(1989) 03 CAL CK 0010

Calcutta High Court

Case No: Appeal from Appellate Judgment and Decree No. 397 of 1985

Swadesh Ranjan Rudra and Others		APPELLANT
	Vs	
Sachindra Nath Roy and Another		RESPONDENT

Date of Decision: March 13, 1989

Acts Referred:

- Transfer of Property Act, 1882 - Section 106

Citation: 94 CWN 290

Hon'ble Judges: S.K. Mookherjee, J

Bench: Single Bench

Advocate: Rabindra Nath Mitra, Mr. Bhaskar Bhattacharjee and Mr. Arun Kumar Maity, for the Appellant; Sudhis Dasgupta, Syama Prasanna Roy Chowdhury and Mr. Subhro Kamal Mukherjee Mr. Dwijendra Nath Lahiri, for the Respondent

Judgement

S.K. Mookherjee, J.

The present Second Appeal is directed against a Judgment and decree of affirmance. The Suit for eviction was instituted by the plaintiff/respondent on the grounds, inter alia, of reasonable requirement for own use and occupation and for those of the plaintiffs'' family after building and rebuilding. By the judgment and decree, dated 31st of July, 1984 the Learned Munsif decreed the said suit which was numbered as Title Suit No. 573 of 1976 and on appeal, being Title Appeal No. 784 of 1984, the Learned Additional District Judge, 10th Court, Alipore, by his judgment and decree, dated 28th February, 1985 dismissed the appeal and affirmed the judgment and decree of the Learned Munsif. The instant Second Appeal has been preferred on behalf of the defendants in the said Suit.

2. Shortly put, the relevant facts are that the plaintiff became the absolute owner of the suit property (2B, Ballygunge Station Road) on partition with his co-sharers; one Usha Ranjan Rudra, the predecessor-in-interest of the defendants, was a tenant in respect of the suit premises at a monthly rental of Rs. 40, payable according to

English Calendar on the death of Usha Ranjan Rudra, the defendants, who are the sons, daughter and widow of the said tenant, became tenants by devolution of interest. Rent receipts, however, for convenience, were used to be granted in the names of defendants 1 to 3 only. The plaintiff is in occupation of a portion of the ancestral building at 15/1A, Ballygunge Station Road as a licencee under his co-sharer and has no other reasonably suitable accommodation elsewhere. Some of the specific defences in this connection are to be noted. Regarding the tenancy it is the defendants'' case that after the death of Usha Ranjan, the original tenant, the landlord accepted and recognised defendants 1 to 3 as tenants the suit premises included the vacant land and as such the suit was barred for partial eviction; the service of ejectment notice also was contended to be not. proper and valid. The plaintiff''s requirement either for own use and occupation or for the Occupation of his family or for building and rebuilding had also been denied. Before this Court the parties have contested on the question of ownership, service of notice, maintainability of the suit and entitlement of the plaintiff to a decree on the ground of reasonable requirement.

3. Regarding the question of ownership.it has been contended by Mr. Mitra, appearing on behalf of the appellants, that Exhibit 8, which is claimed to be a deed of partition, is not really so inasmuch as the properties covered by the said deed also included properties which were not joint properties but personal properties of parties to the said deed. The suit property really belonged to Satyen, another co-sharer of the plaintiff, in his personal capacity, though allotted to the plaintiff by the alleged deed of partition. There being no deed of exchange relating to the suit property Sachin did not acquire any ownership of the said property. According to Mr. Mitra, the intended effect of the alleged deed of partition and the nature of properties covered by the same clearly establish that the deed was not a deed of partition and as such could not effect any transfer of title to the plaintiff regarding the suit property. The ownership of the plaintiff having thus not been proved, the suit must fail on that ground. Mr. Dasgupta, appearing on behalf of the Respondent has, however, pointed out by reference to the deed that the deed was intended to operate either as a deed of settlement or partition and in either case it could validly transfer title. Mr. Dasgupta in this connection has also contended that before the two Courts below the question of ownership of the plaintiff had been conceded and no dispute was raised with regard to that. In such a position it was no longer open to the appellants to argue that point in Second Appeal. In support of his submissions on merits Mr. Dasgupta pointed out two specific portions of the contents of the deed.

4. As regards the question of service of notice on behalf of the appellants, Mr. Mitra has contended that the letter of attornment and the rent receipts, upon proper reading, would show that the original tenancy of Usha Ranjan Rudra came to an end and a new tenancy had been created in favour of defendants 1, 2 and 3. The instant notice having related to earlier tenancy, cannot terminate the present tenancy. Even

assuming that the case of the tenancy devolved in favour of the 5 heirs of the erstwhile tenant pleaded by the plaintiff is correct, Mr. Mitra has submitted that service of the notice on one is not sufficient and the Court of appeal below erred in law in accepting such service to be a good service and treating the tenancy as joint one.

5. The first point of controversy between the parties which falls for my consideration relates to the ownership of the disputed premises. Before I proceed to deal with this point, I would like to keep it on record that this point had not been agitated either before the Trial Court or before the lower appellate court and the observations of the Courts below in their respective judgments clearly indicate that the ownership of the present plaintiff/respondent in the disputed premises had been admitted. Even on merit, from a consideration of the deed of partition/deed of settlement (exhibits 8 and 9) it appears that suit property initially belonged to the father of the present plaintiff, late Indu Bhusan Roy, though it was in possession of Satyendra Nath Roy, a brother of the present plaintiff. The mere mutation of the name of Satyen in the Corporation records does not establish his ownership in law. The recitals in the partition deed to which Satyen is a party confirm the assertion of jointness of ownership as distinguished from absolute ownership of Satyen. The disputed premises was, therefore, put into hotchpot for partition as a joint property on denial of Satyen''s personal ownership by other co-sharers. The allotment of this property, therefore, in favour of the present plaintiff/respondent, notwithstanding the non-execution of any deed of exchange, was sufficient to create ownership in his favour. Even assuming that the property was the personal property of Satyen once it was put into the joint hotchpot for partition, the consideration for the distribution and allotment of all the properties brought into hotchpot as aforesaid was constituted, amongst others, by transfer of the disputed property to the plaintiff for purchasing Peace and harmony by way of family settlement. The concurrent finding about ownership of the present plaintiff by the Courts below, therefore, does not call for any interference. For authority reference may be made to the cases of Ram Charan Das Vs. Girjanandini Devi and Others, and Shambhu Prasad Singh Vs. Mst. Phool Kumari and Others, The case of Sahu Madho Das and Others Vs. Mukand Ram and Another, on behalf of the appellants is distinguishable on facts as the absolute ownership of one of the parties to the deed over the properties concerned, ultimately transferred to some of other parties to the same, was factually admitted. In this connection the other two points urged by Mr. Mitra on behalf of the appellants to the effect that the mere relinquishment of her : share by the mother in favour of the sisters of the present plaintiff through partition deed cannot create title in their favour and as such the whole partition must fail and secondly, it must fail also on the ground of unequal allotments not being compensated by owelty money have no substance. The deed in question, be it a deed of partition or deed of settlement contains a specific recital that the parties to the said deed had agreed to accept the unequal valuation and waive their respective shares of owelty monies.

The absence of registration or non-compliance with other formalities regarding the disputed relinquishment by the mother may at the most, affect the transfer in favour of daughters but cannot affect the validity of partition.

6. The second point of controversy about the relationship between the plaintiff and the defendants as a landlord and tenants has been concurrently found as a fact by the Courts below in favour of the plaintiff/respondent on disbelief of the case of surrender pleaded by the defendants. Such factual finding has been arrived at upon consideration of the oral and documentary evidence. Admittedly there was no parting with possession of the tenanted premises by defendant No. 4 which could confirm, to some extent, the alleged case of surrender of tenancy and creation of a new tenancy sought to be argued on behalf of the appellants. Section 19 of the West Bengal Premises Tenancy Act embodies the mode in which a surrender of a tenancy can be made. The materials in the present case, do not satisfy the criteria of the said provision. In my view, Mr. Dasgupta is right in contending that the contents of Exhibit 17 cannot be looked into as the signatures therein had not been properly proved. In the background of such evidence I cannot say that the finding of fact arrived at by the Trial Court that there was no surrender of tenancy, even overlooking the formal omission of a plea in the Written Statement, can be said to be perverse or erroneous in law as to deserve an interference in Second Appeal. The cases reported in 88 CWN 588 and Sm. Sailabala Dassee Vs. H.A. Tappassier, cited on behalf of the appellants are distinguishable on facts.

7. The third point which has been urged by Mr. Mitra on behalf of the appellants is about the service of the notice of termination. Admittedly, the notice was served on Mira Rudra, defendant No. 4, who received the copy of such notice and the rest of the defendants deposed that no notice was tendered to them. According to Mr. Mitra the service on one of the tenants is not sufficient so as to terminate the tenancy and as such the suit, is not maintainable. The principle laid down in the Division Bench decision of this Court in the case of Ajit Kumar Roy and Others Vs. Sm. Satya Bala Dutt and Others, cited by Mr. Dasgupta, is clear answer to the said argument of Mr. Mitra where regarding the service of notice addressed to all the tenants but served on one, the Division Bench laid down that there was no distinction in the matter of sufficiency and good service between the cases of joint tenants and tenants in common. Such point raised by Mr. Mitra in this connection that refusal by defendants, though contradicted, not having proved by calling the postal peon as a witness also affected the validity of service of notice, cannot stand scrutiny in view of the mode of service prescribed by Section 106 of the Transfer of Property Act. In addition to the above reasonings, I am of the view, that the reasoning of accepting the service of notice by the Lower Appellate Court does not merit any exception.

8. The last point argued by Mr. Mitra is a point on merits of the plaintiff''s case of reasonable requirement after building and rebuilding. According to Mr. Mitra, since

the fact that the disputed premises cannot satisfy the requirement of the plaintiff, unless rebuilt in the proper manner, imposes on obligation on the plaintiff to prove the existence of a sanctioned plan and sufficiency of means, both of which, according to Mr. Mitra, remain unestablished by the categorical evidence on behalf of the plaintiff that sanction of plan has been asked for and the means of the plaintiff are limited to Rs. 25,000. The contention specifically raised by Mr. Mitra clearly points out that as far as the case of reasonable requirement of the plaintiff is concerned, the same is not disputed on behalf of the defendants but the point which is sought to be made out is about failure of the plaintiff to ask for a decree on the ground of building and rebuilding. The extent and nature of the building and rebuilding as appear from the evidence is by changing the worn out wooden beams and wooden bargas of the terraced roof of the ground floor and those are really in the nature of substantial repair for which no plan is necessary. The Trial Court concluded as a fact that the plaintiff had means and there was no necessity for a plan for carrying out the repair, though extensive. The Lower Appellate Court, however, treated the ground in question as a ground under Clause (ff) and not (f). Such treatment of the Lower Appellate Court is well justified by the reasonings given in the case of Krishna Das Nandy Vs. Bidhan Chandra Roy, Having considered the nature of the findings, I do not feel inclined to differ from the approach taken either by the Lower Appellate Court or the findings of fact arrived at by the Trial Court.

9. In view of the reasons, which I have given hereinabove there is no need for deciding as to whether the points raised constitute substantial questions of law or not and any decision on such point would only be academic in the facts of the present case and as such I refrain from entering into the merits of the said contention.

10. The appeal, in the aforesaid circumstances, must fail and is dismiss and the judgment and decree of the Lower Appellate Court must be affirmed'' but the defendants/appellants are allowed time till 31st of December, 1989 to deliver vacant possession to the plaintiff/landlord on condition that they file a written undertaking to that effect within one month from this date in this Court, and go on depositing monthly occupation charged equivalent to rent. in the Trial Court month by month within the 15th of the month following that for which such amounts fall due according to English Calendar. In default, the decree would become executable at once. There will be no Order as to costs.

11. In view of the disposal of the appeal the injunction application preferred on behalf of the landlord becomes infructuous and is disposed of as such. The interim Order made an the basis of such application is also dissolved.

12. Mr. Bhattacharjee appearing on behalf of the appellants prays for leave to move the Supreme Court but such prayer is refused.

13. If an urgent Certified Copy is applied for by any of the parties, the department is directed to deliver the same within one week from the date of deposit of the requisite stamps and folios.