

Asma Bibi and Another Vs Md. Nasim Ali Azad and Another

Court: Calcutta High Court

Date of Decision: Nov. 17, 2011

Hon'ble Judges: Subhro Kamal Mukherjee, J

Bench: Single Bench

Advocate: Bidyut Banerjee and Ms. Shila Sarkar, for the Appellant; Jiban Ratan Chatterjee, for the Respondent

Judgement

Subhro Kamal Mukherjee, J.

This is an appeal against an order of remand arising out of a suit for declaration of tenancy right and for permanent injunction.

2. Undisputedly the property belonged to one Moula Bux. Moula Bux had two wives, namely, Hamida Bibi and Khodeja Bibi. Through Hamida

Bibi Moula Bux had three sons, namely, Rasul Bux, Ahmed Bux and Karim Bux; through Khodeja Bibi he had only one son, namely, Golam

Ahmed alias Sk. Lalu.

3. It was contended by the plaintiff that the plaintiff was inducted by Rasul Bux in the premises-in-suit.

4. The defendants contested the suit disputing the tenancy of the plaintiff. However, it was admitted that the property belonged to Moula Bux and

in an Original Side suit the property was allotted in different lots to the different cosharers.

5. The defendants contended that they had purchased the property by two separate registered deeds dated January 25, 1979 and October 10,

1980 respectively from the allottees and, thus, became the absolute owners in relation to the property-in-suit.

6. The learned trial judge, upon a contested hearing, dismissed the suit holding, inter alia, that the alleged landlord of the plaintiff, namely, Rasul

Bux, had no right, title and interest in the property and as such he has no right to induct the plaintiff in the suit premises.

7. The plaintiff preferred an appeal being Title Appeal No.81 of 1989. The appeal was, eventually, transferred to the court of the learned Assistant

District Judge at Sealdah.

8. By the order impugned of remand, the learned judge in the lower appellate court set aside the judgment and decree of the trial court and

remitted the suit for reconsideration by the trial court. Liberty was granted to the appellant for amendment of the plaint once again as to whether

the tenancy right of the plaintiff was subsisting or not. Liberty was, also, granted to expunge the name of Chandbibi, the widow of Rasul Bux.

9. In this appeal, in my view, the following substantial question of law is involved:

10. When the parties led evidence in full in the trial court, whether the learned judge in the lower appellate court, substantially, erred in law in

granting liberty to the plaintiff to file an application for amendment once again to fill up the lacunae.

11. The moot point for consideration in this appeal is, thus, whether Rasul Bux, the landlord of the plaintiff, had right, title and interest in the

property to create tenancy in favour of the plaintiff.

12. The deliberation as to whether on the death of the Rasul Bux, whether the plaintiff became the tenant under Chandbibi, a widow of Rasul Bux,

or not is unnecessary. If Rasul Bux, the landlord of the plaintiff, had right to induct the plaintiff as a tenant, the tenancy of the plaintiff shall continue

under his legal representatives till he is evicted in due process of law.

13. Although the learned judge in the trial court framed several issues including the issue as to whether the plaintiff was a tenant under Rasul Bux

and, thereafter, under his widow, Chandbibi, but an important issue was omitted.

14. I, therefore, frame the following additional issue:

15. Whether Rasul Bux, the landlord of the plaintiff, had right to induct the plaintiff as a tenant in the premises in suit.

16. However, the learned judge in the lower appellate court was not justified in granting further opportunity to the plaintiff to apply for amendment

the plaintiff when already there was an application for amendment of the plaint in the trial

17. I, therefore, set aside the order of remand and remit the case to the lower appellate court for re-consideration of issue/ point for determination

involved in the appeal including the additional issue/point for determination.

18. Mr. Jiban Ratan Chatterjee, learned senior advocate appearing for the respondents, submits that in view of the framing of additional issue his

client need to adduce additional evidence.

19. Mr. Bidyut Kumar Banerjee, learned senior advocate appearing for the appellants, vehemently opposes such prayer of Mr. Chatterjee.

20. At this stage, it is not possible for this Court to hold as to whether the lower appellate court, while considering the appeal afresh, shall require

additional evidence. It will be open to the parties to apply to the lower appellate court for reception of additional evidence strictly in accordance

with law and it will be open to the lower appellate court to consider their prayer in accordance with law.

21. However, on the prayer of Mr. Chatterjee, learned senior advocate appearing for the respondents and as Chandbibi is already, dead, the

lower appellate court is requested to expunge her name from the cause title of the memorandum of appeal.

22. The appeal is, thus, allowed. The order of remand is set aside.

23. The appeal is sent back to the lower appellate court for re-consideration of all the points for determination, already framed and the additional

issue/point

24. The matter is pending for a considerable period of time.

25. The office is directed to send down the records to the court below immediately.

26. The parties are directed to appear before the lower appellate court on December 19, 2011, when the learned Judge in the lower appellate

court shall fix a date for expeditious disposal of the appeal.

27. The office is directed to communicate this order by December 16, 2011 to the lower appellate court peremptorily.

28. The Registrar (Administration) of this Court is requested to look into the matter so that the order of this Court is secured.

29. I make no order as to costs.