

(2013) 09 CAL CK 0105

Calcutta High Court

Case No: C.S. No. 380 of 2012

Rama Ballav Roy

APPELLANT

Vs

Smt. Kamala Chatterjee and
Others

RESPONDENT

Date of Decision: Sept. 30, 2013

Citation: (2014) 2 CHN 280

Hon'ble Judges: Soumen Sen, J

Bench: Single Bench

Advocate: Soumava Ghosh and Mr. Debasis Das, for the Appellant;

Judgement

Soumen Sen, J.

The plaintiff has instituted the suit for recovery of possession and mesne profits from October, 2012 to November, 2012. In spite of service of writ of summons upon the defendants none of the defendants have entered appearance in the suit.

2. Although in view of Order VIII Rule 5 of the CPC the plaintiff is otherwise entitled to decree since the defendants although had the opportunity to appear and contest the proceeding but did not enter appearance however the plaintiff himself and two witnesses on behalf of the plaintiff gave evidence in support of the claim in the suit.

3. The plaintiff and his mother were the owners of premises No. 64, Ahiritola Street, P.S.-Jorabagan, Kolkata-700005 (hereinafter referred to suit premises).

4. By and under a registered deed of lease dated September 18, 1981 the plaintiff and his mother leased a portion of a suit premises to one Harendra Nath Chatterjee (being the predecessor-in-interest of the defendants above named) for business cum residential purposes for a period of 31 years commencing from October 1, 1981 at a lease rental of Rs. 300/- per month on terms and conditions mentioned in the said deed of lease.

5. The mother of the plaintiff died on January 8, 1989 and her right, title and interest in the suit property devolved solely on the plaintiff.

6. The plaintiff as the sole lessor in respect of the suit premises received lease rental and the defendants duly paid the monthly rentals to the plaintiff in terms of the said lease agreement. The original lessee died on December 12, 2010 and the leasehold interest was inherited and acquired by his widow and two sons being the defendant Nos. 1, 2 and 3 respectively. The defendants continued to pay rent to the plaintiff in terms of the lease deed up to September, 2012. The defendant No. 5 was presently looking after their business of the said defendants. On expiry of the lease i.e. September 30, 2012 the interest of the said defendants ceased to exist upon the expiry of the said lease period the plaintiff duly called upon the said defendants to deliver peaceful and vacant possession of the said premises. By abundant caution the plaintiff also served a notice dated 9th July, 2012 upon the said defendants calling upon the said defendants to quit, vacate and handover the peaceful and vacant possession of the suit premises upon expiry of the lease on 13th September, 2012. In spite of receipt of such notice the said defendants have failed, neglected and/or refused to hand over the peaceful and vacant possession of the suit premises.

7. This has resulted in filing of the suit.

8. The plaintiff has exhibited seven documents in support of his claims, namely, (i) Deed of Conveyance dated 16th May, 1985, (ii) Deed of Lease (exhibit-B) dated 18th September, 1981, (iii) Invitation card of Sradh Ceremony of late Harendra Nath Chatterjee, the original lessee, (iv) the letter of quit dated 9th July, 2012 (exhibit-F), (v) two rent bills (exhibit-G), (vi) property tax bill (exhibit-H) and (vii) a copy of the valuation report prepared by B.K. Associates.

9. The plaintiff in his deposition has duly identified the documents and the signatures appearing on the said documents. He has proved due execution of the said lease deed and has also produced the rent receipts in respect of suit premises. He has also proved the contents of the said documents. He has stated that he did not receive any rent after September, 2012. The death of the original lessee was proved by production of the invitation card for Sradh ceremony. He has also stated that on his instruction a legal notice dated 9th July, 2012 was sent to the defendants by speed post with A/D. It is stated that on 13th July, 2012 however the said notice was returned with endorsement of local post office "not claimed". The witnesses also produced the monthly tax receipts of the said premises.

10. The plaintiff in support of mesne profits has produced two witnesses namely one Mr. Sukumar Saha, a prospective lessee and one Binoy Kumar Dutta a chartered valuer. Mr. Saha during his examination stated that he is willing to take tenancy on and from 1st October, 2012 at a monthly rental of Rs. 10,000/- per month although the plaintiff has asked for Rs. 12,000/-.

11. The plaintiff has produced a report prepared by one Mr. B.K. Dutta from B.K. Associates, a Government registered valuer. The said valuer during his examination has stated that total rented portion of the property is 790 sq. ft. and the rental value of the property as on date of Rs. 11,500/- per month. He stated that he is the engineer and has visited and surveyed the site. The total area according to him of the suit premises is 796 sq. ft. approximately.

12. He has applied composite method in arriving at the rental value of the said property and according to him the total fair market value of the lease property would be Rs. 17,24,010/-. He has separately valued the land and the building by applying the land building method. He has stated that he had made a sincere effort to find comparative rate of similar flat in the neighbourhood and he could ascertain that such rent varied between Rs. 2500/- and Rs. 4500/- per sq. ft.

13. In spite of services of the summons none had appeared on behalf of the defendant to contest the suit. On the basis of the evidence adduced and the materials on record coupled with the fact that in spite of opportunity the defendant had failed to contest the proceeding this Court feels that plaintiff has entitled to a decree for recovery of possession.

14. The plaintiff has been able to establish that the lease was for a fixed period of 31 years and on the expiry of the lease the defendant is required to hand over vacant possession. There is nothing on record to show that the plaintiff had consented and or agreed to the continuation of possession by the defendant after the expiry of the period of lease. The notice to quit was returned with the endorsement "not claimed". Moreover, the service of the writ of summons upon the said defendant duly constitute a notice that a proceeding is initiated for recovery of possession and the defendants having failed, neglected and/or refused to appear and contest the proceeding in spite of having the opportunity to do so and in absence of any rebuttal evidence to dislodge the claim of the plaintiff, in my view the plaintiff is entitled to a decree for quiet and peaceful vacant possession of the said portion of the premises No. 64, Ahiritola Street, P.S.-Jorabagan, Kolkata-700005 as simply described in the schedule being Annexure B/2 to the plaint.

15. Considering the evidence of prospective lessee and that of the valuer I am of the view that the plaintiff will be entitled to mesne profits at the rate of Rs. 10,000/- per month on and from October, 2012. In view of the fact that a willing lessee for the same accommodation is agreeing to offer a sum of Rs. 10,000/- to a willing lessor and it has been more or less agreed that the lessor would let out the said property to such prospective lessee at a monthly rent of Rs. 10,000/- per month I have given preference to this evidence over the report of the chartered valuer since it appears to me that in determining such mesne profits it would be more realistic to take into consideration the rent the said property is capable of fetching on negotiation. This would be more realistic than that was given by the valuer. In view thereof the plaintiff is entitled to mesne profits at the rate of Rs. 10,000/- per month from

October, 2012 till recovery of khas possession.

16. The suit is accordingly decreed on the aforesaid terms. The department is directed to draw up the decree expeditiously. Urgent Xerox certified copy of this judgment, if applied for, be given to the parties on usual undertaking.