint. The defendant No. 1 has claimed that she was inducted as tenant in respect of the demarcated half portion of the said premises at a rental of Rs. 250/- per month since March, 1976. In fact, the defendant No. 1 has been depositing rents with the rent controller at the rate of Rs. 250/- month.

12. It appears from Ext-F and Ext-G, the plaints of two earlier suits filed by the plaintiff, the first one against the defendant No. 3 claiming share of rent and the other suit, against the defendant Nos. 1 to 3 and others, for injunction wherein the tenancy of the defendant No. 1 was admitted. Thus, on the face of such admission of the plaintiff, admitting the tenancy of the defendant No. 1 in a part of the suit property, the suit filed by the plaintiff for recovery of possession against the defendant No. 1 and her husband by describing them as licensee was not maintainable. It is true that in the plaint of the earlier suits, the extent of tenancy of the defendant No. 1 was not mentioned but the fact remained that the plaintiff admitted the tenancy of the defendant No. 1 in a portion of the property and at the same time, also claimed account of his share of rent from her sister, the defendant No. 3. Moreover, it appears from the joint written statement filed by Defendants Nos. 1 to 3 in the earlier suit filed by the plaintiff (Ext-9) that the defendant No. 3 jointly filed written statements with the defendant Nos. 1 and 2 asserting that the defendant No. 3 inducted the defendant No. 1, adverse inference should be drawn against the plaintiff. We therefore find a tenancy of the defendant No. 1 in the Schedule A.

13. Thus, in the absence of any notice u/s 13(6) of the West Bengal Premises Tenancy Act and without proving the grounds mentioned in Section 13(1) thereof, the suit was not maintainable even in respect of the Schedule A even if we ignore the defence of the defendant No. 1 as regards the extent of tenancy or

right to induct sub-tenant. The learned trial judge, as it appears from record, totally overlooked those three exhibits as mentioned above while passing the decree in respect of Schedule A. we, however, make it clear that we have not gone into the question of extent of tenancy in these proceedings as the suit by treating the defendant No. 1 as a licensee was not maintainable in respect of Schedule A property when the tenancy of the defendant in a part thereof has been established from the admission of the plaintiff.

14. The plaintiff sought for recovery of possession in respect of B & C schedule properties which, according to the plaint case, were trespassed by the defendant Nos. 1 and 2. If the plaintiff prays for recovery of possession against the trespassers, the plaintiff was required to value the suit on the basis of market value of the property but it appears that the suit, for the purpose of recovery of possession in respect of Schedule B and C, has been valued at Rs. 100 only which is absurd and arbitrary. The Schedule B of the suit property has been described as all that premises No. 2/2 Ratan Sarkar Garden Lane, Calcutta-7 and the Schedule C having been described as 3 rooms of the 4th floor of the said premises, it is apparent the total market value of the said premises must be a considerable amount and without deciding the issue as to pecuniary jurisdiction of the suit, the learned trial judge should not have arrived at any finding in respect of the Schedule B and Schedule C.

15. At this stage, we may refer to the following observations of the Apex Court in the case of Commercial Aviation and Travel Company and Others Vs. Vimla Pannalal, :

In this connection, we may refer to the provision of Order VII, Rule 11(b) of the Civil P. C. which provides, inter alia, that the plaint shall be rejected where the relief claimed is undervalued and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so. It is manifestly clear from the provision of Order VII, Rule 11(b) that a Court has to come to a finding that the relief claimed has been undervalued, which necessarily means that the Court is able to decide and specify proper and correct valuation of the relief and, after determination of the correct value of the relief, requires the plaintiff to correct his valuation within a time to be fixed by the Court. If the plaintiff does not correct the valuation within the time allowed, the plaint is liable to be rejected.

16. In the abovementioned case, the Supreme Court further observed as follows:

If there be materials or objective standards for the valuation of the relief, and yet the plaintiff ignores the same and puts an arbitrary valuation, the Court, in our opinion, is entitled to interfere under Order VII, Rule 11(b) of the Code of Civil Procedure, for the Court will be in a position to determine the correct valuation with reference to the objective standards or materials available to it. In *Urmilabala Biswas Vs. Binapani Biswas and Others*, a suit was instituted for declaration of title to Provident Fund money amounting to a definite sum with a

prayer for injunction restraining the defendant from withdrawing the said money. It was held that there was no real distinction between the right to recover money and the right to that money itself, and that the relief should have been valued at the Provident Fund amount to which title was claimed by the plaintiff. Thus, it appears that although in that case the suit was one u/s 7(iv)(c) of the Court-Fees Act, there was an objective standard which would enable the plaintiff and the Court too to value the relief correctly and, in such a case, the Court would be competent to direct the plaintiff to value the relief accordingly.

17. In the case before us, the suit having been filed for recovery of possession from trespasser in respect of Schedule B to C, there is no problem of valuation as the valuation should be the market value of the property sought to be recovered and in such circumstances, the valuation put by the plaintiff was on the fact of it arbitrary.

18. We, therefore, set aside the judgment and decree passed by the learned trial judge in respect of schedule A property on the ground that the defendant No. 1 is a tenant at least in respect of a portion thereof without deciding the extent of the same because in the absence of a notice to quit and existence of grounds referred to in West Bengal Premises Tenancy Act such relief was not maintainable.

19. So far the prayer of recovery of possession in respect of Schedule B and Schedule C are concerned, we remand the matter back to the learned trial judge for the purpose of first deciding the market value of Schedule B and Schedule C after giving the parties opportunity to lead evidence and if on such adjudication, it is found that the court had pecuniary jurisdiction, it will decide the issues in respect of those properties afresh after considering the effect of the admission of the plaintiff in Ext-F and Ext-G and Ext-9. The parties will be entitled to lead further evidence on the question of their alleged right in respect of those two schedules. If, however, on such adjudication, it is found that the valuation of the Schedule B and Schedule C exceeds the pecuniary jurisdiction of the court below, it will dismiss the suit in respect of those schedules on the ground of want of pecuniary jurisdiction with liberty to file a fresh suit before appropriate forum as return of part of the plaint after dismissing the suit in respect of another part is not permissible.

20. The learned Judge is directed to comply with our direction positively within February, 2010.

21. Considering the circumstances, there will be no order as to costs.

22. Urgent xerox certified copy of this order, if applied for, be made available to the learned Advocate for the parties on their usual undertakings.

23. I agree.