

Dr. Saroj Kumar Das

Vs

Arjun Prasad Jogani

Civil Appeal No. 8295 of 1983

(Sabyasachi Mukharji, G. L. Oza JJ)

01.09.1987

JUDGMENT

OZA, J. -

1. This is an appeal preferred by the appellant after getting leave from this Court against the judgment and decree passed by the High Court of Calcutta wherein the High Court allowed the appeal of the respondent-tenant and set aside the decree for eviction granted by the courts below in favour of the appellant.
2. The appellant landlord filed a suit for recovery of possession of the second floor rear portion of the premises 248, C. I. T. Road, Calcutta which was let out to the respondent-defendant as a monthly tenant on the ground that the landlord reasonably required the suit premises for his own occupation and had no other reasonably suitable accommodation in the town. The decree was also sought on other grounds which is not relevant for the purpose of this appeal.
3. Both the courts the trial court and the first appellate court found that the suit premises were reasonably required for the personal use and occupation of the appellant-landlord and his family which consisted of his wife, one son, one daughter and therefore the decree was granted in accordance with West Bengal Premises Tenancy Act, 1956.
4. What was urged by the appellant-plaintiff in support of genuine requirement was that he is a medical practitioner and was appointed as a Physician in Ghana (Africa in 1964) where he has been residing temporarily. In Ghana after some time his family could not stay and his wife and children have come back and are residing in Calcutta. His service in Ghana was terminable by giving a notice of 3 months and the plaintiff-landlord desires to come back to India and settle down in medical practice in this locality where the house is situated. It was also alleged in the plaint that he could not come back as the accommodation was not available, and that after taking retirement from Ghana they will settle down in Calcutta in this house in dispute. The requirement of the family also was alleged on the ground that the son and daughter of the appellant have also grown and they also need rooms for their use. It was also alleged that apart from the residential portion he also needs one room for his medical practice.
5. The trial court and the first appellate court accepting this contention of the plaintiff-appellant granted decree for eviction.
6. It appears that during the pendency of this litigation the present appellant also had entered into an agreement with some construction company for a flat in South Calcutta and ultimately in October

1978 he got possession of that flat. The first appellate court i.e. the Court of Additional District Judge maintained the decree in favour of the appellant by its judgment dated September 29, 1978 and against this judgment the respondent-tenant preferred a second appeal before the High Court. During the pendency of this appeal in the High Court the respondent-tenant submitted an application for consideration of subsequent events i.e. the acquisition of the flat in South Calcutta suggesting that the need of the appellant-landlord has been satisfied and therefore the decree of eviction should be set aside. The High Court permitted this application for amendment and permitted parties to lead additional evidence and in consequence the appellant-landlord also was examined once again and it is not disputed that apart from his statement which was recorded earlier additional evidence was recorded and it is on this evidence that the High Court came to the conclusion that as now alternative accommodation i.e. a flat in South Calcutta which was acquired in 1978 is available the decree of eviction was set aside and it is against this judgment of the High Court that the present appeal has been preferred.

7. Learned counsel appearing for the appellant contended that while in service in Ghana since 1975 the appellant wanted to come back but could not because the premises were not available and therefore the suit was filed. During this period out of some savings from the earnings that the appellant made in Ghana, he booked a flat and ultimately a flat was practical ready in 1978. It was contended that after the judgment of the lower appellate court where the decree was confirmed the appellant felt secured that he will now get the premises in suit where he wanted to settle down in practice and where in fact in part of the premises his family was staying and as the appellant had no sufficient funds he let out this flat in South Calcutta and it is the tenant who invested some money and got it completed. According to learned counsel the alternative accommodation should be reasonably suitable and available and it is only then it could be said that as the alternative accommodation which is reasonably suitable is available that the decree for eviction could be refused when the two courts - the court of facts - have found it in favour of the appellant that he required the premises in question for his bona fide use.

8. Learned counsel contended that admittedly the flat which was allotted was a flat on the thirteenth floor in South Calcutta which is a posh locality. For the appellant who is an MBBS and who had been living and practicing in C. I. T. Road in the suit premises for him at this stage in life it was not possible to start practice in South Calcutta on thirteenth floor. It was also contended that the wife of the appellant is also working as a teacher in one of the schools in the locality and it would not be convenient and possible for her to live in South Calcutta and come to this area for discharge of her duties. According to learned counsel although the flat was acquired but it was not at all suitable and therefore the High Court was not right on this basis to interfere with the concurrent findings of facts arrived at by the courts below. Learned counsel by reference to certain decision of this Court contended that mere fact that the landlord had purchased or acquired an accommodation is not sufficient to negative the genuine requirements but it has further to be found that the premises so acquired are reasonably convenient and in this regard it was contended that the learned judge of the High Court omitted to consider these circumstances. It was also contended that the learned judge omitted to consider the positive evidence and drew inference from the fact that the flat was acquired on the basis of agreement that it is being acquired for residential purposes and further averment made to indicate that the appellant-landlord intended to start some laboratory in the flat in South Calcutta.

9. Learned counsel for the respondent contended that after the addition facts came to the knowledge of the respondent-tenant it was pleaded and addition evidence produced. The respondent produced evidence that in fact all other purchasers of the flats got possession of flats in 1977 whereas the

present appellant got it in October 1978 when the judgment in lower appellate court was pronounced on September 29, 1978. It was contended that the present appellant delayed taking of possession just to wait till the decree for eviction was affirmed by the appellate court. He further contended that there is no evidence to indicate that this alternative accommodation acquired is not reasonably suitable. According to the learned counsel South Calcutta where this flat is situated in one of the posh localities in Calcutta and after having acquired a flat almost of the same area which is in possession of the respondent in the suit premises, the High Court was right in coming to the conclusion that the alternative accommodation satisfies the need of the landlord-appellant.

10. Learned counsel further contended that the fact that the appellant's wife is in service and for her it will not be convenient if they stay in South Calcutta and the fact that for practice of the appellant it will not be convenient are facts which have not been stated by the appellant. When after the amendment fresh evidence was recorded and the appellant was given an opportunity and he in fact examined himself and gave additional evidence but only fact that he stated in the additional evidence is that the flat is not suitable for his purpose. It was therefore contended that the High Court was right in coming to the conclusion that the need of the appellant-landlord is satisfied. Learned counsel also referred to some decisions for their above stated proposition.

11. So far as the law on the question is concerned it is well settled that the alternative accommodation must be reasonably suitable and if it is not so then mere availability of alternative accommodation will not be a ground to refuse a decree for eviction if otherwise the courts are satisfied about the genuine requirement of the landlord and to this counsel for both the parties also agreed but the main contention was that on the facts appearing in evidence in this case whether the inference could be drawn that the flat on the thirteenth floor in South Calcutta was reasonably suitable to satisfy the need of the appellant-landlord. As regards evidence it is no doubt true that after these facts were pleaded in the statement of the appellant the only statement in regard to suitability is that "the flat is not suitable for my purpose". It is not disputed that this is a flat on the thirteenth floor in South Calcutta and learned counsel for parties conceded that from C. I. T. Road where premises in question are situated this place where the flat is situated in South Calcutta will be a distant place.

12. Although learned counsel for the respondent emphasised that the above quoted statement is the only statement made by the appellant in additional evidence, it is true that this is the only statement when he was examined afresh after these facts were brought in pleading by way of additional evidence. But it could not be doubted that whatever was in evidence earlier could not be brushed aside and it is also clear that on the basis of evidence which was recorded earlier the two courts of facts came to the conclusion that plaintiff has established his genuine requirement.

13. Before these facts were introduced by amendment it was clearly stated that the appellant wanted to start his practice after taking retirement from his service in Ghana. It was also stated that he intended to start private practice as a medical practitioner in Calcutta. It is also clear that before going to Ghana the appellant was living in the said premises and was practicing. It had also come in evidence that his wife was serving in some nearby institution. On the basis his genuine requirement was held to have been proved and the learned judge of the High Court also accepted this concurrent finding of fact. The only consideration which weighed with the High Court was the acquisition of this flat on the thirteenth floor in South Calcutta.

14. It could not be disputed that if the medical practitioner is an old resident of a particular locality and had practiced in that locality it will not be easy for him at a stage in life after retirement to start

practice afresh in some new area and that too on thirteenth floor in a modern flat. What has weighed with the learned judge of the High Court was the statement made by the appellant that he intended to start a laboratory after retirement in the flat which he acquired and the other fact which weighed was the agreement which stated that the flat was required for residence. Apparently not much could be drawn from these facts as starting a laboratory admittedly is much different from starting private practice as a medical practitioner and signing an agreement which talks of residence is nothing but a mere formality if he at all intended to acquire a flat.

15. It is clear that there is nothing else in evidence on the basis of which it could be said that this flat is reasonably suitable. Learned counsel for the respondent contended that the appellant said nothing else except the statement that this flat is not suitable for his purpose but it is very significant that this statement was made by the appellant when he was examined additionally after the pleadings were amended. This statement is not challenged by the way of cross-examination at all and it clearly states that for the purpose for which the appellant needs the premises and he sought eviction this flat is not at all suitable for the purpose which also is apparent from the situation and the circumstances discussed above.

16. Both the learned counsel emphasised the date of the judgment of the lower appellate court and the date of acquisition of the flat as it is apparent that the judgment of the lower appellate court was delivered on September 29, 1978 and the possession of the flat was given on October 5, 1978. On the one hand the counsel for the appellant contended that the appellate court having affirmed the decree of eviction the appellant knew that now there is no problem and this additional flat which he acquired out of the saving of his service in Ghana he could utilise to have some earning which may help the family at this stage in life and therefore he let it out so that he may earn something out of it whereas learned counsel for the respondent contended that all others got the possession of the flat in 1977 but this appellant waited till he secured a decree of eviction affirmed by the appellate court and it is only then he took possession of the flat so that a reasonable explanation is possible for having let it out because the decree for eviction was already passed. The circumstances discussed above and the suitability and the requirement of the appellant the age and nature of practice possible for a retired doctor with only an MBBS degree establish that the premises in question are suitable and so far as this is concerned there is no dispute but in the context of facts and circumstances discussed above it could not be held that flat in South Calcutta on thirteenth floor could be said to be a reasonable suitable accommodation for the requirement of the appellant-landlord and in the context of these facts and circumstances not much could be made out from the two dates i.e. the judgment of the lower appellate court and the date on which the appellant got possession of the flat.

17. It is therefore clear that the learned judge of the High Court was not justified in second appeal under Section 100 to interfere with the finding of fact unless there were facts established to hold that this alternative accommodation acquired after the decree of eviction in favour of the appellant was reasonably suitable.

18. Learned judge of the High Court only drew inference from the fact that the appellant wanted to start a laboratory and the fact that he signed the agreement for acquiring the flat which was meant for residence and in drawing inferences from these two facts, the learned judge omitted to consider the positive evidence and a positive statement not challenged that this flat was not for the purpose of the appellant-landlord. The judgment of the High Court cannot be maintained. The appeal is therefore allowed. The judgment of the High Court is set aside and the decree of eviction passed by the two courts below is maintained. In the circumstances of the case the decree for eviction shall not be executed against the respondent up to March 31, 1988 on respondent filing an undertaking in the

usual form and also paying rent and mense profits up-to-date within four week. If respondent fails to deliver possession on or before March 31, 1988 the appellant shall be entitled to execute the decree for eviction. In the circumstances of the case no order as to costs.

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