

IN THE HIGH COURT AT CALCUTTA
(CIVIL APPELLATE JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

S.A. 152 of 2022
CAN 5 of 2023
CAN 6 of 2023
CAN 7 of 2023

KARTICK CHANDRA BISWAS & ORS.
VS.
SHYAMA PADA CHAKRABORTY & ORS.

For the Appellants : Mr Kartick Bhattacharyya, Adv.

For the Respondents : Mr. Ganesh Shrivastava, Adv.
Mr. Sukanta Das, Adv.
Mr. Kanchan Ray, Adv.

Hearing concluded on : 5th October, 2023

Judgement on : 19th October, 2023

Siddhartha Roy Chowdhury, J.:

1. This second appeal challenges the judgement and decree passed in Title Appeal No. 18 of 2006, on 16th September, 2017 by learned Additional District Judge, Fast Track Court-I at Sealdah affirming thereby the judgement and decree passed by learned Trial Court in Title Suit No. 390 of 1967.
2. For the sake of convenience the parties will be referred to as they were arrayed before the learned Trial Court.
3. Briefly stated, Chamuda Devei, as sebayet of deity Sri Sri Saktimoyee Kalimata filed the suit for eviction of the defendants who are the sons and daughters of Dulal Ch. Biswas, since deceased. It is contended that

premises no. 20/H/5, Pottary Road belongs to the deity Sri Sri Iswar Saktimoyee Kalimata, nearly 100 years ago one Gopal Ojha having acquired title over the property, dedicated the same to the deity.

4. The predecessor-in-interest of the defendants was inducted as tenant in respect of suit property at a monthly rental of Rs. 8/- per month payable according to English Calendar month. Since then the defendants have been possessing the property. They paid monthly rent regularly up to the month of August, 1962. Thereafter, the defendant with an ulterior motive and for wrongful gain, in collusion with some persons started denying the status of the sebayet; the defendants also stopped payment of rent.
5. One Suvendu Prasad Roy Chowdhury filed a suit being Title Suit No. 242 of 1963 before the learned Munsif, 3rd Court alleging, *inter alia*, that plaintiff had trespassed into the land and raised structure thereon. The plaintiff also filed a suit registered as Title Suit No. 255 of 1964 seeking declaration and injunction against the Roy Chowdhurys and against some of the tenants, including the predecessor-in-interest of the defendants who then joined hands with Roy Chowdhurys for some wrongful gain.
6. Both Title Suit No. 242 of 1963 and Title Suit No. 255 of 1964 were tried analogously. The suit filed by the plaintiff in Title Suit No. 255 of 1964 was decreed on contest while Title Suit No. 242 of 1963 filed by Suvendu Prasad Roy Chowdhury was dismissed on contest.
7. In Title Suit No. 255 of 1964 the status of Chamunda Devi was declared as sebayet of deity Sri Sri Saktimoyee Kalimata and defendants were declared to be monthly tenant under the plaintiff. The plaintiff

terminated the tenancy in respect of suit property by serving the notice to quit dated 13th July, 1967 which was duly received by the defendant. He also gave a reply to that notice through his lawyer Sri N.P. Chaknabis. Despite termination of tenancy the defendant failed to act in terms of the notice. Hence the suit.

8. During pendency of the suit, the plaintiff incorporated an amendment and sought for decree on the ground of reasonable requirement as well.
9. The defendants contested the suit by filing written statement and additional written statement, denying all material averments made by the plaintiff. It is categorically stated that the defendant was never inducted as monthly tenant in the suit property at a rental of Rs. 8/- per month. The plaintiff had no locus standi to induct any tenant in the suit property. The defendant had no reason to pay rent to the plaintiff. It is the specific case of the defendant that the entire premises was owned by Baroda Prasad Roy Chowdhury, after his demise the property vested in Bhabani Ward Estate and after the release of the Ward Estate property was acquired by Suvendu Prasad Roy Chowdhury and others, the heirs of late Baroda. The Premises No. 20/H/5, Kamardanga Road, presently known as Pottery Road, is a big bustee having several thika tenants under the Zamindar Roy Chowdhurys and defendant is one of them.
10. It is contended further that the defendant erected structure over there. Ultimately got the property settled from the Zamidars in his favour. The defendant in other words, constructed one room with pacca walls and tiles roof at his own cost. The defendant was never a tenant under the plaintiff. Learned Trial Court after considering the pleadings of the

parties answered the issues in favour of the plaintiff and holding the defendants tenant under the plaintiff, learned Trial Court passed an order of eviction.

11. The defendants made an unsuccessful attempt to get the said decree reversed in Title Appeal No. 18 of 2006 and preferred the second appeal which was admitted on 9th September, 2022 on the following substantial questions :-

1. Whether on the facts and in the circumstances of the case, the issue whether the appellants were tenants under the respondents had become res-judicate by virtue of the findings of a competent court of law on the self-same issue between the same parties.
2. Whether on the facts and in the circumstances of the case, upon the appellants taking the stand that they were thika tenants, the court should have immediately referred the suit to the thika controller.

12. Mr. Kartick Bhattacharyya, learned Counsel for the appellants submits that soon after filing of the suit the defendants filed the application under Section 17 of the Premises Tenancy Act and denied the relationship of landlord and tenant. The matter came up to this Hon'ble Court and Hon'ble Co-ordinate Bench while deciding the Civil Order Nos. 326 and 327 of 2000 was pleased to hold :-

"I make it clear that the findings arrayed at in this order or in the orders of the Courts below are for the purpose of disposal of the said applications under Section 17(2) and 17(2A) (b) of the said Act. The issue regarding relationship of landlord and tenant is, however, kept open for discharge at the trial."

13. It is adverted by Mr. Bhattacharyya that despite there being specific direction, learned Trial Court did not consider the issue of relationship between the parties as landlord and tenant, but in a slip shod manner decided the issue no. 3 and 8.
14. Attention of the Court is drawn to the observation of learned Trial Court :- “So when Hon’ble High Court declared that there is no existence of thika tenancy mere filing of challans before the Thika Controller bears no consequence. If Thika Controller accepted Khajna from the defendants as thika tenant that has no validity in the eye of law. Learned Trial Court relied upon the judgement of Hon’ble High Court passed in previously instituted suit, holding *inter alia* the predecessor-in-interest of the defendant Dulal Biswas was tenant under the present plaintiff. Therefore, according to learned Trial Court, nothing was left to decide the issue pertaining to relationship of landlord tenant, which was denied by the defendants. According to Mr. Bhattahcharyya, learned Trial Court could not have decided the issue in the light of the decision of Hon’ble High Court given in SA No. 287 of 1968 and 1094 of 1970. It should have been decided based on the evidence on record.
15. Learned Trial Court ought to have considered that the plaintiff failed to prove the relationship by adducing cogent evidence.
16. Drawing attention of the Court to the order no. 38 dated 14th July, 2000 Mr. Bhattacharyya adverted that the plaintiff took out application under Order 6 Rule 17 of the Code of Civil Procedure seeking amendment of plaint and learned Trial Court was pleased to allow the prayer. At the same time, direction was given to the plaintiff to comply with the provision of order 6 Rule 18 of the Code of Civil Procedure and liberty was

given to the defendant to file additional written statement. But the said direction of learned Trial Court was not complied with. The plaintiff who filed the amended plaint on 21st December, 2001, more than one year after the order for amendment was allowed and that too in breach of the direction of the Court as well as in breach of the procedural law which is mandatory in nature.

17. Drawing attention of the Court to the provision of Order 6 Rule 18 of the Code Civil Procedure, Mr. Bhattacharyya submits that the plaintiff had the obligation to submit the amended plaint within the time limit fixed by the Court or within 14 days from the date of the order. Therefore, the decree passed by learned Trial Court on the ground of reasonable requirement, based on the pleadings amended subsequently, cannot be allowed to remain in force as the plaintiff failed to comply with the direction of learned Trial Court. It is further submitted that learned Trial Court could not have decreed the suit on the ground of reasonable requirement. In support of his contention Mr. Bhattacharyya places reliance upon the judgement of Hon'ble Apex Court in Union of India vs Pramod Gupta (dead) by LRS. & Ors. reported in (2005) 12 SCC 1 wherein it is held :-

“140. We have noticed hereinbefore that the amendments have not been carried out in the pleadings in terms of Order VI, Rule 18 of the Code of Civil Procedure. The said provision being mandatory, if not complied with the consequences flowing therefrom shall ensue.”

18. Refuting such contention of Mr. Bhattacharyya, Mr. Ganesh Shrivastava, learned Counsel for the plaintiff/respondent submits that

the learned Trial Court as well as learned First Appellate Court, were absolutely justified in deciding the issue no. 3 and 8 in favour of the plaintiff. The defendants cannot even be allowed to whisper on the issue of their status as thika tenant or to deny the relationship between plaintiff and defendant as landlord and tenant, in view of the judgement passed in SA No. 287 of 1968 and SA 1094 of 1970 disposed of by Hon'ble Justice J.N. Hor.

19. Drawing my attention to the certified copy of the said judgement of the Hon'ble Court Exhibit-1, Mr. Shrivastava submits that the status of the predecessor-in-interest of the defendant, Sri Dulal Biswas, was determined as tenant and the suit property as a Debouttar property.
20. Therefore, the defendants being the descendants of Dulal Biswas cannot reiterate the said issue claiming the status of thika tenant under the Roy Chowdhurys and denying their status as tenant under the plaintiff.
21. It is further contended by Mr. Shrivastava that when the amendment of the plaint was sought for, the provision of Order 6 Rule 17 and 18 were deleted by the Code of Civil Procedure Amendment Act, 1999 which came into force on 30th December, 1999. Subsequently, the said two provisions were inserted by way of Code of Civil Procedure, Amendment Act, 2002 which was given effect to, on and from 23rd May, 2002.
22. The order of amendment of plaint in the suit was allowed on 4th July, 2000 and Order 6 Rule 18 was complied with on 21st December, 2001. Therefore, rigour of Rule 18 under Order 6 cannot be made applicable in this case.

23. Upon perusal of Exhibit-1, I find that the Co-ordinate Bench of this Court while deciding the appeals by a common judgement on 19th July, 1991 decided the nature of the suit property as Debouttar property and status of the plaintiff as sebayet of the deity and the status of Dulal Biswas and other tenants, who claimed to have the status of thika tenant under the Roy Chowdhurys was decided as tenant under the deity, represented by the sebayet Chamunda Devi. Section 11 of the Code of Civil Procedure, therefore, comes into play and learned Trial Court as well as learned First Appellate Court committed no error in deciding issue no. 3 and 8 in favour of the plaintiff, taking lumen from Exhibit-1. Learned Trial Court or learned First Appellate Court could not have any reason to reopen the issue in the breach of Section 11 of the Code of Civil Procedure. The issue raised by the defendants in the present suit was decided and set at rest by the Co-ordinate Bench of this Court while deciding SA No. 287 of 1968 together with SA No. 1094 of 1970.
24. It is rightly pointed by Mr. Shrivastava, provision of Order 6 Rule 18 was introduced on 23th May, 2002. Therefore, learned Trial Court did not commit any error in accepting the amended plaint under Order 6 Rule 18 of the Code of Civil Procedure beyond the period of 14 days; rather it should be presumed that there was implied extension of time granted by the learned Trial Court to the plaintiffs to comply with the order, regarding submission of amended plaint.
25. Thus the plaintiff has proved that the defendants are defaulter in payment of rent. There are evidence to justify the order of eviction on the ground of reasonable requirement. The appeal therefore, in my consideration, is devoid of merit.

26. Consequently, the appeal is dismissed. The impugned judgement passed by learned First Appellate Court affirming the judgement of learned Trial Court stands affirmed. Pending applications, if any, stand disposed of.
27. Let a copy of this judgement along with lower Court record be sent down to the learned Trial Court immediately.
28. Urgent photostat certified copy of this judgement, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)