

(2013) 11 CAL CK 0015
In the Calcutta High Court
Case No : Second Appeal No. 319 of 1993

Sri Khagendra Nath Chakraborty APPELLANT

Vs

Sri Rabindra Nath Ghosh (since deceased, his heirs and successors) (Sri Tripti Ghosh @ Khokan, Sri Sandip Kumar Ghosh and Smt. Renuka Bela Ghosh) RESPONDENT

Date of Decision : 18-11-2013

Acts Referred:

Citation : (2013) 11 CAL CK 0015

Hon'ble Judges : Murari Prasad Shrivastava, J

Bench : Single Bench

Advocate : Sabyasachi Mukhopadhyay and Ms. Koushikee Banerjee, for the Appellant; Haradhan Mondal, for the Respondent

Final Decision : Dismissed

Judgement

Murari Prasad Shrivastava, J.—This Second Appeal is at the instance of the plaintiff and is directed against the judgment and decree passed by learned Assistant District Judge, Katwa on 20.11.1991 and 04.12.1991 respectively in Title Appeal No. 182 of 1991 affirming the judgment and decree passed by learned Munsif 2nd Court, Katwa on 11.01.1991 and 24.01.1991 respectively in Title Suit No. 34 of 1976. During pendency of present appeal, the respondent died and his legal heirs have been duly substituted and brought on record. Plaintiff/appellant instituted a suit for eviction, recovery of khas possession and mesne profits against the defendant/respondent in respect of the suit premises on the grounds of default, nuisance, damage and annoyance as well as reasonable requirement.

2. Defendant/respondent contested the suit filing a written statement denying the material allegations raised in the plaint and praying for dismissal of the suit. Initially, Trial Judge dismissed the suit and against the judgment of dismissal an appeal was preferred by the plaintiff. The Appellate Court set aside the judgment and remanded the suit back for fresh trial upon giving opportunity to the plaintiff

to amend the plaint and adduce further evidence. Thereafter the plaint was amended and further evidence was adduced. Upon fresh trial, the suit was dismissed on contest with cost. Plaintiff/appellant preferred an appeal and the said appeal was also dismissed on contest with cost.

3. Being aggrieved by such judgment and decree of the first appellate Court, plaintiff/appellant has preferred the present second appeal.

4. The following substantial question of law has been framed:-

Whether the learned Court below has committed substantial error in coming to the conclusion that the plaintiff/appellant has no reasonable requirement for the suit premises for use and occupation of himself and his family members?

5. Before the Trial Judge as well as before first Appellate Court, plaintiff/appellant did not press the other grounds for eviction, being default, damage, annoyance as well as nuisance and the only ground urged was for reasonable requirement of the plaintiff. Upon hearing learned Advocates for the parties and upon perusal of the materials on record I find that the requirement of the plaintiff is as follows:-

One bed room for himself and his wife. One bed room for his son. One bed room for his unmarried daughter. One bed room for his married daughter and son-in-law and one reading room for his children.

7. During cross-examination, the plaintiff as P.W. 1 categorically admitted that he obtained vacant possession of three rooms in the suit holding from his previous tenant Santi Mondal about 21/2 years back and he inducted one Tapan Pal as tenant therein. P.W. 1 has further deposed that recently about 5 months ago he obtained possession of 2 rooms after the previous tenant Samir Bhattacharyya left and he has inducted a tenant therein. So, it is quite clear that the plaintiff obtained possession of 5 rooms in the suit holding long after the institution of the suit but chose to induct tenants therein.

8. Mr. Mukhopadhyay, learned Advocate for the appellant submits that these rooms would not have met the requirement of the plaintiff. However there is no iota of evidence to this effect nor has any local inspection been held in this regard. In fact, in a case for reasonable requirement local inspection is a must for ascertaining the size of the rooms in possession of the plaintiff as well as of the defendant/tenant. It is a settled principle of law that the requirement of the landlord must be real and genuine. If the need of the plaintiff was genuine he would surely have had kept the rooms which he got possession of during the pendency of the suit and not inducted tenants therein. In this context, I may also refer to the pleadings in the plaint as well as the evidence of the plaintiff that he is already in possession of three bed rooms.

9. Mr. Mondal, learned Advocate for respondents refers to the decision reported in Narayanan Rajendran and Another Vs. Lekshmy Sarojini and Others, and submits that this Court should refrain from interfering with the concurrent findings of fact, particularly in this case where both the learned Courts below

have clearly held that the accommodation in possession of the plaintiff was sufficient to meet the requirement of himself and his family members. Mr. Mukhopadhyay, learned Advocate for the appellant on the other hand refers to the decisions reported in Dinesh Kumar Vs. Yusuf Ali, and D.R. Rathna Murthy Vs. Ramappa, and submits that the High Court can interfere with the concurrent findings of fact even in second appeal if such findings recorded by the Courts below are found to be perverse being based on no evidence or contrary to the evidence on record or on irrelevant materials. It is now settled law that if concurrent findings of fact are based on no evidence, or on extraneous matters or on misinterpretation of settled principles of law, the Court of Second Appeal can interfere with the said findings of fact treating the same as perverse by invoking Section 100 of the Code of Civil Procedure. Learned Advocate for the appellant contends that although trial Judge held that the plaintiff was in possession of five rooms, first appellate Court came to the finding that plaintiff has 9 rooms under his khas possession. However, I do not find any discrepancy in such findings of the learned Court below since it is clearly admitted by P.W. 1 that he has 2 rooms on the second floor being one bed room and one thakur ghar; 5 rooms on the first floor being 2 bed rooms, one store room, one thakur ghar and one kitchen and 2 rooms on the ground floor which according to the plaintiff are being used as a drawing room and cow shed respectively. The trial Judge held that plaintiff had 5 rooms excluding thakur ghar, kitchen, drawing room and cow shed and if we add the latter to the said 5 rooms it comes to 9 rooms. P.W. 2 is the only other witness and he clearly deposes that there is a separate cow shed and the other room on the ground floor is being used for keeping cycle. As I have already discussed above no local inspection was held to show about any existence of cow shed nor the measurements of the said room where allegedly there is a cow shed. Both the learned Courts below have discussed in detail about the existing accommodation available to the plaintiff to meet his requirement and on going through the evidence on record as well as the averments made in the plaint it cannot be said that the findings of fact recorded by the Courts below are perverse being based on no evidence or based on irrelevant materials. Learned Advocate for the appellant has referred to the decisions reported in Nasib Kaur and Others Vs. Col. Surat Singh (Deceased) through L.Rs. and Others, Gora Chand Dey Vs. Chhaya Bagchi, , Hemangini Debi Vs. Sukumar Babu and Another, Alope Chatterjee Vs. Ram Prasad Chandra and Brother, Ragavendra Kumar Vs. Firm Prem Machinery and Co., and Uday Shankar Upadhyay and Others Vs. Naveen Maheshwari, These decisions however in my opinion are of no help to the plaintiff/appellant as in the present case the learned Courts below have not failed to consider the materials on record and the discussion about the requirement of the plaintiff being met within the existing accommodation available to the plaintiff cannot be considered to be gratuitous advice. As I have already discussed above, had the need of the plaintiff been genuine he would have kept the rooms vacated by the tenants during the pendency of the suit in his possession and not inducted new tenants. In fact, the findings of the learned Court below that the plaintiff's need of the suit premises

was not genuine are very much based on the evidence and materials on record.

10. The substantial question of law is thus answered against the appellant. The present appeal is devoid of any merit.

11. Accordingly, the Second Appeal stands dismissed.

12. I pass no order as to costs in view of the circumstances of the case. A copy of the judgment along with the Lower Court Records be sent down to the learned Court below immediately for information and necessary action. Urgent Xerox certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.