

**(2013) 04 CAL CK 0010**

**Calcutta High Court**

**Case No:** S.A. No. 83 of 2007 and CAN No. 4511 of 2012

Lolit Karati

APPELLANT

Vs

Menokarani Dogra

RESPONDENT

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**Date of Decision:** April 18, 2013

**Citation:** (2013) 4 CHN 199

**Hon'ble Judges:** Tapan Kumar Dutt, J

**Bench:** Single Bench

**Advocate:** Buddhadev Ghosal, Udayan Datta and Tapas Mukherjee, for the Appellant;

**Final Decision:** Disposed Off

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### **Judgement**

Tapan Kumar Dutt, J.

When this matter was called out for hearing none appeared on behalf of the respondent/plaintiff. The learned Advocate appearing on behalf of the defendant/appellant has made and completed his submission.

2. The facts of the case, briefly, are as follows:-

The plaintiff/respondent filed a suit for eviction of a licensee and recovery of possession against the defendant/appellant. The case of the plaintiff/respondent was that she was a thika tenant in respect of premises of 16, Kalipada Das Lane Howrah and out of love and affection, she granted licence to the defendant appellant for two months only permitting the defendant/appellant to occupy the suit property which happens to be one tiled room with common user of privy comprised in the said premises.

3. The plaintiffs further case was that the plaintiff had asked the defendant to vacate the suit premises on 23-01-1998 and deliver up khas possession in favour of the plaintiff but the defendant did not comply with the plaintiff/respondent's request and, as such, the suit was filed.

4. The defendant/appellant contested the said suit by filing written statement denying the material allegations made in the plaint. According to the defendant/appellant, he has been occupying the suit property as a premises tenant paying rent at the rate of Rs. 30/- per month and he was inducted in the year 1977 in the suit premises but the plaintiff/respondent did not grant any rent receipt even though such rent was paid to the plaintiff by the defendant. The defendant's case was that since the defendant was a monthly premises tenant in the suit property, the plaintiff was not entitled to any decree in the said suit. The said suit came up for hearing when the respective parties adduced their evidence and the learned Trial Court, being the Court of the learned Civil Judge (Junior Division), 7th Court, Howrah by judgment and decree dated 26th April, 2000, dismissed the said suit being Title Suit No. 67 of 1998. The learned Trial Court found in its judgment that the D.W. 1 has admitted that the plaintiff is a thika tenant in respect of the suit holding and the evidence on record clearly indicates that the plaintiff is the owner of the suit property. The learned Trial Court found that though the defendant claimed himself to be that effect he did not produce any scarp of paper and the learned Trial Court found that the defendant/appellant did not take any steps u/s 25 of the West Bengal Premises Tenancy Act, 1956. The learned Trial Court was of the view that the rent receipts are the vital documents to establish tenancy. The learned Trial Court took into consideration some ration cards and xerox copies of the identity cards while finding that the defendant is in possession of the suit property.

5. The learned Trial Court laid much emphasis on the fact that the learned Trial Court found that the defendant has been in the suit property for 20-22 years and the defendant was permitted to reside in the suit property since 1978 but the question which could not be answered was why the plaintiff did not take any step for recovery of possession of the suit property for such a long time when the defendant was permitted to occupy the suit property only for a few months. The learned Trial Court came to the conclusion that since the defendant has been in possession of the suit property for 22 years, the presumption is that the status of the defendant is that of a tenant. The other question which swayed the learned Trial Court is that the defendant, not being a relative of the plaintiff, was allowed to stay in the suit property without licence fee for such a long period of time. The learned Trial Court, thus, found that the plaintiff has failed to prove that the defendant is a licensee in the suit property. The learned Trial Court was also of the view that the defendant should have been given a notice of revocation before filing of the suit.

6. Challenging the said judgment and decree passed by the learned Trial Court, the plaintiff/respondent filed Title Appeal No. 150 of 2000 which was placed before the learned First Court of Additional District Judge, Howrah. The learned First Appellate Court by judgment and decree dated 8th June, 2006 allowed the said Title Appeal and set aside the judgment and decree passed by the learned Trial Court. The learned First Appellate Court passed a decree for recovery of possession by eviction of the defendant from the suit premises.

7. Challenging such judgment and decree passed by the learned First Appellate Court, the defendant/appellant has preferred the present second appeal. It appears from the records that by order dated 27.7.2006, a Hon"ble Division Bench of this Court was pleased to admit the appeal for hearing on the following substantial questions of law:

i) Whether the learned Judge of the First Appellate Court committed substantial error in law in reversing the judgment and decree of the learned Trial Court.

ii) Whether the learned Judge of the First Appellate Court committed substantial error in law in not specifically deciding the issue as to whether the defendant is a licensee or a tenant on the basis of the materials on record.

8. The learned Advocate appearing on behalf of the defendant/appellant has submitted at the very outset that an application under Order 41 Rule 27 of the CPC is pending hearing and this should be disposed of along with the appeal itself. The said learned Advocate further submitted that a copy of such application has already served upon the learned Advocate for the respondent. A copy of the notice indicating service of the copy of the said application upon the learned Advocate for the respondent has been filed in Court today by the learned Advocate for the appellant.

9. Let such copy of the notice be kept with the record.

10. The learned Advocate for the appellant submitted that his main contention is that the learned First Appellate Court reversed the judgment and decree passed by the learned Trial Court without any proper application of mind and without assigning any proper reason. The said learned Advocate submitted that the learned First Appellate Court being virtually the last Court of facts should have discussed the evidence in details particularly, when the learned First Appellate Court was inclined to set aside the judgment and decree passed by the learned Trial Court. The said learned Advocate further submitted that the learned First Appellate Court did not decide the issue as to whether or not the relationship between the parties was that of a licensor and licensee. The said learned Advocate submitted that the application under Order 41 Rule 27 of the CPC annexing copies of certain documents have been filed in order to show the long stay of the defendant/appellant and his family members in the suit premises.

11. On perusal of the judgment passed by the learned First Appellate Court, it appears that the contention of the learned Advocate for the defendant/appellant is correct inasmuch as the learned First Appellate Court did not discuss the evidence in details while upsetting the judgment and decree passed by the learned Trial Court. In fact, it appears from the impugned judgment that the learned First Appellate Court proceeded on the basis that "the main ingredients of the present dispute that the proving of ownership of the suit property and revocation of licence thereon". The learned First Appellate Court did not take into consideration the main issue

which was required to be decided in the dispute. The issue was as to whether or not the defendant/appellant was a licensee in respect of the suit premises. With regard to the ownership of the suit property, the learned Trial Court has already found that there was no dispute as D.W. 1 had admitted the ownership of the plaintiff in respect of the suit property. With regard to the question of revocation of licence, the learned Advocate for the defendant-appellant has submitted before this Court that he is not pressing such point because he candidly submits that even without service of notice to quit a suit for eviction of licensee can be brought. The main issue was whether at all there was a relationship of licensor and licensee in between the parties but it appears from the impugned judgment that the learned First Appellate Court has not discussed this issue in a proper manner. The learned First Appellate Court after recording in its judgment several decisions cited at the Bar suddenly came to the finding that it cannot agree with the decision of the learned Trial Court after perusal of the evidence of P.W. 1 and D.W. 1, and P.W. 1 has successfully answered the questions during her cross-examination but D.W. 1 could not establish the case of the defendant; hence "the lower Court judgment should be interfered with". The learned First Appellate Court does not say as to why he does not agree with the view of the learned Trial Court and which part of the evidences on record persuaded the learned First Appellate Court to differ from the findings of the learned Trial Court in respect of the question with regard to the relationship in between the parties.

12. This Court is of the view that this Court should not enter into the merits of the matter in this second appeal and decide the issue with regard to the question as to whether or not the defendant was a licensee under the plaintiff" as because this Court is of the view that the matter should be sent back on remand to the learned First Appellate Court for a fresh decision after the learned First Appellate Court discusses the evidence in details. This Court is of the further view that the application under Order 41 Rule 27 of the CPC which has been filed by the defendant-appellant to bring on record certain additional evidence, leave should be granted to the defendant/appellant to adduce such additional evidence before the learned First Appellate Court. It is a well settled law that the learned First Appellate Court being the last Court of facts should discuss the pleadings and evidence in details before coming to its own conclusions and its conclusions should be supported by proper reasons particularly when the learned First Appellate Court intends to differ from the findings made by the learned Trial Court.

13. In view of the discussions made above, the present second appeal is disposed of by remanding the matter back to the learned First Appellate Court for a fresh decision in the light of this judgment after permitting the defendant/appellant to adduce additional evidence as already indicated above and also permitting the plaintiff/respondent to adduce further evidence if the plaintiff/respondent feels so. The impugned judgment and decree passed by the learned First Appellate Court are set aside. The learned First Appellate Court shall decide the said Title Appeal No. 150

of 2000 afresh after giving the parties proper opportunities to adduce their respective evidence and make their respective submissions in accordance with law.

14. Let the Lower Court records be sent back to and copy of this judgment be communicated to the learned First Appellate Court concerned by special messenger and the special messenger costs for such purpose shall be put in by the appellant within one week.

15. No formal decree need be drawn up in the instant case.

16. In view of the order passed above, the application being C.A.N. 4511 of 2012 stands disposed of. Urgent certified xerox copy of this judgment, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.