(2014) 06 CAL CK 0089

Calcutta High Court

Case No: S.A. No. 278 of 2012 and CAN No. 2934 of 2014

Debabrata Maity		APPELLANT
	Vs	
Pravanshu Kumar Maity		RESPONDENT

Date of Decision: June 19, 2014

Acts Referred:

- Evidence Act, 1872 - Section 91, 92
- West Bengal Premises Tenancy Act, 1956 - Section 13, 13(1), 13(1)(k)

Citation: (2014) 3 CALLT 5 : (2014) 5 CHN 298

Hon'ble Judges: Debabrata Mookerjee, J

Bench: Single Bench

Advocate: Haradhan Banerjee, Soumen Kr. Dutta and Subhas Jana, Advocate for the Appellant; Gopal Chandra Ghosh, K.C. Sahoo and Kartick Kr. Das, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Debangsu Basak, J.
The application was for restoration. The second appeal was dismissed for default on March 20, 2014. When the application appeared in the list it was agreed by the parties that the second appeal would be heard on merits. The parties proceeded to advance arguments on the merits of the second appeal.

2. The causes shown in the application are accepted as sufficient. The order of dismissal for default dated March 20, 2014 is recalled.

3. CAN No. 2934 of 2014 is allowed. There will be no order as to costs.

4. A tenant assailed a judgment of affirmation for his eviction from the tenancy premises.

5. The suit against the appellant, a dental surgeon, was for eviction on the failure of the appellant to vacate the tenancy premises after the expiry of the date on which he agreed in writing to vacate the tenancy premises.

6. The second appeal was admitted by an order dated August 30, 2012. The following substantial question of law was framed for consideration:-

1. Whether the courts below, substantially, erred in law in granting a decree for eviction under sub-section (k) of section 13(1) of the Premises Tenancy Act, 1956 when the plaintiff failed to produce any documentary evidence as to creation of tenancy prior to execution of the agreement dated June 02, 1988, inter alia, expressing the intention of the tenant to vacate the suit premises?

7. Mr. Haradhan Banerjee learned Advocate for the appellant contended that, the conditions required to invoke section 13(1)(k) of the West Bengal Premises Tenancy Act, 1956 were not fulfilled. The only basis for the suit of eviction of the appellant was on the alleged failure of the appellant to vacate the suit premises on the expiry of the date on which the appellant allegedly agreed in writing to vacate. According to him, under the provisions of section 13(1)(k) of the West Bengal Premises Tenancy Act, 1956 a tenant can agree to vacate the tenancy if such tenant agreed to do so in writing and such agreement was entered into subsequent to the creation of the tenancy. He contended that, the agreement dated June 2, 1988 was not entered into subsequent to the creation of the tenancy. He submitted that, there was no evidence on record to establish that the tenancy was created prior to June 2, 1988.

8. He next contended that, the recital in the agreement dated June 2, 1988 claimed that the tenancy was created from January 1988. Such recital was at best, according to him, a recital for creation of a tenancy from an anterior date. He relied on an unreported Division Bench judgment on this Hon''ble Court rendered in F.A. No. 226 of 2004 (M/s. Amarjyoti Pictures v. Sri Himdri Das & Ors.) for the proposition that the period of the tenancy which was dated anterior was void.

9. It was submitted on behalf of the appellant that, the Courts below did not appreciate the evidence properly. It was claimed that the respondent as the plaintiff admitted creation of the tenancy since June 1988. Such factum, according to the appellant, was overlooked by the Courts below. The Courts below, therefore, were in grave error in appreciating the evidence on record. When there was grave error in the appreciation of the evidence on record by the Courts below, the Second Appeal Court was competent to reverse such finding of fact. In support of such contention reliance was placed on 1988 Volume 2 Supreme Court Journal page 453 equivalent to J.B. Sharma Vs. State of Madhya Pradesh and Another, and 1988 Volume 3 Supreme Court Journal page 61 equivalent to 1988 (Supp) Supreme Court Cases page 710 (Dilbagrai Punjabi v. Sharad Chandra).

10. Mr. Banerjee for the appellant relied on the examination-in-chief of the plaintiff witness No. 1 and the other materials on record to submit that, the respondent had admitted that the tenancy was created from June 2, 1988.

11. Mr. Banerjee relied upon 1989 Volume 1 Calcutta High Court Notes page 1 (Mahindra & Mahindra v. Sm. Kohinoor Debi) for the proposition that the interest of a lessee under a deed will commence from the date of the execution of the deed of lease and not from the anterior date from which the lease was expressed to commence.

12. He contended that, the terms and conditions of the agreement dated June 2, 1988 did not come within the purview of section 13(1)(k) of the West Bengal Premises Tenancy Act, 1956. According to him, the document was antedated. The Courts below did not take into consideration the admissions of the plaintiff that the tenancy commenced from June 2, 1988 and, therefore, the findings arrived at by the Courts below was erroneous.

13. Mr. Gopal Chandra Ghosh learned Advocate for the respondent contended that, the appellant had filed a suit being O.S. Suit No. 45 of 1993 against the respondent for declaration and permanent injunction. In such suit seven issues were framed. Three relevant issues in such suit were as follows:-

".....

(3) Was the plaintiff a tenant under the defendant in the suit premises?.....

(5) Was there any agreement between the parties regarding tenancy?

(6) Is the plaintiff entitled to get the decrees as prayed for?....."

14. With regard to issue No. 5 in such suit, the learned Trial Court held that,

".....I also hold that there is no bar to create or make any agreement after a few months of induction of tenancy and the agreement is valid according to law. I also hold that as per term of the agreement the plaintiff is liable to be evicted after expiry of May 1993. The point in the matter of sending notice was not agitated at the time of argument and I agree with the submission of the learned lawyer for the defendant that an agreement to surrender tenancy is equivalent to notice to quit. Admittedly a suit for eviction filed by the defendant in the court of Munsif 1st court Contai and that suit is still pending. So I hold that there was agreement between the parties and the plaintiff was bound to vacate the suit premises after expiry of the stipulated time mentioned in the agreement....."

15. Such judgment was marked as Exhibit "9" in the present suit. The respondent carried an appeal which was dismissed. The First Appellate Court affirmed the judgment of the learned Trial Judge in such suit. The judgment of affirmation of the First Appellate Court

in such suit was exhibited and was marked as Exhibit "10".

16. He contended that it was not open for the appellant at this stage to contend that, the agreement dated June 2, 1988 was not valid and that the terms and conditions of such document did not come within the purview of section 13(1)(k) of the West Bengal Premises Tenancy Act, 1956.Mr. Ghosh relied on Sh. Roop Kumar Vs. Mohan Thedani and Others, for the proposition that oral evidence to vary the terms of a written contract was not permissible.

17. In reply it was contended by Mr. Banerjee that, the findings returned by the two Courts in the suit filed by his client were orbiter dicta. No issues were framed as to the validity of the agreement dated June 2, 1988 in such earlier suit and as such the principles of res judicata did not visit his client in the instant suit on the strength of the findings returned in the earlier suit.

18. The rival contentions of the parties and the materials including the judgment impugned were considered by me. The suit was for eviction. The basis of the suit for eviction was the failure of the appellant to vacate the tenancy premises in spite of the appellant agreeing in writing to do so and his failure to vacate subsequent to the notice of eviction.

19. The respondent in his suit claimed that, the appellant wanted to have a dental clinic chamber for a temporary period at the tenancy premises. The respondent had let out the tenancy premises to the appellant on and from January 1, 1988 for a monthly rent of Rs. 300/- according to English calendar month. After creation of the tenancy disputes and differences arose between the parties. The appellant agreed to quit and vacate the tenancy premises by the end of May 1993 arid executed an agreement in writing to such effect on June 2, 1988. The appellant in his written statement contended that he was inducted as a tenant on June 2, 1988. The appellant denied execution of the agreement on June 2, 1988. The appellant denied being inducted on June 1, 1988. The learned Trial Judge framed five issues for trial. Two witnesses were examined on behalf of the respondent. The appellant examined six witnesses on his behalf.

20. The learned Trial Judge considered the issue as to whether there was any agreement between the parties on June 2, 1988 for the appellant vacate the tenancy premises at the end of May 1993 and whether the respondent was entitled to get a decree for eviction and has possession. After elaborate discussion of the evidence led and the documents exhibited and the law on the subject the learned Trial Judge found that the appellant failed to prove that the agreement dated June 2, 1988 was forged and that the tenancy commenced on June 2, 1988. The learned Trial Judge went on to return a finding that the tenancy between the parties commenced from the month of January, 1988. There was an agreement between the parties dated June 2, 1988 during the continuation of the tenancy for the appellant to vacate the tenancy premises in the end of May 1993. The learned Trial Judge concluded that the respondent was entitled to a decree for eviction under the

provisions of section 13(1)(k) of the West Bengal Premises Tenancy Act, 1956 and proceeded to decree the suit however without costs.

21. The appellant preferred the first appeal. The only point pressed in the first appeal was that the agreement dated June 2, 1988 was executed subsequent to the creation of the tenancy and was executed at the time of induction the appellant as a tenant. In the first appeal, the appellant contended that he was inducted as a tenant on June 2, 1988 which was the date of the agreement and that the tenancy commenced on and from June 2, 1988 and, therefore, the provisions of section 13(1)(k) of the West Bengal Premises Tenancy Act, 1956 was not applicable. On the other hand, the respondent contended in the first appeal that the tenancy commenced from January 1988 and the agreement dated June 2, 1988 was subsequent to the commencement of tenancy and, therefore, the respondent was entitled to a decree for eviction in terms of section 13(1)(k) of the West Bengal Premises Tenancy Act, 1956.

22. The learned First Appellate Court considered the rival contentions of the parties and the evidence on record. The First Appellate Court returned a finding that the signature of the appellant on the agreement dated June 2, 1988 was not denied by the appellant. The First Appellate Court found the respondent to have adequately proved such document. The First Appellate Court found that the plea taken by the appellant was self-contradictory. The First Appellate Court held that, the learned Trial Judge rightly observed that the tenancy between the parties commenced on and from the month of January 1988 and that there was a subsequent agreement dated June 2, 1988 by which the appellant agreed to vacate the tenancy premises at the end of May 1993.

23. Section 13(1)(k) of the West Bengal Tenancy Act, 1956 was as follows:

"Section 13 Protection of tenant against eviction--

(1) Notwithstanding anything to the contrary in any other law, no order or decree for the recovery of possession of any premises shall be made by any Court in favour of the landlord against a tenant except on one or more of the following grounds, namely:.....

(k) when subsequent to the creation of the tenancy, the tenant having agreed in writing with the landlord to deliver vacant possession of the premises to the landlord has failed to do so;"

24. A plain reading of section 13(1)(k) of the West Bengal Premises Tenancy Act, 1956 would show that a landlord was entitled to a decree for eviction of the tenant u/s 13(1)(k) when

(a) the tenant in spite of an agreement in writing to such effect failed to do so and

(b) such agreement was entered into subsequent to the creation of the tenancy.

25. It was an admitted position that the tenancy was governed by the West Bengal Premises Tenancy Act, 1956. The agreement dated June 2, 1988 was in writing and adequately proved before the two Courts below. In course of hearing of the second appeal the authenticity of such agreement was not assailed by the appellant. That the agreement provided for the date when the appellant would vacate the tenancy was also not disputed. Contention of the appellant was confined to the tenancy being created subsequent to the agreement dated June 2, 1988 and not the reverse. Therefore, according to the appellant, since the agreement dated June 2, 1988 was not subsequent to the creation of the tenancy one of the essential limbs of Section 13(1)(k) of the West Bengal Tenancy Act, 1956 was not satisfied and, therefore, such provision could not be pressed into service to obtain an order of eviction against him.

26. There was no material placed nor was there any evidence on record to show that the tenancy of the appellant commenced subsequent to the document dated June 2, 1988. On the contrary, the concurrent findings of the two Courts below were that the tenancy commenced from January 1988 and the appellant executed the document on June 2, 1988 subsequent thereto and agreed to vacate the tenancy premises at the end of May 1993. The document dated June 2, 1988 was placed at the time of hearing of the second appeal. The document itself spoke of the creation of the tenancy from January 1988. The document was signed by the appellant. The authenticity of the document was not assailed in second appeal. Therefore, it must be held that the tenancy was created in January 1988, and that the appellant agreed on June 2, 1988 to vacate tenancy premises at the end of May 1993 and had failed to do so.

27. Another aspect of the disputes between the parties required consideration. The appellant as the plaintiff sought declaration of his tenancy in the earlier suit filed by him. Exhibit ''9'' was the judgment of the learned Trial Judge in such suit. Exhibit ''10'' was the judgment of affirmation of the First Appellate Court in the appeal filed by the appellant in such earlier suit. The issues whether the appellant was a tenant of the respondent and whether there was any agreement for tenancy between the parties were issues framed for trial in such earlier suit as would appear from Exhibit ''9''. The findings of the learned Trial Judge on such issues were that the appellant was the tenant of the respondent and that the appellant was bound to vacate the tenancy with the expiry of May 1993 in terms of the agreement dated June 2, 1988. The appeal preferred by the appellant was dismissed.

28. The agreement dated June 2, 1988 was in issue in the earlier suit between the same parties claiming under the same title before a Court competent to try such suit. The parties were bound by the findings recorded in the judgment of the earlier suit. Therefore, on this additional ground also the respondent was entitled to the relief as prayed for.

29. In the facts and circumstances of the case, therefore, the agreement dated June 2, 1988 was subsequent to the commencement of the tenancy from January 1988 and, therefore, the suit for eviction was maintainable u/s 13(1)(k) of the West Bengal Tenancy

Act, 1956.

30. In M/s. Amarjyoti Pictures (supra) the Division Bench was concerned with an appeal arising out of a suit for eviction on the basis of expiry of lease. In the facts of such case the Division Bench was of the view that the lease in question was valid and that it commenced from April 28, 1959 and that for the purpose of computation of the period of lease the date of commencement should be April 1, 1959. In the facts of that case it was held that the relationship of the lessor and lessee in between the parties to such proceedings commenced from April 28, 1959. The evidence in this case established that the tenancy commenced from January 1988. The document dated June 2, 1988 itself recorded that the tenancy had commenced from January 1988. There was no material on record to reverse the concurrent finding of the Courts with regard to the date of commencement of tenancy.

31. In J.B. Sharma (supra) and Dilbagrai (supra) the Supreme Court was of the view that, when the Second Appeal Court finds that the-Courts below did not consider the entire evidence on record and that the Courts below refused to consider important evidence having direct bearing on the disputed issue then such errors gave rise to a substantial question of law and that the Second Appeal Court can set aside such finding. In this case, there was no material before me to come to a finding that the Courts below had appreciated any evidence erroneously or that the Courts below refused to consider important evidence having bearing on the disputed issues.

32. In Roop Kumar (supra) the Supreme Court was of the view that--

"It is likewise a general and most inflexible rule that wherever written instruments are appointed, either by the requirement of law, or by the contract of the parties, to be the repositories and memorials of truth, any other evidence is excluded from being used either as a substitute for such instruments, or to contradict or alter them. This is a matter both of principle and policy. It is of principle because such instruments are in their own nature and origin, entitled to a much higher degree of credit than parol evidence. It is of policy because it would be attended with great mischief if those instruments, upon which men''s rights depended, were liable to be impeached by loose collateral evidence."

33. In paragraph 20 of Roop Kumar (supra) the Supreme Court held that, sections 91 and 92 of the Evidence Act, 1872 were based on "best evidence rule". Their Lordships were of the view that, "it would be inconvenient that matters in writing made by advice and on consideration, and which finally import the certain truth of the agreement of the parties should be controlled by averment of the parties to be proved by the uncertain testimony of slippery memory."

34. In the instant case the writing dated June 2, 1988 was unambiguous and clear. The appellant did not contend that the meaning of the words used in the documents were unclear or were capable of more than one interpretation. That being the position in law,

the document dated June 2, 1988 was required to be read as a whole and its meaning understood. The document dated June 2, 1988 recorded that the tenancy was created in January 1988 and that the appellant would vacate the tenancy premises by the end of the month of May 1993. The appellant, therefore, agreed in writing on June 2, 1988 which was subsequent to the creation of the tenancy to vacate the tenancy premises by the end of May 1993. All ingredients of section 13(1)(k) of the West Bengal Premises Tenancy Act, 1956 were, therefore, satisfied entitling the respondent to a decree for eviction as prayed for.

35. In such circumstances the appellant failed to substantiate the substantial question of law framed on August 30, 2012. No interference was called for with the impugned judgment and decree. S.A. No. 278 of 2012 is, therefore, dismissed without any order as to costs. All interim orders are vacated. Lower Court records be returned expeditiously.

Urgent Xerox certified copy of this judgment, if applied for, be given to the parties on priority basis.