(1968) 01 CAL CK 0009

Calcutta High Court

Case No: Appeal from Original Decree No. 58 of 1965

Pravin Chandra Ochhavlal		APPELLANT
	Vs	
Girdharlal Govindji		RESPONDENT

Date of Decision: Jan. 4, 1968

Acts Referred:

- Court Fees Act, 1870 - Section 7, 7(V)
- West Bengal Premises Tenancy Act, 1956 - Section 16

Citation: 72 CWN 404

Hon'ble Judges: S.A. Masud, J; A.N. Roy, J

Bench: Division Bench

Advocate: M. Hazra and M.C. Chowdhury, for the Appellant;Sambidananda Das, for the Respondent

Final Decision: Dismissed

Judgement

A.N. Ray, J.

This appeal is from the decree passed by Bijayesh Mukherji, J. on 3 February, 1965 (reported in Girdharlal Govindji Vs. Pravin Chandra Ochhavlal,). The plaintiff-respondent filed the suit against the defendant-appellant and claimed possession of north eastern room in a flat of the plaintiff-respondent on the fourth floor of 44 (also known as 44/45) Ezra Street, Calcutta and further claimed mesne profits at the rate of Rs. 2/- per day on and from 1 November, 1962 until recovery of possession. In short the plaintiff-respondent''s case was that the defendant was granted leave and licence to occupy the said room without the use of bath or privy free of charges on the agreement that the defendant would vacate the room on demand. The plaintiff respondent asked the defendant in the month of June, 1962 to vacate the room. The defendant-appellant failed and neglected to deliver possession. The defendant-appellant alleged to be a tenant of the plaintiff-respondent. The plaintiff-respondent denied that there was any tenancy.

2. The defendant in the written statement pleaded that there was a tenancy between the plaintiff and the defendant. The other defences were that the tenancy was not duly deter-mined and the plaintiff-respondent did not reasonably require the room for the plaintiff''s own use and occupation.

3. Six issues were framed at the, trial. The important issues were whether the Court has jurisdiction to try the suit and whether the defendant was a subtenant under the plaintiff and the tenancy was duly determined.

4. Counsel for the appellant con-tended first, that this Court had no jurisdiction to try the suit. The second contention was that the plaintiff came with the case of leave and licence granted to the defendant in the year 1952; but the case proved at the trial was that leave and licence was granted in the year 1954 to the defendant''s father and therefore the plaintiff was disentitled to any relief. The third contention was that the defendant-appellant was a tenant and the case pleaded by the defendant should have been accept-ed by the learned Judge.

5. As to the contention on behalf of the appellant that the case pleaded and the case proved varied, reliance was placed upon the particulars furnish-ed. The particulars were given in a supplementary paper book. In para-graph 3 of the plaint it was alleged that the plaintiff at the request of the defendant and his father granted leave and licence to the defendant. The particulars asked for were when and how the request was made and if in writing, the same was to be produced for inspection. The further particulars asked for were when and how leave and licence was granted and when and how and between whom the agreement was entered into and if there was anything in writing the same should be produced for inspection. The particulars furnished were that in or about 1952 orally the request was made and in or about 1952 the plaintiff allowed access to the room and the agreement was entered into between the plaintiff and the defendant in the presence of the father of the defendant. These are all the particulars.

6. The oral evidence of the plaintiff on which counsel for the appellant relied was to be found in questions 27, 28, 38, 188-195, 242-258. The plaintiff stated that in the end of 1954 or beginning of 1955, they asked for room for sleeping and sitting accommodation. By "they" the plaintiff referred to the members of the family of the defend-ant as will appear in question 23. In question 29, the plaintiff was asked to specify who were included in the word ''they''. The plaintiff mentioned the name Pravin Chandra''s father Ochhavlal. Pravin Chandra is the defendant. In question 38 the plaintiff said that the agreement was entered into with Ochhavlal. In question 188 following the plaintiff said that the plaintiff had no dealing with Pravin Chandra''s father. In question 195 the plaintiff said that Pravin Chandra used to stay in the other flat with his wife since the year 1952. In question 242 following the plaintiff said that licence was granted to Ochhavlal so that his sons could use the room for their study, sitting and other purposes.

7. On this evidence counsel for the appellant contended that if licence was granted to the defendant''s father, the case pleaded was not proved and the heirs of the defendant''s father would all become defendants to the suit and the suit would not be maintainable in the form in which it was pleaded.

8. The case pleaded was that the plaintiff at the request of the defendant and his father granted leave and licence to the defendant. As far as particulars are concerned there is no discrepancy between the particulars and the case pleaded. With regard to evidence that the plaintiff gave it will appear in the oral evidence of the plaintiff that the dealings that the plaintiff had were with the defendant as also with the defendant''s father. The negotiations were with the defendant''s father. That is also to be found in the particulars given. Broadly stated, the evidence of the plain. tiff is that the licence was granted to the defendant. The negotiations were with the father of the defendant. The oral evidence as also the pleadings have been brought in aid by counsel for the appellant in support of the contentions. It was put to the landlord in questions 13 and 18 as to whether there was ever any occasion for the defendant and the defendant''s father to have any discussion with the landlord with regard to occupation of the room as tenant. The oral evidence of Jayantilal who happened to have acted in relation to the premises belonging to the trust estate said that the room in question was occupied by Pravin Chandra. It may be stated here that Jayantilal was called as a witness by the defendant.

9. The evidence, in my opinion, is not in conflict with the case pleaded. The negotiations were held, as the plaintiff alleged, between the plaintiff on the one hand and the defendant and the defendant''s father on the other. It is established that leave and licence was granted to the defendant.

10. The other contention of the appellant was that there was a case of tenancy. With regard to the case of tenancy the learned Judge was pleased not to accept the case of the defendant. The oral evidence will appear in questions 186-187 of the plaintiff where it was suggested that the plaintiff wanted to let out the room and the plaintiff denied such suggestion and again in questions 210-211 it was suggested to the plaintiff that he approached Jayantilal to agree to the proposal of giving the room on a rental and the plaintiff again denied that suggestion. The other oral evidence is to be found in questions 13, 18 and 19 of Jayantilal where he said that Ochhavlal called Jayantilal to his room and there was discussion and Jayantilal said that he had no objection to Giridharilal giving up one of his rooms to Ochhavlal but he would not change tenancy. Jayantilal further said that he was not agreeable to give a separate tenancy to Ochhavlal. Jayantilal further said in question 56 following that the talk was in the room of Ohhavlal in the presence of Giridharilal and his evidence was that he said that he would have no objection to the plaintiff letting out but Jayantilal would not make anyone a direct tenant.

11. On this oral evidence counsel for the appellant contended that the case of tenancy of the defendant should be accepted. The learned Judge came to the

conclusion that the case of tenancy could not be accepted because one of the primary reasons was the absence of rent receipts. The defendant in questions 55-56 said that he did not get any rent receipt from the plaintiff because the plaintiff told him that the plaintiff would have income tax troubles if rent receipts were given. This case was not put to the plaintiff. Again the defendant said in question 17 following that the defendant''s wife maintained an account book for the year 1960 for the month of May, 1960 to the month of July, 1961 and said that certain entries were in the hand-writing of the defendant''s wife and that the entries were correctly made and that the entries represented the payments made to the plaintiff. The wife did not give any oral evidence. The learned Judge disbelieved the entries in the book. The reasons given by the learned Judge are correct. The book was without any bound cover. The book contained scribblings. The book contained pencil writings. The wife did not state the circumstances under which the entries were made. It is not the evidence of the defendant''s husband that the book was maintained under the supervision of the husband. Handwritings might have been proved; but the entries were not proved. Further a look at the book leaves no room for doubt that a book of this nature is not worthy of any credence. It may also be stated that though the book is supposed to contain accounts upto July, 1961 there are accounts for the year 1962. In the affidavit of documents the book was described as one for the 1960-61. This is an additional feature which will repel the case of the defendant that it was a genuine book.

12. There are two noticeable features in regard to the case of alleged sub tenancy. First, that if the defendant''s case was that there was any sub tenancy there is not a single rent receipt forthcoming. It is unimaginable as to how not a single rent receipt would be produced when the defendant appellant made the case that the sub tenancy commenced in the year 1952 or 1954 as the case may be. It is true that the defendant in oral evidence said that the defendant did not get any rent receipt because the plaintiff said there would be trouble in income tax. It was not said as to what trouble in income tax would arise. But in view of the fact that the case was not put to the plaintiff, no reliance can be placed on such a belated afterthought. The second noticeable feature is that the defendant never sought the permission of the landlord. It is true that the relevant statute before 1956 did not require any such permission. But u/s 16 of the 1956 West Bengal Premises Ten-Tenancy Act a notice was required to be given in case of sub-tenancy. The defendant in the written statement alleged not merely the case of sub-tenancy but also that the defendant gave notice of sub-tenancy. That will appear in paragraph 11 of the written statement. There was no such evidence adduced by the defendant nor was such case put to the plaintiff. I am therefore of opinion that the case of the defendant is unacceptable.

13. The other contention about the jurisdiction of the suit was that the suit related to mesne profits and therefore the jurisdiction should have been based on the amount of mesne profits available for that particular room taking into consideration

that the total rent of the four rooms was Rs. 140/- of which only one room was given to defendant. It is therefore said that mesne profits should be at the rate of Rs. 35/- per month and on that basis the mesne profits for a year would be Rs. 420/- and the amount multiplied 15 times would not make it a suit with-in the competency of this Court. The learned Judge came to the conclusion that mesne profits were at rate of Rs. 2/-per diem amounting to Rs. 730/- for a year and that amount multiplied 15 times would make this suit within the jurisdiction of this Court and not within the jurisdiction of the City Civil Court.

14. Counsel for the respondent contended that the jurisdiction that the plaintiff attracted by allegations in the plaint were sufficient to clothe this Court with proper jurisdiction. Reliance was placed on the decision of the Supreme Court in the case of (1) S.Rm.Ar.S.Sp. Sathappa Chettiar Vs. S.Rm.Ar.Rm. Ramanathan Chettiar, . It is said there that the value for jurisdiction must be deter-mined on the amount at which the plaintiff has valued the relief sought and for the purposes of court-fees that determines the value for jurisdiction of the suit. Therefore it is said on behalf of the respondent that the plaintiff''s valuation for purposes of jurisdiction is correct. In the present case counsel for the appellant contended that the Court Fees Act would have no application to suits on the Original Side.

15. In order to find out whether a suit falls within the jurisdiction of the City Civil Court, the Court Fees Act would have to be taken into consideration. It is also now well-settled that in cases of revocation of lease and licence the provisions of the Court Fees Act and, in particular, section 7(V) would be applicable. The result, therefore, is that the provisions contained in section 7(V) of the Court Fees Act have to be looked into in order to decide whether this suit would fall within the jurisdiction of the City Civil Court. Broadly stated the provisions contained in sec. 7 (V) of the Court Fees Act are that in suits for the possession of land. buildings or gardens, the valuation will be according to the value of the subject-matter and such value shall be deemed to be fifteen times the Nett profits which have arisen from the land, building or gardens during the year next before the date of presenting the plaint, or if the Court sees reason to think that such profits have been wrongly estimated, fifteen times such amount as the Court may assess as such profits or according to the market value of the land, building or garden, whichever is lower.

16. Reference may be made to the West Bengal Act XVIII of 1963 which introduced clause vA to section 7 of the Court Fees (West Bengal Amendment) Act which is decisive in the present case. The result of the amendment is that in a suit for recovery of possession of immovable property from a licensee upon revocation or termination of his licence -- (i) where a licence fee is payable by the licensee in respect of the immovable property to which the suit refers, court fee will be according to the amount of the licence fee of the immovable property payable for the year next before the date of presenting the plaint; (ii) where no such license fee is payable by the licensee, court fee will be according to the amount at which the

relief sought is valued in the plaint subject to the provisions of section 8C of the Court Fees Act. Section 8C of the Court Fees Act states that if there is wrong valuation the court may determine.

17. This statutory amendment indicates that valuation put upon the plaint by the plaintiff in the present case is sufficient and proper because first, it is the plaintiff''s case of revocation of licence, secondly it is the plaintiff''s case that no licence fee was payable, thirdly, the plaintiff valued the plaint according to mesne profits, fourthly, the Court found that the basis of valuation of mesne profits in the plaint was correct.

18. In the present case mesne profits being the subject-matter of the suit it has been said by counsel for the appellant that nett profits would have to be calculated by taking into consideration the amount which the respondent would have to pay to his landlord and after deducting the same whatever would remain would be nett profits. The oral evidence that was adduced by the plaintiff in the present case that Rs. 2/- per day would be the mesne profits was not challenged in cross-examination. Counsel for the appellant also criticised the oral evidence on msene profits as amounting to no evidence at all for mesne profits. The plaintiff said that Rs. 2/- per day would be charged because the defendant was occupying forcibly, and since the relation was so good with his family that he could not ask in excess and he could not make a false demand. The plaintiff gave his own assessment of mesne profits, that is, what the plaintiff could have as a man of prudence and diligence obtained. That evidence was not challenged. No other evidence was before the Court except the plaintiff''s evidence. In that view of the matter the rate of Rs. 2/-per day is established.

19. The nett profits in the facts and circumstances of the present case was not challenged by the defendant and if it had been challenged as to what other expenses were liable to be incurred, the plaintiff would have given other adequate evidence in that behalf. In view of the fact that the plaintiff''s evidence was not challenged and also in view of the further fact that this question of nett profits which was canvassed in the appeal was not raised at the trial as a question of fact and no evidence was either adduced or available on the records it would not be justified and proper to say that it is open to the defendant to contend that nett profit should be calculated after taking into consideration other expenses. After all nett profit would be a question of fact in each case. Fact is based on evidence. The rate of Rs. 2/- is the evidence. That evidence is not challenged and displaced to make it less than that or more than that. Secondly, it would not be proper to allow the concept of nett profits to be amplified in the facts and circumstances of the present case by bringing into challenge the rate of Rs. 2/- per diem in comparison with what would be available to the plaintiff as 1/4th of the rent which the plaintiff was paying for four rooms. Mesne profit is not synonymous with rent. Mesne profit cannot be equated with rent. In the facts and circumstances of the present case the plaintiff has given sufficient evidence as to why Rs. 2/- was claimed. I am, therefore, of

opinion that there is no merit and substance in the contentions raised that the Court has no jurisdiction to try the suit. All the contentions advanced fail. The appeal is dismissed. The judgment and decree are affirmed. The appellant is to pay costs to the respondent.

S.A. Masud. J.

I agree.