
(2014) 02 CAL CK 0097
In the Calcutta High Court
Case No : S.A. No. 245 of 2002

Sova Rani Pal

APPELLANT

Vs

Smt. Ashima Saha

RESPONDENT

Date of Decision : 24-02-2014

Acts Referred:

West Bengal Premises Tenancy Act, 1956 — Section 13(1)(f) 18(A)

Citation : (2014) 3 WBLR 327

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Sabyasachi Mukhopadhyay, Mr. Partha Pratim Sarkar, Mr. Ayan Kumar Boral, Ms. Koushikee Banerjee, for the Appellant; Krishna Das Poddar and Mrs. Kumkum Jana, for the Respondent

Final Decision : Allowed

Judgement

Prasenjit Mandal, J.—This appeal is at the instance of the defendant/appellant and is directed against the judgment and decree dated July 5, 2001 passed by the learned Civil Judge (Senior Division), 2nd Court, Krishnanagar in Title Appeal No. 84 of 1999 thereby reversing the judgment and decree dated February 25, 1999 passed by the learned Civil Judge (Junior Division), Nabadwip in Title Suit No. 225 of 1993. The plaintiff/respondent herein instituted the aforesaid suit for ejectment against the defendant/appellant on the ground, inter alia, building & re-building as well as for own use and occupation against the defendant/appellant herein in respect of the suit premises as described in the schedule to the plaint before the learned Civil Judge (Junior Division), Nabadwip.

2. The defendant/appellant herein is contesting the said suit by filing an appropriate written statement denying the material allegations raised in the plaint. Both the parties adduced evidence in support of their respective contentions and then upon analysis of evidence, the learned Trial Judge dismissed the suit on contests without costs against the defendant.

3. Being aggrieved, the plaintiff/appellant preferred an appeal being Title Appeal No. 84 of 1999, which was allowed on contests without costs. Accordingly, the suit was decreed against the defendant/appellant herein. Being aggrieved by such judgment and decree of the First Appellate Court, this second appeal has been preferred by the defendant.

4. At the time hearing on admission of the appeal, the following substantial question of law was framed:-

Whether the plaintiff's suit for ejectment for reasonable requirement for own use and occupation after building and rebuilding u/s 13(1)(f) of the West Bengal Premises Tenancy Act as made out in paragraphs 3 and 3A after amendment of the plaint but the said Section 13(1)(f) being subject to the provisions of Section 18(A) of the said Act, the Court of Appeal below erred in law while passing a decree for ejectment by not specifying the period within which the building or rebuilding of the premises shall be completed and thereby providing for restoration of Tenancy after such building and rebuilding?

5. Upon hearing the learned Counsel for the parties and on going through the materials on record, the short compass of this second appeal is limited to the provisions of Sections 13(1)(f) read with Section 18(A) of the Act and 13(1)(f) of the West Bengal Premises Tenancy Act, 1956.

6. The plaintiff has filed the suit contending, inter alia, that the suit premises is required for own use and occupation after making construction on the first floor of the suit premises and for that reason, the vacation of the premises in suit is required. It is also contended that the premises in suit is also required for making chamber for the son of the plaintiff who has a degree of B.H.M.S. and her son wants to start a medical profession thereat. Therefore, the scope of this second appeal is limited to the grounds of eviction as laid down in Sections 13(1)(f) and 13(1)(f) of the 1956 Act.

7. So far as the first ground of Section 13(1)(f) is concerned, I find that no substantial question of law has been framed. But, while disposing of the appeal, the First Appellate Court has observed that the plaintiff is a school teacher of Bauria Girls' High School and that she resides thereat. But, her husband had retired from service in 2000 and during the examination of the husband on behalf of the plaintiff, he has stated that by constructing a house on the suit premises, they will reside on the upper floor and their son will run a business on the ground floor. Admittedly, the plaintiff has a permanent residence in Howrah District. So, if the premises in suit is required for building & re-building, i.e., for making construction on the upper floor, it comes within the provisions of Section 13(1)(f) and in that case, while passing the judgment by the First Appellate Court, he must indicate the other essential ingredients for providing accommodation, time-limit, etc. as laid down in Section 18(A) of the West Bengal Premises Tenancy Act, 1956. This is totally missing in the impugned judgment passed by the First Appellate Court.

8. While disposing of the said first appeal, save and except, the sentence that "the suit premises is required for building & re-building on the upper floor and the premises in suit for running the business in the ground floor", there is no observation as to other ingredients of Sections 13(1)(f) and 13(1)(f) of the 1956 Act. The First Appellate Court has passed the decree of ejectment on two grounds, i.e., under Sections 13(1)(f) and 13(1)(f) of the 1956 Act; so he is required to state the fulfillment of all the ingredients of the said two grounds of ejectment by the landlady. As per report of the scientific investigation, the suit premises does not require immediate danger of falling down.

"The suit room is neither fit for dwelling purpose nor for starting a doctor's chamber being situated in the busy commercial area", observed by the learned Trial Judge.

9. The First Appellate Court has concluded that since the room in suit is situated in a busy commercial area, it cannot be stated that it is unfit for doctor's chamber. But the judgment of the First Appellate Court is silent if the premises in suit is fit for residential purpose. It is not also stated in the impugned judgment that without vacation of the suit premises by the tenant, building & re-building of the premises cannot be carried out as per sanctioned plan. Since the remedy has been sought for under both the grounds, the matter also requires a clear finding as to the provisions of Section 18(A) of the 1956 Act. But, with utter surprise, this Court finds that the learned First Appellate Court has not, in fact, made any observation in this regard.

10. He has simply recorded the submissions advanced by the learned Advocates of both the sides and thereafter, certain decisions which lay down the principles that the accommodation of the plaintiff includes the accommodation of the other members of the family and then he has jumped to the conclusion that the plaintiff has succeeded in proving that she has reasonable requirement of the suit premises. The findings of the learned First Appellate Court do not support the conclusion in the manner as provided in Sections 13(1)(f) and 13(1)(f) subject to Section 18(A) of the 1956 Act.

11. Of course, he has recorded that the Nabadwip Municipality has sanctioned the plan for the purpose of construction of the building of the suit premises.

12. Therefore, the observations as made by the First Appellate Court is not at all conclusive with regard to the essential ingredients as provided under Sections 13(1)(f) and 13(1)(f) of the 1956 Act. There is a total missing of the consideration of the provisions of Section 18(A), if the tenant is required to be accommodated after building & re-building of the premises.

13. Having due regard to the above facts and circumstances, in my view, without going into the details of the matter, I have no other alternative but to set aside the judgments and decrees passed by the Courts below.

14. The substantial question of law as framed is, thus, answered.

15. Accordingly, the second appeal is allowed. The judgments and decrees passed by the Courts below stand set aside.

16. The learned Trial Judge is directed to start trial again. He shall give opportunities to the parties to adduce further evidence in support of their respective contentions on the grounds under Sections 13(1)(f) and 13(1)(f) subject to Section 18(A) of the 1956 Act only. Thereafter, on the basis of the evidence already on record and the evidence to be adduced by the parties, the learned Trial Judge shall dispose of the suit in accordance with law. Such exercise must be done within a period of four months from the date of communication. He may take up the matter on day-to-day basis hearing without granting any adjournment to either of the parties to ensure disposal of the suit within the aforesaid period.

17. Considering the circumstances, there will be no order to as costs. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.