
(2008) 12 CAL CK 0007

Calcutta High Court

Case No: S.A. No. 497 of 1997

Smt. Pratima Ghosh and Another

APPELLANT

Vs

Sri Bimal Krishna Dutta

RESPONDENT

Date of Decision: Dec. 18, 2008

Acts Referred:

- West Bengal Premises Tenancy Act, 1956 - Section 13(1)(ff)

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Bidyut Banerjee and Ms. Shila Sarkar, for the Appellant;

Final Decision: Allowed

Judgement

Prasenjit Mandal, J.

The Judgment of the Court was as follows:

1. This second appeal is directed against the judgment and decree dated 31st May, 1996 passed by the learned Assistant District Judge, Sealdah in Title Appeal No. 12 of 1995 whereby he has allowed the appeal reversing the judgment and decree dated 30.07.1994 passed by the learned Munsif, Additional Court, Sealdah in Title Suit No. 209 of 1991.

2. The short fact of the case is that the plaintiffs/appellants became the owner of the premises No. 1/1W/1, Jaharlal Dutta Lane, Calcutta-700 067 by inheritance and deed of gift. The defendant/respondent was a tenant under the original owner, late. Nepal Ch. Ghosh, at a rental of Rs. 130/- per month payable according to English Calendar month. The defendant/respondent has defaulted in payment of rent since August, 1981. He is in possession of the entire ground floor of the said premises. The plaintiffs are occupying the first floor and the second floor of the said premises but the rooms available thereon are not sufficient at all for their own use and occupation. The plaintiff No. 1 is a heart patient and under medical advice, she is to

live on the ground floor. The plaintiff No. 2 is a bank employee and he requires a sitting room on the ground floor. The plaintiff No. 1 is a vegetarian and so a separate kitchen is required for her. The plaintiffs have no other reasonable and suitable accommodation elsewhere. The daughter of the plaintiff No. 1, Smt. Sabita Ghosh, wants to start a tutorial class and so one room is required for her for the said purpose. For that reason, the tenancy of the defendant/respondent was determined by a notice to quit. The defendant/respondent accepted the said notice but he did not vacate the premises in suit in favour of the landlords. So the plaintiffs/appellants have instituted the suit for eviction.

3. Upon considering the evidence of both the sides, the learned Munsif has decreed the suit on the ground of reasonable requirement. An appeal was preferred against the said judgment and decree passed by the learned Munsif and the appeal was allowed by setting aside the judgment and decree passed by the learned Trial Court. Thereafter, the plaintiffs/landlords have preferred this second appeal.

4. At the time of making argument, Mr. Banerjee, learned Advocate for the appellants, has contended that all the grounds raised in the second appeal have been made the substantial questions of law to be decided by this Court. But, in fact, I find from the record that the ground of reasonable requirement as embodied in Section 13(1)(ff) of the West Bengal Premises Tenancy Act, 1956 is the sole substantial question of law to be decided in this second appeal.

5. The suit was filed for eviction on the ground of default and reasonable requirement. From the record it appears that the defendant/respondent has paid all the arrears of rent and he is depositing the current rent. So the plaintiffs/appellants cannot get a decree for eviction on the ground of default. It may be mentioned here that it is not the case of second default to get a decree for eviction.

6. During argument, Mr. Banerjee has drawn my attention to the two applications bearing C.A.N. No. 6558 of 2005 for amendment of the plaint under Order 6 Rule 17 of the CPC and the C.A.N. No. 6566 of 2005 for taking note of the subsequent events. It was ordered that those two applications shall be heard along with the appeal. Accordingly, these two applications are taken first for decision. It is pertinent to mention here that notice was sent upon the defendant/respondent again and again; but he is not interested to proceed with the second appeal. As such, the matter has been taken up for ex parte hearing.

7. So far as the C.A.N. No. 6558 of 2005 is concerned, I find that the plaintiffs/appellants have wanted to incorporate the fact that the plaintiff No. 1, mother of the plaintiff No. 2, died and on her death, her interest devolved upon her daughter, Smt. Sabita Ghosh and the plaintiff No. 2. At present, Sabita is a co-owner of the premises in suit and so she is entitled to press her requirement as a co-owner. She has claimed one room to run a coaching-cum-tutorial home for earning her livelihood on the ground floor in addition to her requirement for a room

for her stay. Another ground for amendment is that the son of the plaintiff No. 2 has attained majority and he requires a separate bed room for his study. The plaintiff No. 2 requires a separate dining room and a drawing room. They also require a Thakurghar. So they have prayed for a decree for eviction on the ground that their present accommodation is not sufficient to meet all the requirements.

8. Upon perusal of the plaint case and the application for amendment, I find that the points for amendment are not altogether new at all. After death of the mother of the plaintiff No. 2, Sabita became a co-owner of the premises in suit by way of inheritance from her mother along with the plaintiff No. 2. The trial Court as well as the Lower Appellate Court have decided that Sabita has been residing with the family of the plaintiff No. 2. She is unmarried. Though previously Sabita acquired the right, title and interest in the premises in suit by way of inheritance after death of her father, she gifted her right, title and interest in the premises in suit in favour of the plaintiff No. 2. But subsequently after death of her mother, acquired the right, title and interest in the premises in suit by way of inheritance from her mother. Now, therefore Sabita has claimed for accommodation as a owner of the suit, premises for her stay and to get her livelihood. Such fact of need has already been stated in the earlier plaint and there is evidence on this matter. So if this prayer for amendment is allowed at this stage under the changed circumstances, the defendant/respondent is not prejudiced in any way. This amendment is also necessary to settle the dispute between the parties once for all. Accordingly, the application for amendment of the plaint is allowed.

9. So far as the second C.A.N. No. 6566 of 2005 is concerned, I find that by way of such CAN application the plaintiffs/appellants have wanted the Court to take judicial notice of the fact that Sabita is a qualified unmarried lady and she requires one room for her stay and another room to earn her livelihood. She has prayed for accommodation of a room on the ground floor. The plaintiffs have also wanted to take note of the subsequent fact that the son of the plaintiff No. 2 has attained majority and he requires a separate bed room. He also requires another room for his study. They also require one separate drawing room and a dining room and a Thakurghar. The fact that the son of the plaintiff No. 2 was aged about 7 (seven) years at the time of passing judgment by the trial Court, is observed in the body of judgment passed by the trial Court. Other events as to the son of the plaintiff No. 2 are of consequential events and so the Court can take notice of such subsequent events into consideration. So if such facts are taken into consideration at the time of disposal of the second appeal, the defendant/respondent is not also prejudiced in any way. The plaintiffs, in fact, did not want to incorporate new grounds other than the reasonable requirement, under the changed circumstances. In the circumstances, I am of the opinion that this CAN application should be allowed and the merit of the second appeal can well be decided on the basis of evidence-on-record and that no further evidence is required. Accordingly, this CAN application is allowed.

10. Now, therefore, I am to consider whether in the given circumstances, the plaintiffs/appellants are entitled to get a decree for eviction on the ground of reasonable requirement and/or if the judgment and decree passed by the first Appellate Court can be supported.

11. Mr. Banerjee has submitted before me that the present accommodation of the plaintiffs/appellants is not sufficient for their own use and occupation and for that reason they require the suit premises reasonably. He has also contended that both the Courts below have observed that the plaintiffs/appellants have no other suitable accommodation elsewhere and as such they require the suit premises reasonably. He has drawn my attention to the observations made in the judgments passed by the trial Court and the Lower Appellate Court. Upon due consideration of the entire evidence-on-record, judgments passed by the lower two Courts and on hearing the submission of the learned Advocate, I find that a local inspection was held in respect of the premises occupied by the plaintiffs/appellants. The learned commissioner has submitted his report and such report has been marked exhibit. According to the report of the commissioner as well as the evidence on behalf of the plaintiffs/appellants before the trial Court, I find that the plaintiffs/appellants are in possession of the entire first floor and the second floor and one chilekotha room in the premises above the second floor. There are two rooms, one kitchen, one bath and privy, one covered varandah and one small balcony on the first floor. Out of the two bed rooms, one is being used as a bed room and the other room, as a dining room. The covered varandah is 22 feet /6 feet and it is intervened by two pillars. There is another small balcony measuring 12"11"/1"7". In the second floor of the premises, there is one bed room with attached privy. This room is being used also as a bed room. There is a chilekotha room above the second floor of the premises and this room is being used as thakurgarh of the plaintiffs/appellants. These are the extent of accommodation of the plaintiffs at present.

12. Now, the members of the plaintiffs/appellants' family are the plaintiff No. 2, his wife, son and sister, Smt. Sabita Ghosh. Now all are major. The plaintiffs/appellants can choose the mode of use of their premises and the Courts are not in a position to dictate the choice of the plaintiffs/appellants. It is the absolute discretion of the plaintiffs/appellants as to how they would use the premises in their accommodation. From the materials-on-record, I find that the plaintiff No. 2 and his wife reside in the bed room of the second floor of the premises. The use of the chilekotha room as made by the plaintiffs/appellants, I hold, is okay and such use may be maintained by them. So, I find that after use of the premises in the manner as is being done by the plaintiffs/appellants in respect of the second floor and chilekotha room, there remains only two rooms in the possession of the plaintiffs/appellants in the first floor of the premises. Though the varandah is a lengthy one but I find that it is intervened by two pillars and that it being narrow one, is not at all fit for being used as dining space of the plaintiffs/appellants. So the plaintiffs/appellants use one room out of the two rooms of the first floor as dining room. So the use of this room

in this manner may be maintained. Then there remains only another room as bed room of the plaintiffs/appellants on the first floor. The sister of the plaintiff No. 2 and his son being adult, now they cannot be accommodated in the said room. Now either the son of the plaintiff No. 2 or his (plaintiff No. 2's) sister can be accommodated in the room of the first floor. So, the plaintiffs/appellants require one more bed room separately for their accommodation. Moreover, the sister of the plaintiff No. 2 desires another room for making tuition in the ground floor. As per evidence-on-record, she is a B.A., B.Ed. and she wants independent income for her livelihood. This desire is not a mere desire or mere wish to get the premises in suit anyhow. After death of the mother of the plaintiff No. 2, I think such desire of the plaintiff No. 1 (a) for a separate room for making tuition thereat cannot be ignored at all. Such desire ripens into need. The son of the plaintiff No. 2 also requires one room as observed above and so I am of the view that the remaining one bed room is not sufficient at all for accommodation of the members of the plaintiffs/appellants. Thus, I find that the plaintiffs/appellants have prayed for decree for ejectment on the genuine ground of reasonable requirement and not a mere desire to get eviction of the defendant/tenant from the premises in suit anyhow. Such an observation gets support from the decision of [Siddalingamma and Another Vs. Mamtha Shenoy](#). The observations made by the First Appellate Court that Sabita remained idle in the house in spite of having a degree of B.A. and B.Ed, since 1973, cannot supported. Similarly, her observation that it becomes difficult to believe that the sister has/had any intention to start any tutorial room in the premises in suit for augmenting the income of the plaintiffs' family, cannot be supported. The Court is not supposed to know the intention of Sabita by such facts. It may be the situation that she did not feel necessity to make tuition or to have a post of a teacher earlier. Yet, after death of her mother her subsequent desire to have an accommodation for tuition cannot be ignored. So, I hold that she requires a room for tuition also.

13. Admittedly, the plaintiff No. 2 is a bank employee. He is the head cashier of the United Bank of India. So it is natural that employee's office colleagues, friends and others may visit his house and so I am of the view that in consideration of the status of the plaintiff No. 2, his family requires a drawing room. The covered varandah, as I find from the commissioner's report, is being used for keeping refrigerator, wall fitted almirah, basin, flower tubs, etc., beside being used as passage. The same may be continued to be used as is being done by the plaintiffs/appellants. So, this covered varandah may neither be used as dining room nor as drawing room. The covered varandah intervened by two pillars being a narrow one is not fit to be considered as a drawing room. In coming to such decision, I have considered the decision of N.C. Paul & Anr. vs. D.K. Saha, reported in 2005(4) CHN 819 (Single Bench decision). Therefore, I am of the view that the present accommodation of the plaintiffs/appellants is not sufficient at all for the bona fide need of the family.

14. Upon analysing evidence-on-record, the trial Court has observed that the plaintiffs/appellants have proved that they have no other accommodation

elsewhere. Upon due consideration of the said evidence, the First Appellate Court has also come to the same conclusion and she supported the findings of the learned Munsif. Such concurrent findings being unchallenged one, I have no other alternative but to support the same view that the plaintiffs/appellants have no other suitable accommodation elsewhere.

15. The learned Trial Judge took steps to see whether a decree for partial eviction could be granted allowing both the plaintiffs/appellants and the defendant/tenant live in the said premises by the principle of "live and let live". Such an attempt of the trial Court came to futility when the defendant/tenant disagreed with the proposal of the trial Court. Accordingly, the trial Court passed the decree for eviction. In consideration of this fact and my earlier observations I hold that the requirement of the plaintiffs/appellants of the suit premises is a genuine one and not a mere wish or desire. So the plaintiffs/appellants have proved the ground of reasonable requirement of the premises in suit as required u/s 13(1)(ff) of the West Bengal Premises Tenancy Act. They are, therefore, entitled to get a decree for eviction against the defendant/tenant on this ground. The observations of the learned First Appellate Court in this regard cannot be supported and it is set aside. The substantial question of law is thus answered.

16. Accordingly, the second appeal succeeds. It is allowed. The two CAN applications are also allowed with the observations made earlier.

17. The judgment and decree dated 31st May, 1996 passed by the learned Assistant District Judge, Sealdah in Title Appeal No. 12 of 1995 is set aside and the judgment and decree dated 30.07.1994 passed by the learned Munsif, Additional Court, Sealtlah in Title Suit No. 209 of 1991 is hereby confirmed.

18. However, it is recorded that the decree shall be effective from 15.01.2009. Alternatively, I can say that the execution proceeding may be started with effect from 15.01.2009 only.

19. Considering the circumstances, there will be no order as to costs.

20. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.