

SUPREME COURT OF INDIA

Anamika Roy

Vs.

Jatindra Chowrasiya

C.A.No.4539 of 2013

(P.Sathasivam and M.Y.Eqbal JJ.)

09.05.2013

JUDGMENT

M.Y. EQBAL, J.:

1. Leave granted.

2. Aggrieved by the judgment dated 10.2.2011 passed by learned Single Judge of the Calcutta High Court in S.A. No.342 of 2007, whereby the second appeal filed by the defendant-respondents was allowed, the judgments and decrees of the courts below were set aside and the matter was remitted to the trial court after expressing the view that considering the provisions of Section 13(4) of the West Bengal Premises Tenancy Act, 1956 it is a duty cast upon the Court to consider whether the requirement of the plaintiff could be satisfied by evicting the defendant from a part only of the suit property, plaintiff-appellant has preferred this appeal by special leave under Article 136 of the Constitution of India. The trial court and the first appellate court had passed decree for eviction against the defendant/tenant in respect of the entire suit premises in question.

3. The litigation between the parties started on the filing of Title Suit No.66 of 1993 by the plaintiff in the Court of 4th Civil Judge (Senior Division) at Alipore, District 24 Parganas (South) for eviction and recovery of khas possession of the suit premises against the original defendant/tenant – Lalji Chowrasia (predecessor of the respondents) and for mesne profits and compensation for damages to the suit property. The suit property happens to be a portion of the ground floor flat consisting of three bed rooms with attached three bathrooms with modern fittings, sanitary privy, one store room, one kitchen, one dining room and one covered

verandah in the front portion with grill in the premises No.128/15, Hazra Road, Kolkata.

4. The case of the plaintiff in the above mentioned suit, inter alia, is that she is the owner and landlady of suit property in terms of a decree passed on 17.3.1988 in Title Suit No.55 of 1986. She requires the suit property in occupation of the defendant for her own use and occupation. She alleges that she is a divorcee and is occupying one room on the second floor of the three-storeyed building where her brother with his family is residing. Entire first floor of the building has been in occupation of a Bank (State Bank of India) as a tenant. The plaintiff alleges that she has been permitted by her brother to stay in one room, but since she is having bitter relationship with her brother's wife, she wants to reside in the suit property. Her further case is that she does not have any source of income except a paltry amount of Rs.500/- which she gets as her share in the rent collected from the tenant-bank. According to her, if she rearranges the suit premises and makes provision for one room flat, she will be able to augment a minimum income of Rs.2500/- per month by letting or leasing it out. She alleges that the original defendant was guilty of causing damage to the suit premises.

5. The suit was contested by the defendant by filing written statement contending inter alia that there was no relationship of landlord and tenant between the parties to the suit. Defendant further alleged that although the plaintiff might have realized rent from the defendant and the defendant might have paid/deposited monthly rent in the name of the plaintiff, yet there could not be any relationship of landlord and tenant in between the plaintiff and the defendant. Although defendant did not dispute the fact that plaintiff has been residing with her brother and his family on the second floor of the suit holding, but he denied that the plaintiff requires the suit premises for her own use and occupation. According to the defendant, her present accommodation is suitable and her statement that she had no alternative suitable accommodation elsewhere is not correct. The defendant also disputed the plaintiff's claim of ownership of the suit premises on the basis of compromise decree passed in the said Title Suit No.55 of 1986. It is further contended that the alleged decree is not binding upon the defendant. It appears from the judgments of the courts below that after the original defendant died, the respondents herein were substituted in place of the original defendant. Defendant No.5 also filed a separate written statement denying pleas of the plaintiff.

6. The trial court by its judgment dated 30.7.2002 decreed the said suit and directed the defendants to hand over the vacant possession of the suit premises to the plaintiff within a stipulated period of time. The trial court found that the defendant

had admitted in evidence that the plaintiff is the landlady of the defendant and that the suit premises is the portion of the ground floor and the remaining portion of the ground floor is in possession of the plaintiff's brother's son. The trial court further found that admittedly the original defendant was inducted in the suit premises as a tenant by the father of the plaintiff and the defendants have been substituted on the death of the original defendant. However, the trial court did not find any cogent evidence with regard to the alleged damage to the suit property. The trial court found that the present accommodation of the plaintiff on the second floor is not suitable where she has got only one room as per the Will of her father and she has got no separate kitchen and bath-cum-privy for herself. Finding the said Title Suit No.55 of 1986 being suit for declaration and not a partition suit, the trial court found that the decree passed in the suit was a compromise decree, from which it is clear that the plaintiff has got title in respect of the suit premises and from Ex.4 – the probate of the Will executed by plaintiff's father it is clear that the plaintiff has got life-estate in one room on the second floor and 15% share of rent from the said bank-tenant on the first floor. Admitting the compromise decree, the trial court concluded that the plaintiff is the owner of the suit premises and the present accommodation of the plaintiff is not suitable and the suit premises is reasonably and in good faith required by the plaintiff for own use and occupation and for augmentation of her income from the suit premises and there cannot be any partial eviction as such.

7. Challenging the judgment and decree of the trial court, the defendants filed Title Appeal No.280 of 2002, which was placed before the Additional District and Sessions Judge, Fast Track Court-II, Alipore, who also opined that a complete flat is required for the purpose of the residence of the plaintiff and the plaintiff has bona fide requirement of the suit premises for her own use and occupation. Dismissing the title appeal on 28.2.2005, the first appellate court took note of the fact that the trial court had already decided that there was a relationship of landlord and tenant between the parties and held that the trial court had rightly decreed the suit. The lower appellate court also found that there is bitter relationship between the plaintiff and her brother's wife and it is not expected that the plaintiff being a divorcee will reside in the house of her brother at the mercy of her brother's wife.

8. The defendants (contesting Respondent Nos.1 and 2 herein) challenged aforesaid judgment and decree of the lower appellate court before the High Court by way of second appeal. It appears that the second appeal was admitted by the High Court on the following substantial questions of law:

(a) Whether the learned Courts below committed substantial error of law in not considering the question of partial eviction of the appellants from the suit property?

(b) Whether the learned Court of appeal below committed substantial error of law in refusing to consider the question of partial eviction on the ground that no such prayer was made by the defendants by totally overlooking the fact that in view of the provision contained in Section 13(4) of the West Bengal Premises Tenancy Act, a duty is cast upon the Court to consider whether the requirement of the plaintiff can be satisfied by evicting the tenants from a part of the property?

9. On the aforesaid substantial questions of law, it was contended by the defendants (appellants in second appeal) in the High Court that the courts below did not consider question of partial eviction and it is the plaintiff's case to let out a part of the suit property for augmenting her income. It is the case of the defendant that there is a vacant flat in the ground floor of the suit holding which was allowed to the brother of the plaintiff and the same can be provided to the plaintiff for residence. There is no dispute that in the instant case no local inspection was held in respect of the suit premises and/or suit building itself.

10. Defendants referred to a decision reported in AIR 1978 SC 413 (Rahman Jeo Wangnoo vs. Ram Chand and others) in support of their contention submitting that it is mandatory for the Court to consider the question of partial eviction as contemplated under the West Bengal Premises Tenancy Act, 1956. Reference was also made to this Court's judgment in Krishna Murari Prasad vs. Mitar Singh, 1993 Supp (1) SCC 439, in which this Court has observed that the landlord's requirement having been found proved, the Court had to consider the matter further according to the relevant provision of law and the order for eviction from the entire premises could be made only if a decree for partial eviction in the manner provided could not substantially satisfy the landlord's requirement. Plaintiff (respondent in second appeal), on the other hand, submitted that the question of local inspection in the present case does not arise as the present occupation of the plaintiff is precarious and that is enough to prove her reasonable requirement for own use and occupation and there can be no partial eviction in the present case.

11. The learned Single Judge of the High Court was not inclined to upset the concurrent finding with regard to the right of the plaintiff in respect of the suit premises as found by the courts below. From the materials on record, it appeared to the High Court that the plaintiff proved her bona fide requirement. However, the

High Court is of the view that the decisions reported in AIR 1978 SC 413 (supra) and 1993 (Supp) (1) SCC 439 (supra) supported the case of the defendants in so far as their stand on the question of partial eviction is concerned. Without disturbing the finding of the courts below with regard to the relationship of landlord and tenant between the parties to the suit and the plaintiff's ownership in respect of the suit property, the High Court allowed the second appeal filed by the defendants and made it clear that the inquiry, that will thereafter be done by the courts below, shall be limited to the question whether or not the eviction of the defendants from a part only of the suit premises can substantially satisfy the plaintiff's need. Liberty has also been given by the High Court to the parties to the proceedings to adduce appropriate evidence before the trial court and also to make an appropriate application for appointment of a Local Commissioner for holding a local inspection in respect of the suit premises and/or the suit holding.

12. The relevant portion of the findings recorded by the High Court is extracted herein below:-

“In the facts of the present case no Commissioner was appointed to hold a local inspection and consequently no local inspection report is on record. The description of the suit property appears to be a ground floor flat consisting of three bedrooms with attached three bathrooms with modern fittings, sanitary privy, one store, one kitchen, one dining room, one covered verandah in the front portion with grill in the suit holding, that is, premises No.128/15, Hazra Road: P.S. Bhowanipore Kolkata 700026. The learned Lower Appellate Court has found that the plaintiff would require one privy, one kitchen, one bathroom and one dinning space that is a complete flat for the purpose of her residence. As it appears to this Court that none of the Courts below has examined the question of partial eviction, the matter should be remitted back to the learned Trial court since this Court is of the view that considering the said provisions of Section 13(4) of the said Act of 1956 it is a duty cast upon the Court to consider whether the requirement of the plaintiff could be satisfied by evicting the defendant from a part only of the suit property. The decisions reported at AIR 1978 Supreme Court 413 (supra) and 1993 SUPP(1) SCC 439 (supra) supported the case of the appellants in so far as their stand on the question of partial eviction is concerned. In the present case, the plaintiff's reasonable requirement has been found to be proved by both the learned Courts below and, accordingly, the inquiry is now required to be made only with regard to the question of partial eviction. This Court is also not disturbing the finding of the learned Courts below with regard to the relationship of landlord and tenant in

between the parties to the suit and the plaintiff's ownership in respect of the suit property.”

13. We have heard Mr. R.K. Gupta, learned counsel appearing for the appellant and Mr. Shymal Chakravarti, learned counsel appearing for the respondent.

14. The question that falls for consideration is as to whether the High Court is justified in holding that both the trial court and the appellate court have not examined the question of partial eviction.

15. Both the courts have recorded the concurrent finding of fact that the appellant is a divorcee old lady and is occupying one room on second floor of three-storeyed building owned by her brother. The first appellate court has taken note of the fact that there is a bitter relationship between the plaintiff and her brother's wife and it is not expected that the plaintiff being a divorcee resides in the house of her brother at the mercy of her brother's wife.

16. The trial court while deciding the issue as to whether the suit premises is reasonably required by the plaintiff or not, has gone into the details of the difficulties, which the old landlady is facing. While discussing the question of partial eviction, the trial court referred to a decision reported as 2001 (3) CHN 244 (Jagat Bandhu Batabayal vs. Jiban Krishna Roy) for the proposition that the question of partial eviction was rightly not considered in that case by the appellate court as the tenant never raised such issue before the appellate court nor any material was available before the learned Judge to form an opinion that the requirement of plaintiff can be substantially satisfied by ejecting the tenant from a portion of the suit premises. In the concluding portion of the judgment, the trial court observed:-

“ Considering the evidence adduced by both parties and the principles of law discussed above, I find that the plaintiff is the owner of the suit premises, the compromise decree in T.S. No.55/86 is admissible in evidence, the present accommodation of the plaintiff is not suitable and the suit premises is required for the reasonable requirement of the plaintiff for own use and occupation and for augmentation of her income from the suit premises and there cannot be any partial eviction and as such all these issues be disposed of in favour of the plaintiff.”

17. Similarly, in the appeal filed by the respondent-tenant, the appellate court has also gone into the question as to the reasonable requirement of the landlady and

held that a complete flat is required for the purpose of residence of the plaintiff. The appellate court held that:- “It is not expected that the plaintiff being divorcee will reside in the house of her brother and at mercy of her brother and brother’s wife.

In order to reside peacefully one privy, one kitchen, one bath room and one dining space in other words complete flat is required for the purpose of the residence of the plaintiff, so in the circumstances I hold that the plaintiff has bonafide reasonable requirement of the suit premises for her own use and occupation.”

18. Having regard to the finding recorded both by the trial court and the appellate court that the entire flat is required by the plaintiff landlady for her use and occupation, the High Court has committed grave error in formulating a question mentioned hereinabove and holding that the question of partial eviction has to be considered since it is a mandatory requirement of law. The High Court has further committed serious error of law in setting aside the judgment and decree of the trial court and that of the appellate court. Indisputably, the appellant-landlady has been residing in one room at the mercy of her brother and she needs the suit premises on the ground of her personal requirement. The suit premises is a flat consisting of three bedrooms with bathroom, one store room, one kitchen and one dining room. The suit was filed in the year 1993 and for the last 20 years the appellant-landlady, who is 58 years old, has been fighting with the tenant for getting her flat for her own use and occupation. Both the trial court and the appellate court have considered the question of partial eviction as noticed above and recorded the finding that the appellant-landlady needs the entire flat to live there comfortably. In our considered opinion, it would be too harsh if the flat which consists of three rooms is divided and a decree in respect of the portion of the flat is passed which will result in inconvenience for both the parties. Moreover, the defendant-respondent neither before the appellate court nor before the trial court or in the High Court has asserted that a portion of the premises will satisfy the requirement of the appellant.

19. There is no dispute with regard to the ratio laid down by this Court in *Rahman Jeo Wangnoo vs. Ram Chand and Others* (AIR 1978 SC 413) that the provision contained in the West Bengal Premises Tenancy Act, 1956 mandates the court to consider whether partial eviction as contemplated therein should be ordered or the entire building should be directed to be vacated. However, while deciding the issue of reasonable personal requirement of the landlord, if the trial court or the appellate court also considers the extent of requirement and records a finding that the entire

premises or part thereof satisfies the need of the landlord, then, in our considered opinion, there is sufficient compliance of the provision contained in the said Act.

20. Taking into consideration these facts and also having regard to the finding recorded both by the trial court and the appellate court after discussing the question of partial eviction, the substantial question of law framed by the High Court does not arise. Consequently, the impugned judgment passed by the High Court cannot be sustained in law.

21. For the reasons aforesaid, this appeal is allowed. The impugned judgment of the High court is set aside and the judgment and decree of the trial court is affirmed. However, there shall be no order as to costs.

22. The defendant-respondents are directed to vacate the suit premises within three months and hand over vacant possession of the same to the appellant.