

(2012) 02 CAL CK 0013
In the Calcutta High Court
Case No : S.A. 393 of 1991

Sri Susanta Ghosh

APPELLANT

Vs

Sri Gopal Prasad Barui and Others

RESPONDENT

Date of Decision : 01-02-2012

Acts Referred:

West Bengal Land Reforms Act, 1955 — Section 14

Citation : (2012) 2 CALLT 245 : (2012) 5 CHN 242

Hon'ble Judges : Tapan Kumar Dutt, J

Bench : Single Bench

Advocate : Jiban Ratan Chatterjee, Mr. S. Bhattacharyya and Ms. Jolly Chakraborty, for the Appellant; Nabaroon Karak and Mr. Amal Krishhna Saha, for the Respondent

Final Decision : Dismissed

Judgement

Tapan Kumar Dutt, J.—Today Mr. Chatterjee, learned Senior Advocate has made his submissions on behalf of the appellant and prayed before this Court that substantial questions of law should be formulated. Having heard Mr. Chatterjee, learned Senior Advocate, this Court is of the view that this appeal should be heard on the following substantial questions of law:

1. Whether or not the learned lower appellate court erred in not holding that the suit is not maintainable in the absence of Pannalal Barui as a party to the said suit when the said Pannalal Barui is the brother of Bhabani Barui (Predecessor of the plaintiff);
2. Whether or not the learned lower appellate court erred in relying upon the evidences of Pannalal Barui wherein he has stated that the suit property has been partitioned but no document of partition has been filed in the suit and such statement of Pannalal Cannot confer any title upon the plaintiffs;
3. Whether or not the learned lower appellate court erred in not holding that the long possession of the defendant in respect of the suit property would indicate

that the defendant was a tenant in the suit property, particularly, when there was no relationship between the defendant and the plaintiffs and/or their predecessor;

4. Whether or not the learned lower appellate court failed to consider the question as to what could have been the status of the defendant in respect of the suit property between 08.09.1968 and 15.08.1979 as exhibit "1" and A(1) indicate that two different dates have been mentioned in the said notices, being the said exhibits, with regard to the induction of the defendant in the suit property, i.e. 08.09.1968 and 15.08.1979.

2. After the aforesaid substantial questions of law have been formulated, the said learned senior Advocate proceeded to continue with his submissions on behalf of the appellant.

3. Today, Mr. Jiban Ratan Chatterjee, learned Senior Advocate completed his submissions on behalf of the appellant. Thereafter the learned Advocate for the plaintiffs/respondents made his submissions and completed his submissions.

4. Thereafter, Mr. Chatterjee, learned senior Advocate for the appellant made his submissions in reply and the hearing has been concluded.

5. Having heard the learned Advocates for the respective parties and having considered the materials on record, this Court now passes the following judgement.

6. The facts of the case, very briefly, are as follows:

7. The plaintiffs/respondents filed a suit for eviction against the defendant/appellant being Title Suit No. 620 of 1980 which was placed before the learned 3rd Munsif at Sealdah.

8. The plaintiffs/respondents' case was that the defendant/appellant was a licensee under the predecessor-in-interest of the plaintiffs i.e. Bhabani Prosad Barui. It was further alleged that the said Bhabani Prosad Barui had verbally revoked the licence of the defendant in respect of the suit room, but the defendant did not vacate, It further appears from the plaint that the notice of revocation dated 08.09.1980 was served upon the defendant by the plaintiffs but the defendant failed to vacate and hence the said suit was filed.

9. The defendant contested the said suit by filing a written statement claiming himself to be a tenant in respect of the said suit property. The defendant prayed for dismissal of the said suit.

10. The learned Trial Court by its judgement and decree dated 28th July, 1989 decreed the said suit in favour of the plaintiffs and the defendant was directed to deliver possession of the suit room in favour of the plaintiffs within a stipulated period of time.

11. Challenging the said learned Trial Court's decree the defendant preferred an appeal being Title Appeal No. 151 of 1989 which was placed before the learned

Assistant District Judge, Sealdah and ultimately by the impugned judgement and decree dated 18th April, 1990 the learned lower Appellate Court dismissed the said Title Appeal affirming the judgement and decree passed by the learned Trial Court.

12. Challenging the said impugned judgement and decree of the learned lower Appellate Court the defendant has filed the instant Second Appeal. The substantial questions of law have been formulated today as already noted above and thereafter the respective learned Advocates agreed to have the appeal heard out today itself and as such the hearing was completed today.

13. The first point raised by the learned Senior Advocate for the appellant was that in the absence of Pannalal Barui who happened to be the brother of Bhabani Prosad Barui the suit was not maintainable as according to the said learned Advocate, it is the plaintiffs' case that the suit property is an ancestral property and the said Pannalal Barui and Bhabani Barui had both succeeded to the suit property. According to the said learned Advocate, in the absence of any partition in between the two brothers Pannalal Barui ought to have been impleaded as a party to the said suit and in the absence of Pannalal Barui the suit is not maintainable.

14. Even though Pannalal Barui has adduced evidence in the suit and has stated that there has been a partition in between the two brothers and the original premises has been divided into two parts, namely, Laljee Show Street and 1/1, Laljee Show Street, there is no documentary proof in support of such partition. The said learned Advocate for the appellant referred to Section 14 of the West Bengal Land Reforms Act, 1955.

15. The learned Advocate for the appellant has also referred to that part of the evidence where the P. W.1 had stated that the partition was effected by a registered deed, but such deed was never produced before the Court. Assuming for the sake of argument that the said Pannalal Barui happens to have a share in the suit property even then it cannot be said that Bhabani Prasad and/or his successors did not have any right to institute a suit for eviction against a licensee. Even if it is assumed for the sake of argument that Bhabani Prasad remained to be a co-owner in respect of the suit property Bhabani Prasad was entitled under the law to file a suit for eviction against a licensee. Of course, it appears from the records that now there are two premises, namely, 1 and 1/1. Such fact would appear from the evidence of P.W. 2, i.e. Pannalal Barui himself. Pannalal Barui himself has deposed that there was a partition in between Pannalal Barui and Bhabani Prosad Barui. It will appear from his evidence that at present two premises exist, namely, No. 1 and 1/1. That apart having a look at the written statement will make things clear in paragraph 10 of the written statement the defendant has made the following statement:

That the defendant submits that he was not a licensee as alleged but was a monthly tenant under Bhabani Prosad Barui since after his death, his heirs

became the landlord, so the story of licence as alleged by the plaintiffs is denied." In Paragraph 16 of the written statement, the defendant has claimed to be a tenant under the plaintiffs. Keeping the question of tenancy apart for the time being, It is thus clear that the defendant was inducted in the suit premises by Bhabani Prosad Barui.

16. In view of such stand taken by the defendant it is difficult to accept the submissions made by the learned Senior Advocate for the appellant that in the absence of Pannallal Barui the suit is not maintainable. The second point raised by the said learned Advocate is also devoid of any substance. The question of any statement of Pannallal Barui conferring any title upon the plaintiffs does not arise. The plaintiffs did not become owners of the property on the basis of any statement by Pannalal. Plaintiffs have become the owners of the property by way of succession from their predecessor-in-interest. Pannalal Barui has only stated that there was a partition in between the two brothers and it appears from the evidence that now there exists two premises, as aforesaid.

17. This Court does not find anything wrong in the fact that the learned lower Appellate Court has relied upon the evidence of Pannallal. The learned Senior Advocate appearing on behalf of the appellant has clearly submitted that he is not pressing the point of adverse possession. There is no dispute with regard to the fact that the defendant has not been able to produce a single rent receipt in support of his claim of tenancy in respect of the suit premises. It has to be remembered that rent receipt is very important piece of evidence in support of any claim of tenancy, but the defendant has failed to produce any such rent receipt in the suit. There is nothing on record to show that there was any contract of tenancy between the plaintiffs and/or their predecessor and the defendant. It has been argued by the learned Senior Advocate for the appellant that the long possession of the defendant in respect of the suit premises would indicate that the defendant was inducted as a tenant in the suit premises. In the absence of proving any contract of tenancy or any proper evidence to show that any contract of tenancy came into existence it cannot be said that the defendant has been occupying the suit premises as a tenant only by virtue of long stay in the suit premises. The learned Advocate for the appellant, as already noted above, has not pressed the point of adverse possession and in such circumstances, this Court is not inclined to accept the argument made by the said learned Advocate that the defendant has been occupying the suit property as a tenant. Merely because, some trade licences were produced in evidence, it does not prove that there was relationship of landlord and tenant in between the parties. Even a licensee with the permission of the landlord and/or the owner of the property can obtain a trade licence from the Municipality concerned for the purpose of running any business. So, even the existence of such trade licence cannot help the defendant/appellant to prove any tenancy.

18. The question raised by the said learned Advocate for the appellant as regards the status of the defendant between 08.09.1968 to 15.08.1979 since two dates

of induction have been mentioned in two different notices being exhibit "1" and A(I) is also not of any substance. This is so because the defendant has never been able to prove that he has been a tenant in respect of the suit property at any point of time and both the learned Courts below have concurrently found that the defendant has been in permissive occupation of the suit property. Thus, the period between 08.09.1968 to 15.08.1979 can be said to be a period when the defendant was in occupation of the suit property as a licensee. The last point raised by the said learned Advocate, thus has no substance.

19. The learned Advocate appearing on behalf of the appellant has cited a decision reported in 2006(3) CHN page 1 and referred to paragraph 24 of the said reports wherein the Hon"ble Court has been pleased to observe, "it is now well settled law that even if the actual induction as a licensee is not proved, the moment the plaintiff establishes absolute title to the property and the defendant fails to establish his title in the property, the plaintiff is entitled to get a decree for eviction as a matter of course simply on the basis of his title." It is difficult to appreciate as to how this reports can be any assistance to the defendant/appellant. The learned Advocate for the appellant has argued that since the plaintiffs in the instant case have failed to prove absolute title to the suit property, the plaintiffs are not entitled to any decree for eviction.

20. This Court, in view of the discussions made above and also in view of the concurrent findings of the learned Courts below on a pure question of fact, is unable to accept the submissions made by the learned Advocate for the appellant. The statements made by the defendant in Paragraph 10 and Paragraph 16 of the written statement as already discussed above will clearly show that the defendant did not seriously dispute the fact that he has been in occupation of the suit property initially under Bhabani Prosad Barui and thereafter under the heirs and legal representatives of Bhabani Prosad Barui.

21. In view of the discussion Court does not find any merit in the instant Second Appeal, which is dismissed. There will, however, be no order as to costs. Urgent certified xerox copy of this judgement, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.