

(2006) 07 CAL CK 0023
In the Calcutta High Court
Case No : C.O. No. 2326 of 2006

Sri Ajoy Kumar Sadhu

APPELLANT

Vs

Smt. Rina Saha and Another

RESPONDENT

Date of Decision : 20-07-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (2007) 1 CALLT 247 : 111 CWN 253

Hon'ble Judges : Pranab Kumar Deb, J

Bench : Single Bench

Advocate : Saktinath Mukherjee, Saptangshu Basu, S.K. Samanta and N.C. Maity, for the Appellant; Sabyasachi Bhattacharya, Jakir Hossain and Chandradoy Ray, for the Respondent

Final Decision : Allowed

Judgement

Pranab Kumar Deb, J.—This instant revisional application has been directed against the Judgment and order dated 17th May, 2006 passed by the learned Additional District Judge, Fast Track Court-III, Sealdah in Misc. Appeal 34 of 2006 whereby the Judgment and order dated 20th March, 2006 passed by the learned Civil Judge (Junior Division), 2nd Court at Sealdah in Title Suit No. 291 of 2005 was affirmed.

2. As noted in the revisional application as well as the objection thereto, the father of the petitioner was inducted in the suit premises by the erstwhile landlady. The petitioner was accepted as a tenant in respect of the suit property after demise of his father. On the death of erstwhile landlady, Smt. Kamala Saha inherited the property as her sole legal heir. Subsequently, it devolved upon Jogeswari Saha who during her lifetime executed a power of attorney in favour of the plaintiffs, authorizing them to collect rents from her tenants. On the defendant approaching the plaintiffs for according permission to change his nature of business of a grocery shop to that of a retail medicine shop in the suit premises, the proposal so made by the petitioner/ defendant was accepted. The

rent was enhanced from Rs. 125 to 2000 per month, payable as per English Calendar month. Permission was also accorded to effect repair in the suit premises for the purpose of running the business.

3. Alleging that the defendant in the garb of repair had dismantled the wall of the suit premises and also encroached upon the portions of the plaintiff in the suit premises, the plaintiffs approached the Calcutta Municipal Corporation for redressal of their grievance in view of illegal work of renovation. The plaintiffs also sought intervention of the local police station. A suit for declaration and injunction was filed for the purpose of restraining the defendant from doing the illegal work of renovation. Prayer for mandatory injunction for dismantling the illegal construction was also made on behalf of the plaintiff. The Trial Court was pleased to pass an order of injunction, restraining the defendant from carrying out renovation work in the suit premises. He was also restrained from changing the nature of the character of the suit property. The order of injunction was made absolute vide order dated 20/03/06. By another order on the same date, the learned Trial Court was pleased to allow the application u/s 151 CPC filed by the plaintiffs with a direction upon the defendant not to run the retail medicine shop in the suit premises until further order. Both the orders were challenged before the Appellate Court. Affirming the order of the Trial Court, the learned Additional District Judge was pleased to dismiss the misc. appeal.

4. Drawing the attention of the Court to the averments made in the plaint, Mr. Sakti Nath Mukherjee, learned senior counsel, has submitted that since the landladies accepted the proposal for change of the business, they cannot back out from the terms and conditions made earlier. Nothing was done behind the knowledge of the landladies. Since there was acceptance of the proposal of change of business, the tenant agreed to pay rent @ 2000 per month from Rs. 125. Acting on such agreement, rent was continued to be paid @ Rs. 2000 per month. Conversion of grocery shop into medicine shop" required some adjustments. This is precisely what has been done by the defendant/ petitioner. The boggy of encroachment and renovation has been raised to secure eviction of the tenant/petitioner from the suit premises, as contended by Mr. Mukherjee.

5. Commenting on the alleged encroachment made by the petitioner, Mr. Mukherjee has submitted that the Trial Court as well as the Appellate Court totally overlooked the aspects that the land ladies accepted the proposal of the petitioner to use nearly 450 square ft. area out of the total tenanted portion covering an area of nearly 1600 square ft. for the purpose of setting up of a medicine shop therein. It is contended that the Trial Court and the Appellate Court proceeded on the wrong footing that the tenancy comprised of an area of 240 square ft. The granting of trade licence for running for grocery shop in an area of 240 square feet should not have been used for entertaining the notion that the medicine shop was required to be confined within a space of 240 square ft.

6. Defending the order, Mr. Sabyasachi Bhattacharya representing the opposite

party has submitted that in the name of effective repair of the shop room, the petitioner went on dismantling the structure of the tenanted portion by breaking the inner wall. Referring to the report of the commissioner, Mr. Bhattacharya has submitted that the entire floor was uprooted for the purpose of planting marble tiles. Permanent fixtures had been installed against the wall of the building, causing substantial damage to the tenanted portion. What was more shocking was the fact that the petitioner encroached upon the other portion of the building for the augment of his business. Such construction and intrusion having been made in flagrant violation of the terms of tenancy, the petitioner had to be restrained by an order of injunction from carrying out such nefarious acts. Since he went on repeating such illegal acts, an order under 151 CPC was issued forbidding him from carrying out his business of medicine shop.

7. The lower Court heavily relied on the report of the commissioner in forming an opinion as to whether damage was caused by the petitioner in the suit premises. The lower Court also entertained the view that by making permanent fixtures against the wall and by uprootment of the cemented portion on the floor, the nature and character of the suit premises had been substantially altered. Since the trade licence was obtained for running grocery shop in an area of 240 square ft. only, the Trial Courts assumed that the petitioner must have been encroached upon the other portion of the premises. In doing so, the Trial Court totally overlooked and ignored the acceptance of the proposal made by the petitioner to the landladies for conversion of the grocery shop into that of a medicine shop. As revealed from the said letter, annexure "A" to the petition, the land ladies were requested to accede to the proposal of the petitioner to use approximately 450 square ft. area for the proposed medicine shop. The petitioner also offered to break up of the total rent in the following manner:

i) Rs. 500/- in respect of the medicine shop covering an area of 450 square ft. and Rs. 1,500/- for the rest of the entire tenanted portion covering an area of 1,600 square ft.

8. The said letter was accepted by both the landladies namely Rina Saha and Sabita Saha, as evidenced by their signatures in the letter. The land ladies on a stamp paper also accorded their sanction to the aforesaid change over of the business. Permission was also accorded to cause necessary repairing with temporary fittings and fixtures without changing the nature and character of the same. Rs. 2000/- was also accepted as rent for the tenanted portion on the ground floor of premises No. 106/A, Khudiram Bose Sarani. Installation of fittings and furnitures were made following acceptance of the proposal to set up a medicine shop in a portion of the entire tenanted portion. As disclosed in the report of the learned Advocate Commissioner, the building housing the tenanted shop room is an old one. It is in partly dilapidated condition, as indicated in the report. True, there is indication in the report that marble tiles had been planted on the floor. There are indications that some furnitures and fixtures were set up against the wall. There is no concrete evidence that in setting up such fittings

and furniture, substantial damage building had been caused. The learned Commissioner has not clearly expressed his view whether the marble tiles had been planted by removing the cemented portion. Weighty substances were required to be stored in the grocery shop. The erstwhile landlady never complained of damage to the floor because of storage of heavy objects. It is hard to accept that by planting marble tiles on the floor extensive damage to the building has been caused. A medicine shop may require the little bit of spice up. Facelift of the room was made following the landladies accepting the proposal of the petitioner to set up a medicine shop therein. Whether such changes really brought about a drastic change in the nature and character of the building can only be decided at the appropriate stage. Whether there has been substantial damage to the building can also be ascertained at the appropriate stage. In coming to the finding, the Court may take the help of the expert. Right now, there is no justification for the Court to restrain the petitioner from running his medicine shop, which, according to Mr. Mukherjee, is the source of livelihood of the petitioner. Having accepted and acquiesced in the proposal of the petitioner to set up a medicine shop in an area covering roughly 450 square ft. area, the landladies should not be allowed to retract their decisions. The proposal, as contained in the letter, annexure "A" to the petition, having been accepted by the landladies/executrix, the Court below moved on a wrong footing that the medicine shop was required to be set up within a covered area of 240 square ft. only. Acting on such belief, the Trial Court accepted the contention of the encroachment the other portion of the building. The misreading of the documents thus resulted in miscarriage of Justice, justifying interference in revision. The balance of inconvenience was not at all considered in passing the order u/s 151 CPC.

9. In the result, the revisional application is allowed, setting aside the order in Misc. Appeal No. 34 of 2006 passed by the learned Additional District Judge, Fast Tract Court-III, Sealdah and the order dated 20th March, 2006 passed by the learned Civil Judge (Junior Division), 2nd Court, Sealdah in Title Suit No. 291 of 2005, with a direction upon the Trial Court to dispose of the suit expeditiously preferably within a period of four months of the communication of the order. The petitioner will be allowed to run the medicine shop in the tenanted portion covering 406 square ft. as indicated in Commissioner's report until further order. He will not make any further repair or renovation work without permission of the Court.

Urgent xerox certified copies, if applied for, are to be supplied.