

Ranjan Kumar Sinha Vs. Prabir Kumar Sinha and ors.

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Court : Kolkata

Decided On : Jul-04-2006

Reported in : 2006(3)CHN560

Judge : Pranab Kumar Chattopadhyay and ;Kalidas Mukherjee, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 39, Rules 1 and 2

Appeal No. : F.M.A.T. Nos. 542 and 1349 of 2006 and C.A.N. Nos. 3855 and 3857 of 2006

Appellant : Ranjan Kumar Sinha

Respondent : Prabir Kumar Sinha and ors.

Advocate for Def. : S.P. Roy Chowdhury and ;Jiban Ratan Chatterjee, Advs. in F.M.A.T. Nos. 542 and 1349 of 2006

Advocate for Pet/Ap. : Sudhis Das Gupta and ;Asit Baran Raut, Advs. in F.M.A.T. No. 542 of 2006 and ;Bidyut Kr. Banerjee, ;R.K. Roy and ;A.K. Sharma, Advs. in F.M.A.T. 1349 of 2006

Judgement :

Pranab Kumar Chattopadhyay, J.

1. Both the aforesaid appeals have been preferred from the same order being Order No. 22 dated 16th January, 2006 passed by the learned Judge, City Civil Court at Calcutta in Title Suit No. 1684 of 2004 whereby the learned Judge of the Court below allowed the application under Order 39 Rules 1 and 2 of the Code of Civil Procedure filed by the plaintiff and rejected the application for injunction under Order 39 Rules 1 & 2 CPC filed by defendant No. 4.

2. The plaintiff filed the suit in the Court below for declaration that the said plaintiff is the sole tenant in respect of the suit premises under defendant Nos. 2 and 3 and prayed for a mandatory injunction directing the defendant Nos. 2 and 3 for accepting rents from the said plaintiff in respect of the suit premises. The plaintiff also filed an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure in connection with the said suit for granting temporary injunction restraining the defendant Nos. 2 and 3 from changing the nature and character of the rent receipt in respect of the suit premises and also for restraining the defendant No. 1 from disturbing or interfering with the possession of the plaintiff in respect of the suit premises till the disposal of the suit. The plaintiff and the defendant No. 1 are the brothers. It is the contention of the plaintiff that since the inception of the tenancy only the plaintiff used to carry on the business in the suit property and alone used to pay the monthly rents to the defendant Nos. 2 & 3 although the receipts were granted by the defendant Nos. 2 & 3 in the joint names of plaintiff and the defendant No. 1. There were suits and counter-suits between the plaintiff and the defendant No. 1 and according to the plaintiff, the parties settled the disputes out of Court. It has been contended on behalf of the plaintiff that pursuant to the said amicable settlement, the defendant No. 1 surrendered his tenancy in respect of the suit property in favour of the plaintiff and by the letter dated 01.01.2002 the said defendant No. 1 voluntarily surrendered his tenancy right in favour of the plaintiff. It is the further contention of the plaintiff that the defendant No. 1 permitted the plaintiff to get the name of the defendant No. 1 struck off from the rent receipt. The plaintiff also claimed that in the last week of September, 2004 when the landlords were requested to change the rent receipt in respect of the suit premises, the said landlords refused to comply with the said request and informed the plaintiff that the rent receipts could not be changed as the defendant No. 1 claimed himself to be the joint tenant and after paying rents

for some months forcibly took away the receipts from the defendant Nos. 2 and 3. It has also been submitted on behalf of the plaintiff that the said plaintiff came to know that the defendant No. 1 asked the defendant Nos. 2 and 3 to substitute the name of the defendant No. 4 in the rent receipts in place of the name of the said defendant No. 1. The plaintiff has further contended that a cloud has been cast on the tenancy right of the plaintiff as the defendants conspired with one another denying the plaintiff's right in the suit property.

3. The wife of the defendant No. 1 being impleaded as a party to the suit as defendant No. 4 also took out an application praying for appropriate order of injunction restraining the plaintiff from creating any disturbance or obstructions to her peaceful use and enjoyment of the suit property and also from dispossessing her from lawful possession of the said suit property till the disposal of the suit.

4. The learned Judge of the Court below heard both the aforesaid applications analogously and upon contested hearing the application for injunction filed on behalf of the plaintiff was allowed whereas the application filed by the defendant No. 4 was dismissed by the common order dated 16th January, 2006 passed by the learned Judge of the Court below. By the aforesaid order the defendants have been restrained from interfering with the peaceful possession of the plaintiff in respect of the suit premises till the disposal of the suit.

5. Being aggrieved by the aforesaid order dated 16th January, 2006 passed by the learned Judge of the Court below, defendant No. 1 herein preferred the appeal which has been numbered as F.M.A.T. No. 542 of 2006 with C.A.N. No. 3855 of 2006. The landlords being defendant Nos. 2 and 3 also filed a separate application which has been numbered as F.M.A.T. No. 1349 of 2006 with C.A.N. No. 3857 of 2006. Separate applications for injunction and for stay have also been filed in connection with the aforesaid appeals. Both the appeals and the applications filed in connection with the said appeals were heard analogously.

6. The defendant No. 1/appellant in F.M.A.T. No. 542 of 2006 is the brother of the plaintiff. It has been submitted on behalf of the defendant No. 1 that the tenanted suit property was all along in joint use and occupation of both the defendant No. 1 and the plaintiff upto and including the month of August, 2004 and thereafter at the

request of the defendant No. 1 the wife, namely, the defendant No. 4 herein, was substituted in place and stead of the said defendant No. 1 and accordingly, the plaintiff and the said wife of the defendant No. 1 became the joint tenant in respect of the suit premises. The appellant/defendant No. 1 also claimed that the landlords granted rent receipts in respect of the said joint tenancy in the joint names of the plaintiff and the defendant No. 4 from the month of September, 2004.

7. The plaintiff, however, strongly denied and disputed the aforesaid claim of the appellant/defendant No. 1.

8. Mr. S. P. Roy Chowdhury, learned senior Counsel representing the plaintiff/respondents raised a preliminary objection regarding maintainability of the appeal at the instance of the defendant No. 1 as according to Mr. Chowdhury, the said deendant No. 1 cannot claim himself as the affrieved party. Referring to the affidavit-in-opposition of the said defendant No. 1 in connection with the application filed by the plaintiff under Order 39 Rules 1 and 2 Mr. Roy Chowdhury submits that the said defendant No. 1 specifically stated in the said affidavit that he is in no way concerned with the tenancy in question.

9. Mr. Roy Chowdhury also referred to the impugned order of the Court below wherein the learned Judge specifically recorded the aforesaid stand of the defendant No. 1. the relevant portion from the impugned order dated 16th January, 2006 passed by the learned Judge of the Court below is quoted hereunder:

According to the defendant No. 1, at present he has no interest in the suit premises since his wife Sweta Sinha became joint tenants in respect of the suit premises with the plaintiff in his place and as such the plaintiff has got no cause of action against the defendant No. 1 to file the suit as well as the petition for injunction against him.

10. Mr. S. Dasgupta, learned senior Counsel representing the appellant herein, however, submits that the written objections filed before the Court below cannot be accepted or relied upon in part and the same should be considered as a whole. According to Mr. Dasgupta, tenancy was never surrendered by the defendant No. 1 to the landlords in favour of the plaintiff and the plaintiff was never accepted as

the sole tenant in respect of the suit premises. Mr. Dasgupta further submits that the said defendant No. 1 took the aforesaid stand in respect of the tenancy in view of the fact that his wife has been inducted as one of the joint tenants in his place and after the said induction of his wife as one of the joint tenants rent receipts have also been issued by the concerned landlords in the joint names of the plaintiff and the wife of the said defendant No. 1 namely, the defendant No. 4.

11. It has been submitted by Mr. Dasgupta that the learned Judge of the Court below arrived at a wrong conclusion upon placing reliance on the scattered statements and/or observations of the said defendant No. 1 mentioned in the written objections filed before the Court below although the said learned Judge should have considered the said written objections filed by the defendant No. 1 as a whole and not in part in order to appreciate the actual stand taken by the said defendant No. 1.

12. Mr. Dasgupta referred to and relied upon the following decisions of the Supreme Court as well as of this Court in support of his aforesaid submissions:

1] : (2004)7SCC478 [Metro Marine and Anr. v. Bonus Watch Co. (P) Ltd. and Ors.]

2] AIR 1955 Cal. 464 [Rameswar Agarwalla v. State and Anr.]

3] Vol XLII Indian Appeals 103 [Motabhoy Mulla Essabhoy v. Mulji Haridas]

4] AIR 1966 SC 605 [Ambika Prasad Thakur and Ors. etc. v. Ram Ekbal Rai (dead) By His Legal Representatives and Ors.]

5] : [1988]1SCR662 [Kendrya Karamchari Sahkari Grih Nirman Samiti Ltd. v. New Okhla Industrial Development Authority]

6] Vol LXVI Indian Appeals 210 [Monghibai v. Cooverji Umersey]

7] : [1951]2SCR153 [Badri Narain Jha and Ors. v. Rameshwar Dayal Singh and Ors.]

8] : AIR1985 Cal248 [Indian Cable Co. Ltd. v. Sumitra Chakraborty]

9] 66 CWN 441 [Tiloke Chand Chopra v. Ramdhandas Beharilal and Anr.]

10] : [1957]1SCR488 [Garikapati Veeraya v. N. Subbiah Choudhry and Ors.]

13. It has been argued on behalf of the plaintiff that in view of the family arrangement the plaintiff alone has been carrying on business in the suit premises and had been paying rent though rent receipts were being issued by the defendant Nos. 2 and 3 in the joint names of the plaintiff and defendant No. 1.

14. Mr. Roy Chowdhury, learned Counsel representing the plaintiff also submits that the plaintiff and his brothers including the defendant No. 1 were involved in various litigations over the properties left by their deceased father and ultimately the said disputes were amicably settled out of Court and in terms of the amicable settlement entered between the parties, the defendant No. 1 agreed to surrender his right of tenancy in respect of the suit premises and accordingly the said defendant No. 1 issued a letter dated 1st January, 2002 surrendering his right, and interest as tenant in respect of the suit premises in favour of the plaintiff. The defendant No. 1 denied to have written the said letter dated 1st January, 2002 surrendering his right of tenancy in respect of the suit premises in favour of the plaintiff and it was further contended on behalf of the said defendant No. 1 that the alleged letter was never produced before the landlord by the plaintiff.

15. The landlords, namely, the defendant Nos. 2 and 3 also opposed the claim of the plaintiff and submits that the said letter dated 1st January, 2002 allegedly written by the defendant No. 1 surrendering his tenancy right in favour of the plaintiff was never received by the landlords. Mr. Banerjee, learned Counsel of the landlords submits that at the request of the defendant No. 1 and with the knowledge and consent of the plaintiff, the name of the defendant No. 4 was substituted in place of the defendant No. 1 in the rent receipts which were granted by the said landlords on and from September, 2004.

16. According to the landlord, plaintiff was never accepted as the sole tenant in respect of the suit premises. Mr. Banerjee, learned Counsel of the landlords further submits that the plaintiff herein cannot be accepted as the sole tenant in respect of the suit premises in absence of the consent of the landlord and alleged

surrender either express or implied of the tenancy right by the other tenant with whom the plaintiff was jointly occupying and enjoying the suit premises.

17. Mr. Dasgupta, learned Senior Counsel representing the defendant No. 1 also submits that the joint tenancy in respect of the suit premises confirms the joint possession of the same by the plaintiff and the defendant No. 1 upto the month of August, 2004 and thereafter instead of defendant No. 1, his wife, defendant No. 4 was in possession jointly with the plaintiff and there cannot be any implied surrender of tenancy under any circumstances.

18. Mr. Roy Chowdhury, learned Counsel of the plaintiff, however, submits that the inter se arrangements amongst the family members have been admitted in view of the terms of settlement executed and signed by the concerned parties including the defendant No. 1 herein. Mr. Roy Chowdhury further submits that in view of the family settlements and/or arrangements, plaintiff all through paid the rent in respect of the suit premises and the receipts were granted in favour of the joint tenancy. Referring to the affidavits filed by others family members in the Court below, Mr. Roy Chowdhury submits that the claims of the plaintiff in respect of the suit property have been supported and accepted by the other family members. Referring to the objection filed by the defendant No. 1 in the Court below Mr. Roy Chowdhury also submits that rents in respect of the suit premises were all along paid exclusively by the plaintiff although the rent receipts were never granted in the name of the plaintiff as the sole tenant.

19. In order to explain the principles of temporary injunction Mr. Roy Chowdhury referred to and relied upon a decision of the High Court in the case of Dalpat Kumar and Anr. v. Prahlad Singh and Ors. reported in : AIR 1993 SC276 .

20. Mr. Banerjee, learned Advocate representing the landlords, namely, the defendant Nos. 2 and 3 also submits that entitlement of the exclusive tenancy should be proved and/or established after recording of evidence and not at this stage. Mr. Banerjee further submits that by the impugned order learned Judge of the Court below virtually asked the landlord to change the tenancy by issuing the direction to the landlord to issue rent receipts in the joint names of the plaintiff and the defendant No. 1 although after August, 2004, rent receipts have been granted

in the joint names of the plaintiff and the defendant No. 4.

21. Mr. Banerjee referred to and relied upon a decision of the Supreme Court in the case of T. K. Lathika v. Seth Karsandas Jamnadas reported in : AIR 1999 SC3335 , Paragraphs 11 & 12. Referring to the aforesaid decision Mr. Banerjee submits that there cannot be an implied surrender of tenancy which has been claimed by the plaintiff.

22. Mr. Chatterjee appearing on behalf of the defendant No. 4 urged before this Court that the said defendant No. 4 as the joint tenant is not only paying the rent regularly to the landlords but also is in possession of the said suit property.

23. Having heard the learned Counsel of the respective parties and considering the pleadings of the contesting parties before this Court and also in the Court below and further considering the materials on record available before this Court at this stage, we are of the opinion that rights, and interests of the parties in respect of the suit premises should be decided exclusively after full-fledged trial. The claims of the plaintiff cannot be decided even, prima facie, on the basis of the materials available on record at this stage and unless evidences are adduced by the parties, such issues involved in this case cannot be finally decided.

24. In the guise of the tentative findings, learned Judge of the Court below has virtually expressed his final opinion with regard to the possession in respect of the suit premises as well as the tenancy in question which cannot be sustained.

25. In the aforesaid circumstances, the impugned order of the Court below dated 16th January, 2006 should be suitably modified. The learned Judge of the trial Court is directed to expedite the hearing of the suit and the said suit should be decided by 30th November, 2006, positively.

26. Pending disposal of the suit, we modify the impugned order to the extent that the parties herein will maintain status quo in respect of the possession, mode and manner of payment of rent and nature of the rent receipts in respect of the suit property as on the date of filing of the suit. Let it also be recorded that we have not expressed any opinion with regard to the issues involved in the suit and all

questions are left open for adjudication by the Court below.

27. With the aforesaid directions, both the appeals and the connected applications stand disposed of. There will be, however, no order as to costs.

28. Urgent xerox certified copy of this order, if applied for, be made available to the learned Advocates of the parties on usual undertaking.

Kalidas Mukherjee, J.

29. I agree.

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