

Mrityunjoy Seal and ors. Vs. M/S. Delite Builders (P) Ltd.

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Court : Kolkata

Decided On : Aug-04-2010

Judge : Maharaj Sinha, J.

Appeal No. : CS No. 124 of 2008

Appellant : Mrityunjoy Seal and ors.

Respondent : M/S. Delite Builders (P) Ltd.

Advocate for Def. : Ms. Moumita Chatterjee, Adv.

Advocate for Pet/Ap. : Mr. Sudip Ghosh, Adv.

Judgement :

The plaintiffs instituted the suit on 13 May 2008 claiming the following relief:

(a) A decree for recovery of khas possession of the suit premises from the defendant of the lease hold portion of the suit property at 107/1, Park Street, Kolkata 700 016 under P.S. Park Street, as mentioned in the Schedule below by evicting the defendant and/or men, agents, assigns, representatives and sub-lessees as the case may be from the suit property;

(b) A decree for money for a sum of Rs.5,59,19,874/- being the outstanding arrear rates and taxes of the Kolkata Municipal Corporation, along with further claim of the Kolkata Municipal Corporation, which will accrue on such arrear taxes;

(c) A decree for damages calculated @ Rs.10,000/- per day from the date of service of notice of termination of lease till the date of recovery of khas possession of the entire suit property under the defendant company;

(d) Receiver;

(e) Attachment before judgment;

(f) Injunctions;

(g) Costs and/or incidentals; After institution of the suit, although the writ of summons was duly served, the defendant did not enter appearance to contest the suit.

The learned advocate on record of the plaintiff has obtained a certificate from the department signed by the Deputy Registrar, Original Side of this Court to the effect that the defendant, M/s. Delete Builders Private Limited has not entered appearance either in person or by advocate up to this 20th day of July, 2010.

Let the certificate be kept on record. Although, in my opinion, the plaintiffs are entitled to obtain the relief as claimed by the plaintiffs under the provisions of the Code of Civil Procedure as the defendant has not contested the suit, one of the plaintiffs, namely Mrityunjoy Seal has given evidence in Court today in support of the plaintiffs case made out in the plaint and the witness has also proved all the documents on which the cause of action or the causes of action of the plaintiffs are based.

The documents which have been proved by the plaintiffs witness today in his evidence are mentioned below:

1. The Deed of Lease dated 17.05.1985 Annexure A1.

2. The demand notice dated 24.1.2008 issued by Kolkata Municipal Corporation Annexure B.

3. The letter of intimation dated 12.03.2008 issued by the Kolkata Municipal Corporation and the letter of termination of Lease issued on behalf of the plaintiffs

dated 29.03.2008 Annexure C.

4. Two subsequent notices of the Kolkata Municipal Corporation demanding other taxes, namely in respect of property and supply of water to the premises in question.

I have considered the case of the plaintiffs made out in the plaint and the evidence on record of the plaintiffs witness given in Court today. I have also considered the documents proved by the plaintiffs witness. Having considered the case of the plaintiffs in the plaint on merits and the proved documents in support of the plaintiffs case, I am of the opinion that the plaintiffs are entitled to the relief as claimed in the plaint.

Thus there will be a decree as claimed in claim (a) of the plaint. There will also be a decree as claimed in claim (b) of the plaint. There will also be a decree for costs assessed at Rs. 50,000/- and the decree for costs will be over and above the court fees that the plaintiff paid at the time of institution of the suit.

Let the decree be drawn up expeditiously.

Urgent certified copy of this judgment and decree, if applied for, shall be made available to the parties upon compliance with all requisite formalities.

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