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**(1989) 11 CAL CK 0038**

**Calcutta High Court**

**Case No:** C.R. No. 1708 of 1984

Parul Das Roy

APPELLANT

Vs

Anath Das

RESPONDENT

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**Date of Decision:** Nov. 7, 1989

**Acts Referred:**

- Presidency Small Cause Courts Act, 1882 - Section 41
- Transfer of Property Act, 1882 - Section 105

**Citation:** AIR 1991 Cal 1

**Hon'ble Judges:** Sudhangshu Sekhar Ganguli, J

**Bench:** Single Bench

**Advocate:** Girish Gupta and G.S. Gupta, for the Appellant; D.N. Chatterjee, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

1. It appears that S.C.C. Suit No. 3832 of 1978 disposed of by the learned Judge, 6th Bench, Small Causes Court, Calcutta, by his judgment and

order dated 19th March, 1984 was instituted u/s 41, Chapter VII of the Presidency Small Causes Court Act, 1982 by the present petitioner being

the Secretary of Manila Silpa Ashram and Tailoring College, a registered society situated at 80-82 Bidhan Sarani, Calcutta-4 against the present

opposite party describing him as a mere licensee in respect of the disputed suit room. The defence was that the opposite party was the tenant of

the same. On a consideration of the evidence adduced by the parties, the Id. Judge concluded that the opposite party was not a tenant and that he

was a mere licensee of the disputed premises. He dismissed the proceedings all the same holding that the petitioner was not competent to file the

proceedings as she was not authorised to institute the same by the President or the members of the society. Hence this civil revision from the side

of the present petitioner. It is urged from the side of the petitioner that the proceeding was very properly instituted by her in her own name and that

the Id. Judge made a mistake by holding that she was not competent to do that and her contention is naturally challenged from the side of the

opposite party. The opposite party also challenges the decision of the Id. Judge to the effect that he was a mere licensee in respect of the disputed

premises.

2. The first point that has to be decided is whether the Id. Judge was right in holding that the petitioner was not competent to institute the suit. In

this connection so it appears, the Id. Judge relied upon Rule 14 of the Rules and Regulations of the Silpa Ashram which lays down that the

President of the said Silpa Ashram shall preside in all meetings and give directions in all affairs of the society and that the secretary shall be the

executive officer and shall act according to direction of the President of the Committee. From this, the Id. Judge concluded that the secretary of the

institution could not institute a suit or a proceeding without express permission from the President. The Id. Judge, however, failed to notice that as

per Rule 28 of the said Rules all suits and legal proceedings by or against the society were to be in the name of the secretary. It is also pointed out

that the last sentence of the aforesaid Rule 14 authorised the secretary to conduct, defend and compound any legal proceedings on behalf of the

society or its affairs or otherwise concerning the affairs of the society. It is also pointed out from the side of the petitioner that the resolution of the

executive committee of the Silpa Ashram passed on 14th July, 1979 (Ext. 2) recites that the Court had to be moved on behalf of the society for

evicting the present opposite party from the disputed premises and that a proceeding was actually instituted for doing the same. It appears,

therefore, under R. 28 that the proceeding was rightly instituted by or in the name of the secretary who was competent to conduct the same under

the provision of R. 14. Besides the resolution dated 14th July, 1979 (Ext. 2) ratified the institution of the proceeding. In view of the circumstances,

I am of the view that the present petitioner was perfectly competent to institute and conduct the proceedings against the present opposite party.

The finding and the decision of the learned Judge to the contrary cannot be supported.

3. Next to the question as to whether the learned Judge was quite right in holding that the opposite party was the licensee of the disputed premises.

It appears that a receipt (Ext. C) for Rs. 40/- shown to have been paid and received as donation was produced from the side of the opposite party

to establish his case that he was a tenant and not a licensee. Since this receipt did not contain the signature of the opposite party on its back the

learned Judge refused to hold that it evidenced a tenancy. The learned Advocate for the opposite party urges that this was not sufficient ground for

refusing to hold that the receipt in question showed the existence of a tenancy. He urges further that in that view of the matter the case may be sent

back to the learned Judge on remand for a fresh decision on this point.

4. The reason given by the learned Judge cannot be treated as very proper. The fact remains, however, that the receipt (Ext. C) showed payment

and receipt of an amount of money by way of donation. In that view of the matter it cannot be held that the receipt showed the existence of a

tenancy as claimed from the side of the opposite party. In that view of the matter I am not inclined to disturb with the conclusion drawn by the

learned Judge in this regard.

5. Both the points having been decided in favour of the petitioner society, it is hereby ordered that the Rule is hereby made absolute. The finding of

the learned Judge to the effect that the suit is not maintainable and his final order dismissing the suit is hereby set aside. The suit is hereby decreed

on contest and the petitioner do get a decree for recovery of possession of the disputed premises after evicting the opposite party therefrom. The

opposite party is hereby directed to deliver the vacant possession of the disputed premises within a period of four months from this date. In case

he fails to comply with this direction the petitioner will be at liberty to recover possession of the disputed premises by evicting the opposite party

therefrom in accordance with the procedure under the law. The decree for eviction shall not be executable till the expiry of four months from this

date.

6. Petition allowed.