Shival P. Talreja Vs Md. Yakub and Others

Court: Calcutta High Court

Date of Decision: April 11, 1989

Acts Referred: Specific Relief Act, 1963 â€" Section 6
West Bengal Premises Tenancy Act, 1956 â€" Section 14

Citation: 94 CWN 331

Hon'ble Judges: Ajit Kr. Nayak, J; A.M. Bhattacharjee, J

Bench: Division Bench

Advocate: Tarun Chatterjee, for the Appellant;

Final Decision: Allowed

Judgement

A.M. Bhattacharjee, J.
The appellant''s suit was heard ex-parte, but even then the trial Judge dismissed the same holding the appellant-

plaintiff to be entitled to no relief. We must over-turn the impugned judgment and the decree of dismissal, as we have no manner of doubt that the

trial went entirely wrong in understanding the case made out in the pleadings, the evidence on record, as well as the relevant law on the point. As

would appear from the material portion of the impugned judgment (at pages 14 and 15 of the Paper Book), the trial Court dismissed the Suit on

two grounds. Firstly, it held that the is ""no specific avernment that the defendants or the defendants nos. 1, 3 and 4 dispossessed the plaintiff from

the disputed property, or for that matter the suit Flat"", and also no ""specific avernment in the plaint as to the very particular date of any alleged

dispossession of the plaintiff from the disputed property"", and, therefore, the plaintiff could ""not make out a case contemplated u/s 6 of the Specific

Relief Act, 1963"". We, however, find that in paragraphs 6, 7 and 9 of the plaint, there are clear averments that the defendants nos. 1, 3 and 4

dispossesed that plaintiff from the suit Flat sometime during his absence in between 12/3/79 and 24/3/79 and also again on 31/3/79. Such clear

averments are also there in the deposition of the plaintiff figuring as P.W. 1 (at pages 38 and 39 of the Paper Book) and the Suit, as already stated,

having been heard ex-parte, there was and could be no cross-examination on the point. We also do not think that the trial Court was right in

thinking that under the law, ""the very particular date of alleged dispossession"" must be averred in the plaint to make out a case u/s 6 of the Specific

Relief Act, 1963"" and all that sub-Section (2) of that Section 6 directs is that a Suit thereunder shall fail if it is found to have been instituted ""after

the expiry of six months from the date of dispossession"".

2. But the suit giving rise to this appeal does not appear to have been framed as a suit u/s 6, Specific Relief Act at any stage and if it were such a

one, this appeal itself would have been incompetent in view of sub-section (3) of Section 6. The suit was one under the general law for declaration,

possession and other consequential reliefs and the trial Courts also appears to be quite alive to this fact as it held that ""under the general law also,

the plaintiff has no escape"". But why?

3. From the impugned judgment we have been able to glean two reasons which weighed with the trial Judge for holding that ""under the general law

also, the plaintiff has no escape"". Firstly, he held that no relief could be granted as the plaintiff did not pray for declaration of his title or his right to

possess. We think that the plaintiff did, and did so by amending the plaint, allowed by the trial Court by its orders dated 4/9/79, 13/2/80, as would

appear from the copy of the plaint (at pages 18 and 23 of the Paper Book).

4. The second reason (to quote from the impugned judgment) appears to be that according to the trial Judge ""the avernments in the plaint with the

above prayers contained therein together with the evidence on record go a long way to lean against the bonafides of the allegations of the plaintiff

made in the plaint and for that matter, the bonafides of the plaintiff''s case made out in the plaint"". The Judge has straightway come to this finding

just after making a brief summary of the plaint, but without any discussion whatsoever as to the evidence on record and even the allegations made

in the plaint were not adverted to white arriving at his findings.

5. The fact that a suit is being heard ex-parte does not enable a Judge to make any short-cut of the procedure established by law and does not

entitle him to arrive at any finding of fact, as if by some intuitive sixth sense, without any reference to the evidence on record. A Judge has no right

to condemn a case as not bonafide without articulating the reasons with reference to the relevant facts as to why the case appears to him to be

lacking in bonafide and if a Judge does so, he sadly betrays his ignorance of the fundamental principles of our Judicial procedure. Such a summary

disposal of a list is not permissible under our Civil Procedure even under Order 37 or otherwise, and even summary trials under the Criminal

Procedure also can not go that far.

6. Be that as it may, we have looked at the plaint and the evidence on record and we are fully satisfied that the possession of the plaintiff in respect

of suit flat, till the date of his alleged dispossession, has been fully proved and we must note that the same has not also been negatived, even

remotely by the Trial Court. We have also found no reason to disbelieve, the categorical evidence of the plaintiff that the defendants nos. 1, 3 and

4 have dispossessed the plaintiff in March, 1979. Though we do not, as we need not, decide the question, but it may be that the plaintiff''s own

case being that the tenancy in respect of the disputed Flat stood in the name of the deceased husband of his sister, and now stands in the name of

that sister, the present defendant no. 2 and that though he is all along paying rent on his own to the landlord, he used to do so originally in the name

of his sister''s husband, since deceased and now in the name of his sister, the defendant no. 2, the trial Judge was inclined to think that there has

been some sort of transfer or assignment or subleting of the tenancy in the plaintiff''s favour by the defendant no. 2 and her deceased husband. And

if that has been done ""without the previous consent in writing"" of the original landlord, that might attract the mischief of Section 14 of the West

Bengal Premises Tenancy Act, 1956 and might render both the plaintiff and the defendant no. 2 liable to eviction at the instance of the superior

landlord. But even assuming that there was such unauthorised transfer or assignment or sub-letting by the tenant to the sub-tenant, it is now settled

law that the relation between the tenant and the sub-tenant is nevertheless a jural one and a tenant, after transferring or assigning or sub-letting to a

sub-tenant, can not turn round and throw out the sub-tenant on the plea of the transaction being unauthorised, except of course in accordance with

the due process of law. As has bean pointed out by one of us in a Division Bench decision of this Court in Madhu Jayahti v. Roger''s Engineering

(91 C.W.N. 844) and then again in another Division Bench decision in Zodiac Investment v. Durga Investment (92, Calcutta Weekly Notes 1080

at 1084), even if sub-letting has been made by the tenant without the prior consent in writing of the superior landlord and is thus made in violation

of Section 14 of the West Bengal Premises Tenancy Act prohibiting such sub-letting without such consent, there would still be legal relationship of

landlord and tenant between the tenant of the first degree and the sub-tenant, even though such sub-letting is not binding on the superior landlord

and is actionable and voidable at his instance. This now appears to be the clear law in view of the three-Judge bench decision of the Supreme

Court in Nanakram Vs. Kundalrai, which has approved an earliert two-Judge bench decision of the Supreme Court in Murlidhar Aggarwal and

Another Vs. State of Uttar Pradesh and Others, Reference may also be made to yet another earlier Division Bench decision of this Court in

Debabrata v. Kalyan (1981 1 Calcutta High Court Notes 497) which has inter alia relied on the earlier Supreme Court decision in Murlidhar

(supra). At any rate, under the law in this country, it is also well-settled, as pointed by the Supreme Court in Lallu Yeswant Singh (AIR 1968 SC

620 at 622), that even a rank trespasser without any semblance of lawful authority to possess, cannot be dispossessed except in due course of

law. We are inclined to think that this suspicion that the plaintiff might be a transferee or a sub-tenant let in by the tenant without the written consent

of the superior landlord, might have led the trial Judge to doubt the bonafide of the case of the plaintiff. But as already noted, even in such a case,

the sub-tenant may have a jural right to possess vis-a-vis his own landlord, i.e., the tenant of the first degree, unless such relationship is brought to

end in accordance with law.

7. We would, therefore, allow the appeal and set aside the impugned judgment and decree of the Court below and would decree the suit. We

decree that the plaintiff has, as against the defendants, the right to possess the suit flat and grant a decree in his favour to recover possession; of the

suit flat in execution of the decree. Since the defendants did not contest the suit in the Court below, nor in appeal before us, we make no order as

to costs.

Ajit Kumar Nayalk, J.

I agree.