

Nripati Nath Mitra and ors. Vs. Dilip Kumar Das and ors.

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Court : Kolkata

Decided On : Jan-21-2008

Reported in : (2008)1CALLT491(HC)

Judge : Bhaskar Bhattacharya and ;Rudrendra Nath Banerjee, JJ.

Acts : [West Bengal Premises Tenancy Act, 1956](#) - Section 13(1)

Appeal No. : F.A. No. 40 of 1993

Appellant : Nripati Nath Mitra and ors.

Respondent : Dilip Kumar Das and ors.

Advocate for Def. : Siddhartha Lahiri, Adv.

Advocate for Pet/Ap. : Arun Kumar Maity, ;Kaberi Sengupta, ;Purnasish Bhuinya and ;Prabal Chatterjee, Adv.

Disposition : Appeal dismissed

Judgement :

Rudrendra Nath Banerjee, J.

1. This appeal is directed against the Judgement and decree passed in Ejectment Suit No. 297 of 1981 of the 11th Bench of the City Civil Court at Calcutta for eviction of the defendant appellants from the suit property.

2. The plaintiffs'/respondents' case in the Court below was that they were the owners of the two storied building on 20, College Row, Calcutta. The plaintiffs/respondents got such property by a Will executed on 5.5.40 by Brojobala Dasi, the maternal grand-father bequeathing said premises to them and granting life interest in the said premises to her daughter Malina Bala Dasi, since deceased, the mother of the plaintiffs. Amulya Chandra Guin, the maternal uncle of the plaintiffs was the executor to the said Will. The Will was probated through Court of competent jurisdiction and the defendants appellants and proforma respondent No. 4 attorned their tenancy to the plaintiffs and they began to pay the rent to the plaintiffs @ Rs. 262/- per month.

3. The further case of the plaintiffs/respondents that due to the early demise of their parents they were looked after since childhood by their maternal uncle and maternal grand-mother and the plaintiffs were brought up in their maternal uncles house. With the passage of time the plaintiff completed their academic career and took up different avocations in life and the plaintiff Nos. 1 and 2 got married. Due to insufficiency of accommodation the three respective families of the plaintiffs began to live separately in their respective tenanted premises.

4. The plaintiffs having reasonably required the said premises for their own use and occupation as they had no reasonably suitable accommodation of their own. They served notice of ejectment dated 16.2.80 terminating the tenancy of the defendants with the expiry of the month of March, 1980 asking them to quit and vacate and deliver peaceful possession thereof after the expiry of the said month of tenancy. The said notice was sent under registered post with A/D separately to all the defendants. The notices were received by the defendant Nos. 1 to 4 on 20.2.80 which is evident from acknowledgement due cards returned to the plaintiffs. The acknowledgement due card of the defendant No. 5 did not come back to the plaintiffs.

5. It is the further case of the plaintiffs that the family of the plaintiff No. 1 consists of the plaintiff No. 1 himself, his wife and two school going children aged 12 years and 6 years respectively. The plaintiff No. 1 is an engineer working under Siemens India Limited. The family of the plaintiff No. 1 requires one drawing room, one bed

room for themselves and one bed room for the children and one study room for such children.

6. The family of the defendant No. 2 comprises of the plaintiff No. 2 himself, his wife and one school going daughter aged 5 years. The plaintiff No. 2 was working in Oriental Concrete Pipes and Industries and the requirement of this family was one bed room for themselves, one bed room for their daughter and one study room for her (afterwards he got married as is evident from evidence).

7. The plaintiff No. 3 is a bachelor and dealer of second hand motor cars and is a owner of taxis and he requires one bed room, one drawing room and another room to accommodate three of his employees.

8. In furtherance to such requirement the plaintiff also requires one dining room, one thakur ghar, one servants room, kitchen etc. It is the further case of the plaintiffs that the defendants were in arrears of rent since April, 1980.

9. However, the defendants having not vacated the suit premises hence the suit for recovery of possession and costs.

10. All the defendants contested the suit by filing a joint written statement denying the material allegations in the plaint and challenging the legality, validity and the service of the alleged notice of ejectment dated 16.2.80. The defendants also denied that the plaintiffs had any reasonable requirement for their own occupation and they asserted that they are not in arrears of rent as alleged. The defendant Nos. 1 to 4 also filed an additional written statement stating that the defendant No. 5 died on 14.1.89 during the pendency of the suit living behind the other defendants and her daughter Maya Roy who is also a necessary party to the suit.

11. The plaintiffs examined altogether four witnesses including the three plaintiffs and learned advocate commissioner and the defendants examined the defendant No. 3 himself.

12. Learned Court below upon consideration of the oral and documentary evidences of record held that the notice of ejectment was duly served upon the defendants and such notice was legal, valid and sufficient. Learned Court below

also held that the plaintiffs i.e. the three brothers were compelled to live separately leaving aside in their respective tenanted homes their own house which they got by the Will from their maternal grand-mother and they wanted to live unitedly under a common roof. It was further observed by the learned Court below that plaintiffs' requirement of the suit premises was genuine and their present separate rented accommodations are not suitable for them and accordingly learned Court below by the Judgment decreed the said ejectment suit giving the defendants six months time to vacate the suit premises.

13. Mr. Arun Kumar Maity, the learned advocate appearing for the petitioners challenged the Judgment and decree of the learned Court below on the ground, first that the plaintiffs living with their respective families separately never expressed their intention to live in joint mess and to live under the same roof. Their present rented accommodations are not unsuitable. Secondly, the notice of ejectment has not been proved to be served duly upon defendants. The signatures appearing in the A/D card received by the plaintiffs are not the genuine and learned Court below ought to have discarded the same. According to Mr. Maity learned Court below ought to have dismissed the suit.

14. Mr. Siddhartha Lahiri, the learned advocate for the respondents while supporting the Judgment of the Court below has urged that the plaintiffs lost their parents in the childhood and their maternal grand mother bequeathed the suit building to them by the Will which was probated and from the evidence on record it transpires that the plaintiffs had the genuine necessity to come to the suit building and to live as owners thereof leaving their respective tenanted houses. Mr. Lahiri has also submitted that notice of ejectment was duly served upon the defendants tenants as per the A/D cards returned to the plaintiffs. It is further submitted that when the postal address was correct and sending of the notice under registered post with A/D in such correct address of the defendants is proved, the presumption of service arises and the same is not rebutted.

15. Undisputedly and as admitted by the defendant No. 3 Bhupati Nath Mitra examined as D.W. 1, the suit building originally belonged to Brojobala Dasi, the maternal grand-mother of the plaintiffs who lost their parents in the childhood and

was being brought up at their maternal uncle's house. The said Brojobala Dasi after the loss of the father of the plaintiffs in the year 1944 bequeathed the suit property in favour of the suit building in favour of the plaintiffs by a Will which was subsequently probated in the year 1962 by the executor Shir Amulya Kumar Guin, the maternal uncle of the plaintiffs. The said Will marked ext. 1 in the suit reveals that the suit building at 20, College Row was bequeathed in favour of Malina Bala Dasi, the mother of the plaintiffs and on her death the property was to devolve upon the present plaintiffs. The defendant No. 3 in his deposition has admitted that his father was a District & Sessions Judge at Raipur and was the original tenant under Brojobala Dasi and on her death Amulya Kumar Guin used to collect rent from them and on a letter of attornment the plaintiffs ultimately used to realise such rents from them. It is also not disputed that the said Amulya Kumar Guin made a Deed of Release in favour of the plaintiffs giving them accounts for the period of his executorship of the said Will.

16. It is also not disputed that the plaintiffs at their very childhood due to the loss of their father used to live with the maternal grand-mother under the care of their uncle Amulya Kumar Guin at a separate place at Calcutta. They lived together in the said house till 1972 when due to the increase of their family members after the marriage of the plaintiff Nos. 1 and 2 they began to live separately in tenanted houses elsewhere at Calcutta. Subsequently, the plaintiff No. 3 also married and also began to live in a separate rented house. Now, after the Will has been probated and the executor of the Will being released and the mother of the plaintiffs Malina Bala Dasi having already died, the ownership of the plaintiffs in respect of the suit building cannot be denied and the defendants also do not try to deny the same during the hearing of the suit. The plaintiffs, to show the genuineness of their requirement, have examined all of them as P.Ws.

17. The P.W. 1 is the plaintiff No. 2 Sandip Das. He lives in a tenanted house at Lake Gardens. The rent receipts showing his payment of rents to his landlord has been marked as exts. 5, 5A and 5B. He occupies two bed rooms, one dining and drawing room and kitchen, privy etc. in the said tenanted house where he lives with his wife and daughter aged 10 years. The plaintiff No. 2 is a service holder under the Multiplex India. He while giving the requirements of all the plaintiffs has

stated that they want to live in joint mess under the same roof and they require at least six bed rooms, three drawing rooms, one dining room, one servants room, one kitchen, store, respective baths and privies in the said house which goes to indicate that the plaintiffs required at least 12 bed rooms.

18. The plaintiffs examined the plaintiff No. 1 as P.W. 2, who is an engineer under the Siemens Limited and lives in the tenanted house at P-157, CIT Road, Kankurgachi along with his wife and two school and college going daughters aged 13 and 20 years respectively, occupying two bed rooms, one drawing room, one dining room and one bath and privy in the said tenanted house, the rent receipts being ext. 9, 9A and 9B.

19. The P.W. 4 is the plaintiff No. 3 Ashok Das who has a business of letting out taxis and handling of second hand motor cars. He lives along with his wife at 47, Kali Dutta Street at Calcutta - 5 in a tenanted house occupying one bed room, one drawing room and one servant's room. He has got employees under him in the business. He has produced the rent receipts ext. Nos. 12, 12A and 12B.

20. When all the plaintiffs have appeared in person before the Court and have testified about their present accommodations in tenanted house the mere non-examination of the landlords of such plaintiffs does not impress us to disbelieve their oral testimony in that regard.

21. The P.W. 4 is Md. Tazammal Hossain, the learned advocate commissioner, who was appointed by the Court to inspect and report the suit building at 20, College Row. Ext. 10 is his report. According to such report there are five rooms in each of the floors of the two storied building and also one privy and one bath room in each of the two floors. There are two staircases at two corners of the said house leading to the second floor where there are two chilekathas. In the said report the measurements of the rooms have been given as far as practicable. From such measurements the rooms appear to be of different sizes ranging from 12' X 8', to 20' X 9' (approx).

22. Now undisputedly the plaintiffs are living separately in tenanted house and they have expressed their clear intention in the witness box to live in joint mess

under the same roof. The ground of reasonable requirement by the plaintiffs for their own occupation have also been taken in the said notice of ejectment (ext. 6). The plaintiff No. 1 i.e. the P.W. 2 has got his wife and two daughters. He is an engineer. According to his status he can very well expect an accommodation of three bed rooms and one drawing room and a separate bath and privy for his family. The plaintiff No. 2, P.W. 1 has his wife and one daughter. He can very well expect, according to his own status, two bed rooms, one drawing room i.e. three rooms for the accommodation of his family. The plaintiff No. 3, P.W. 4 is a dealer of second hand motor cars and taxis living along with his wife may very well expect one bed room, one drawing room for themselves and one office rooms-cum-rooms of employees in the said house. Besides as plaintiffs have expressed their intention to live in the joint mess one separate kitchen, one store room and one dining hall are their absolute necessity. Besides they also require one privy and one bath for each of the three families.

23. Thus, for their living in the joint mess in the same building they reasonably require at least 14 rooms including such bath, privy, kitchen, dining room etc. It cannot be expected that the plaintiffs while having their own house will be compelled to live in separate tenanted houses in the same city. Their requirements cannot be satisfied and do not suggest any partial eviction of the defendants from the said building. It is not at all suggestible to compel them to live in their present respective tenanted houses leaving their own house. Such tenanted house cannot be held to be a suitable alternative accommodation for them. The defendants tried to make out a case that the plaintiffs wanted an enhancement of rent from them but such defence story is not being made out by any corroborative and convincing evidence.

24. Accordingly, we are of the view that the plaintiffs have got reasonable requirement under Section 13(1)(f) of the [West Bengal Premises Tenancy Act, 1956](#) for their own use and occupation.

25. Defence has tried to make out a case of non-service of ejectment notice upon all the defendants. It is the case of the defendants through the mouth of the D.W., that the father of the defendant since deceased, was the original tenant under

Brojobala Dasi in the suit premises and he died living behind four sons and his widow Gouri Bala Mitra and one daughter Maya Roy. According to the defendant No. 3 as D.W. 1 the said Maya Ray although defendant No. 2 D.W. 2 has stated that she lives in her in law's place at Birbhum got married in 1960, stays with him wherever she comes there from Birbhum but their relation with her is strained. It is also the evidence of D.W. 1 the defendant No. 3 that his father was the original tenant in the suit home under Brojobala Dasi and he died in the year 1952. With such evidence from the end of the defendants it can safely be inferred that even during the lifetime of Brojobala Dasi who died in the year 1969 the said sister got married and since then she has been living at Saithia, Birbhum at her in-laws place and she comes occasionally to her one of brothers and stays in the suit house. Her father having died before 1956, she cannot inherit her father's tenancy. She cannot be said to have inherited the tenancy for the fact that as per averments in the written statement the defendants have accepted their tenancy under the plaintiffs after the Will was probated. Thus, such contention from the ends of the defendants as to the absence of service of notice upon Maya Roy does not stand.

26. So far as Gouri Bals Mitra, the defendant No. 5 is concerned, undisputedly she died during the pendency of the suit and her name has been excluded from the cause title of the plaint. Undisputedly, the plaintiffs have received the A/D cards showing service of notice of ejectment upon the defendant Nos. 1 to 4. It is also admitted by the defendant No. 2 D.W. 2 that the notices were sent to the correct address of the defendants under registered post with A/D. There is no pleading or evidence that the defendant had enmity with the postal peons and accordingly the A/D cards showing service of notice upon the defendant Nos. 1 to 4 can be accepted. It may be remembered that the written statement or the additional written statement does not deny the signatures on the A/D cards showing service upon the defendant Nos. 1 to 4. There is also no application for comparison of signatures of the addressees in the A/D card along with the admitted signatures of the defendants by any hand writing expert. The A/D card in respect of the defendant No. 5 Gouri Bala Devi, since deceased has not been returned to the plaintiffs. But the correctness of her address on the envelope of the letter sent to her remaining undisputed, the service of such notice upon her can be presumed.

Furthermore, the defendants having inherited the tenancy from their father were tenants in common and service of notice upon one of them is sufficient under law.

27. In the additional written statement filed by the defendant Nos. 1 and 4 a new question has been raised from the side of defendants that Mrs. Maya Ray, the daughter of defendant No. 5, Gouri Bala Mitra being not substituted as heir of the defendant No. 5 who died during pendency of the suit in 1989, she is a necessary party to the suit. But after such additional written statement was filed no such issue as to defect of parties was framed, nor does the impugned Judgment reveal that such point of dispute was argued before learned Court below. Such point of defect of party being a matter of fact to be raised in the trial Court and not in this appellate Court and being not agitated by learned Advocate for the appellant it does not invite any judicial consideration.

28. Thus considering all such facts and circumstances we are of the view that the plaintiffs have succeeded to show their reasonable requirement of the suit premises for their own use and occupation and the service of notice upon the defendants is sufficient and such notice of ejectments is legal, valid and sufficient as held by learned Trial Court. Accordingly, such Judgment and decree of the learned trial Court should not be interfered with and is affirmed.

29. The defendants/appellants have been occupying the suit premises at a nominal rental of Rs. 262/- per month for such a long period of 26 years. Accordingly, the defendants are directed to vacate the suit premises immediately within 15 days from the date of the Judgment. The plaintiffs/respondents shall have the liberty to realise the rents if deposited by the defendants in the Court below or elsewhere, as mesne profits subject to payment of Court fees thereon.

30. The appeal is accordingly dismissed.

There shall be no order as to costs.

Urgent xerox certified copy be given to the parties expeditiously, if applied for.

Bhaskar Bhattacharya, J.

31. I agree.

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