

(1971) 01 CAL CK 0033
In the Calcutta High Court
Case No : A.F.A.D. No. 1568 of 1961

Smt. Sayambari Dassi

APPELLANT

Vs

Dwijapada Naskar

RESPONDENT

Date of Decision : 14-01-1971

Acts Referred:

Easements Act, 1882 — Section 61

Citation : AIR 1971 Cal 435 : 75 CWN 560 : (1974) 1 ILR (Cal) 592

Hon'ble Judges : S.K. Chakravarti, J

Bench : Single Bench

Advocate : Asoke K. Sen Gupta, for the Appellant; Benoy Krishna Ghose, for the Respondent

Final Decision : Allowed

Judgement

S.K. Chakravarti, J.—This appeal arises out of a suit brought by the present appellant for the purpose of ejecting the defendant from a homestead plot. The case of the plaintiff was that the defendant being the son-in-law of her sister used to look after her properties and in that capacity used to reside on the homestead in suit but he has been recorded as a tenant under her in the recent khatian, which is wrong, and she, therefore, sued to have her title declared and for confirmation of her possession. The plaint was subsequently amended to enable her to recover possession thereof.

The defendant contested the suit alleging that he was a tenant indicated in the homestead by the plaintiff's husband who was the original owner of the land, that he used to pay the rents to him and after his death to the plaintiff herself, but that no dakhilas were given. Both the courts below have found that the defendant was not a tenant at all in respect of this homestead. Both the courts have found that the defendant was in possession as a mere licensee. The trial court decreed the suit accordingly. The Appellate Court, however, was of opinion that there should have been a demand for possession before the suit could be instituted, and, in that view, dismissed the suit.

2. In view of the concurrent findings of the courts below, the fact remains that the defendant was not a tenant but was a mere licensee in possession of the land. The question, therefore, is as to whether a licensee is entitled to get a notice to quit or a demand for possession before a suit for his ejectment can be instituted. A licensee has, no real interest in the property. He uses the property by the permission of the owner with whom the legal possession continues. It gives the licensee a personal privilege with no interest in the, land (vide *Associated Hotels of India Ltd. Vs. R.N. Kapoor*, ; *B.M. Lall (Dead) by Lrs. Vs. Dunlop Rubber and Co. Ltd. and Others*, ; *Errington v. Errington* (1952) 1 KB 290). That is why normally a licence comes to end with the death of either party. To call upon the owner in every such case to make a demand for possession before suit would be a tax on his generosity, though normally speaking one does demand possession before going in for a costly and time-consuming litigation. At the same time there may be cases where the licensee may have made commitments to others on the basis of the licence, and it would be inequitable to call upon him to vacate at once by a suit, without giving him sufficient time ahead to make suitable arrangements. There can be no universal inflexible rule that a licence has to be revoked by a demand for possession, before a suit is instituted. It will depend on the facts and circumstances of a particular case. The learned Judge has relied on a Canadian case, (*The Canadian Pacific Rly. Co. v. The King*) reported in AIR 1932 PC 108 and *Sudhir Kumar Majumdar and Others Vs. Dharendra Nath Biswas and Another*, in the main. These two decisions do not support the contention that a licensee is always entitled to get a notice or demand before a suit to recover possession can be filed. In the Privy Council case their Lordships held that in circumstances where "the exercise of the right may have involved the licensee in obligations in other directions, which the determination of the license would disable him from fulfilling unless the licenses were determined after a notice sufficient, in point of time, for the making of substituted arrangements", a notice would be necessary. In *Sudhir Kumar Majumdar and Others Vs. Dharendra Nath Biswas and Another*, also the person in occupation was a tenant at will and the facts would not be exactly similar. What is more, in *Gobinda Chandra Ghose v. Nanda Dulal* Sut 27 Cal LJ 523 : (AIR 1918 Cal 601 (2)) an exactly similar point came up for consideration before this Court and it was held that the licensee was not entitled to get a notice and that the Suit should be decreed. In the facts of this case, I must hold that no previous notice or demand for possession was called for.

3. Mr. Ghose on behalf of the respondent has also drawn my attention to the fact that the courts below have noted that the plaintiff has deposed that she had an adopted son, and, as such, the suit, at the instance of the plaintiff, alone, would not suffice. The plaintiff alone claimed to be the owner of the land according to the plaint. In the written statement, not only was that fact not challenged, but, it was further alleged that she alone used to realize rents after the death of her husband. In the settlement khatian also, the defendant has been shown to be a tenant under the plaintiff alone. In the circumstances, so far as this suit was

concerned, it was not open to the courts below to enter into the question as to whether the plaintiff had any adopted son or not, and this contention must, therefore, fail.

4. The result, therefore, is that this appeal succeeds and is allowed. The judgment and decree passed by the learned Subordinate Judge is set aside and that of the Munsif restored. There will be no order as to costs in this Court.