

CIVIL APPEAL

Present: The Hon'ble Mr. Justice Tarun Kumar Gupta

Judgment on 03.09.2010

S.A. No.127 of 2008

Subodh Chandra Chatterjee

Versus

Asish Das

Points:

Onus, Handwriting expert-Onus to prove tenancy whether lies on the party who claims tenancy-When signature of a document is denied by the alleged signatory, whether burden is on the party to prove the document with the assistance of handwriting expert-First Appellate Court approached the case and appreciated the evidence from wrong angle whether be corrected in second appeal. - Code of Civil Procedure, 1908 -S.100- Evidence Act, 1872 -S 45

Facts:

Appellant was owner of the suit building and that respondent occupied the suit room as a licensee under him without payment of license fee. He filed the suit for eviction of licensee. The respondent/defendant contested the suit contending inter alia that he was a tenant in the suit room since December, 1974 at a rental of Rs.100/- per month together with electricity charges of Rs.10/- per month which has since been raised to Rs.20/- per month. Plaintiff collected rent from defendant without issuing rent receipts and that later on defendant started to deposit rent in the office of Rent Controller and the defendant was in exclusive possession of the suit room all along Defendant also alleged that he paid an advance of Rs.15,000/- to the plaintiff

and plaintiff granted receipt of said sum. Plaintiff denied the issuance of the said receipt and the receipt was also not marked as exhibit. Trial court decreed the suit but the appellate court reversed the decree.

Held:

It came out from the evidence of plaintiff (P.W.1) that the defendant's maternal uncle Dr. Rakhit used to occupy the said room as a licensee and that he surrendered the same on 01.12.1975. There is a document to that effect, in the regard and it was not challenged by the defendant. When plaintiff has claimed defendant as a licensee under him and there was no rent receipt, the onus was upon the defendant to establish that he was a tenant in respect of the suit room. Para 11

Defendant filed one alleged receipt showing advanced payment of rent to the tune of Rs.15,000/- for holding first floor of the suit building and that the advance to be adjusted at the rate of Rs.110/- per month with effect from 01.12.1974. Said document was vehemently opposed by the plaintiff by denying his signature thereupon. Under these circumstances it was the duty of the defendant /tenant to get the signature appearing on said receipt to be compared with admitted signature of plaintiff by an expert to establish his claim of tenancy in the suit room since 01.12.1974 on payment of said advanced rent of Rs.15,000/-. Unfortunately defendant did not take any step in this regard.

Para 12 and 13

In 1974 Rs.15,000/- is not a meager amount. It is really hard to believe that a person who was admittedly to be a student and non-earning member will be asked to pay Rs.15,000/- as advanced rent. It is also pertinent to note that if rent is alleged to be Rs.110/- per month inclusive of electric and other charges, then such advanced rent of Rs.15,000/- was meant for rents of more than 11 years. This also prima facie seems to be absurd. Again, it is also

hard to believe that a landlord who wants to induct a tenant in a suit room on condition of receiving rent without payment of rent receipt will issue a rent receipt acknowledging taking advance of Rs.15,000/- as advanced rent. It is also pertinent to note that though it came out from the evidence on record that the room vacated by Dr. D. Rakhit was allotted to the defendant, but there was no scope of giving said room to defendant on 01.12.1974 when admittedly Dr. Rakhit vacated said room on 01.12.1975. It is true that from the evidence on record it came out that defendant was in exclusive possession of the suit room, but said exclusive possession by itself cannot be conclusive proof of tenancy particularly in view of the circumstances as stated above. Corporation inspection book is not a public document. As such noting of defendant as a tenant therein does not by itself prove anything. It is true that there is no document to show that plaintiff preferred an appeal against said notings in the Corporation inspection book. This by itself does not prove tenancy of the defendant in the suit room. Para 13 and 14

Learned First Appellate Court approached the case and appreciated the evidence from wrong angle and that impugned judgment of First Appellate Court is not sustainable in law Para 17

Cases cited:

Jothika Basu versus lieutenant colonel A. N. Sharma , (1992) 1 CLJ 174

For the appellant: Mr. Arabindo Ghosh

Mr. Ishwar Chandra Sharma

For the respondent: Mr. Aniruddha Chatterjee

Mr. Rahul Karmakar

Tarun Kumar Gupta, J.:-

This second appeal is directed against judgment and decree dated 5th October, 2004 and 8th October, 2004 respectively passed by learned Additional District Judge, Sealdah, Fast Track Court –III in Title Appeal No.10 of 2001 reversing the judgment and decree dated 22nd December, 2000 passed by learned Civil Judge (Junior Division), Additional Court, Sealdah in Title Suit No.72 of 1991.

2. Appellant's / plaintiff's case, in short, is that he was owner of the suit building and that respondent / defendant occupied the suit room as a licensee under him without payment of license fee. As plaintiff reasonably required the suit room, he revoked the license of the defendant by sending a registered notice dated 23.06.1986 asking him to deliver 'khas' possession on 06.07.1986. The defendant refused to accept that notice and did not also vacate the suit room. Hence was the suit for eviction of licensee. It was further case of the appellant / plaintiff that the defendant illegally fixed up one door and accordingly the plaintiff prayed for a decree for damages and other reliefs.

3. The respondent/ defendant contested the said by filing written statement denying material allegations of the plaintiff and contending inter alia that he was a tenant in the suit room since December, 1974 at a rental of Rs.100/- per month together with electricity charges of Rs.10/- per month which has since been raised to Rs.20/- per month. The present accommodation of the plaintiff was sufficient and that the defendant did not fix any door. Plaintiff collected rent from defendant without issuing rent receipts and that later on defendant started to deposit rent in the office of Rent Controller and the defendant was in exclusive possession of the suit room all along and the suit was liable to be dismissed.

4. On the basis of the pleadings of the parties learned Trial Court framed several issues including one issue namely “whether defendant was a tenant or a licensee.” Both sides adduced oral as well as documentary evidence in the Trial Court. On the basis of said evidence learned Trial Court came to a conclusion that defendant was a licensee under the plaintiff in the suit premises and accordingly he granted an ejectment decree but refused to grant any other relief.

5. The defendant /tenant filed a Title Appeal being No.10 of 2001 in the First Appellate Court challenging said judgment and decree of eviction. Plaintiff also filed a cross appeal for refusal of damage / mesne profits by the Trial Court. Learned First Appellate Court allowed the appeal filed by the defendant and dismissed the cross appeal filed by the plaintiff and accordingly reversed the judgment of eviction passed by the Trial Court.

6. Being aggrieved with said judgment of reversal passed by learned First Appellate Court this Second Appeal has been filed by the plaintiff. At the time of admission of the Second Appeal the Division Bench framed the following substantial questions of law to be heard at the time of disposal of this appeal.

(a) Whether the learned Court of Appeal below commit substantial error of law in reversing the judgment and decree passed by the Learned Trial Judge by not applying the well settled tests, which are required to be followed while deciding a question whether a person is a tenant or a licensee;

(b) In view of the admitted fact that the tenant was not in exclusive possession of the entire property, whether the learned Court of Appeal below committed substantial error of law in holding that the respondent was a tenant under the appellant.

(c) In view of the fact that the other tenant of the property, namely DW-3 herself admitted that the landlord used to grant rent receipt to her, whether the learned Court of Appeal below was justified in reversing the finding of the learned Trial Judge that the defendant failed to prove the tenancy in the property;

(d) Whether the learned Court of Appeal below committed substantial error of law in totally overlooking, the fact that before institution of the suit, the defendant never approached the rent controller under Section 25 of the West Bengal Premises Tenancy Act for grant of rent receipt.

7. The moot point in this case is whether respondent /defendant was a licensee under the plaintiff in the suit premises, or a tenant as alleged by the defendant. Admittedly, there is no document of lease and / or license in this case. As such the nature of occupation of the suit room by the defendant has to be gathered from the surrounding circumstances.

8. Mr. Arabindo Ghosh learned Advocate for the appellant / plaintiff has submitted that respondent /defendant failed to file rent receipts to show that he paid rent to the plaintiff landlord month by month as was done by other tenants of that building and that he also did not move Rent Controller under Section 25(2) of W.B.P.T. Act, 1956 which also supports the case of license as advanced by plaintiff.

9. Mr. Aniruddha Chatterjee learned advocate for the respondent /defendant, on the other hand, has submitted that plaintiff has tried to make out a case of license by saying that one Mahendra used to reside in suit room along with the defendant but there is no corroborative evidence to that effect. According to him rather it came out that the defendant was in continuous possession of the suit premises at the initial stage alone, then along with his mother, brother and presently with his wife and it is impossible to imagine that a

person will be permitted to occupy a suit premises without any license fee though admittedly there was no relation between the parties.

10. He has further submitted that said exclusive possession of defendant in the suit premises belied the story of license as put forward by plaintiff. He has further submitted that defendant produced one receipt showing payment of advanced rent of Rs.15,000/- to the plaintiff for first floor of the suit building which will be adjusted at the rate of Rs.110/- per month including electric and other charges from 01.12.1974, but said receipt, for not bearing any stamp, was not taken into evidence by learned Trial Court. Though plaintiff denied his signature thereupon, but he did not take any step for comparing the signature appearing on said receipt with his admitted signature by an expert. He has further submitted that it came out from the evidence of one employee of Calcutta Corporation (D.W.4) that during inspection of the suit building by employees of Calcutta Corporation defendant was noted as one of the tenants therein and that said direct evidence of D.W.4 cannot be brushed aside lightly. He has further submitted that D.W.3 being one of the tenants of said building also deposed that defendant was staying there as a tenant and there was no ground for disbelieving said independent evidence of D.W.3. He has further submitted that long exclusive possession of the suit premises by the defendant, corroboration of defendant's claim of tenancy by co-tenant and employee of Calcutta Corporation, filing of advanced rent receipt by defendant and not challenging the same by plaintiff by way of forwarding the same to an expert for examination, failure of plaintiff to show that one alleged Mahendra used to share the suit room with defendant at any point of time, absence of relationship between the parties namely plaintiff and defendant, all these taken together go to show that the possession of the suit premises by

defendant was that of a tenant and not as a licensee and that learned First Appellate Court came to the right conclusion in this regard.

11. It is true that save and except oral evidence of plaintiff there is no evidence that one Mahendra used to share the suit room with defendant at the initial stage. It is also an admitted fact that plaintiff had no blood relation or any relation with defendant. But it came out from the evidence of plaintiff (P.W.1) that the defendant's maternal uncle Dr. Rakhit used to occupy the said room as a licensee and that he surrendered the same on 01.12.1975. There is a document to that effect, in the regard and it was not challenged by the defendant. When plaintiff has claimed defendant as a licensee under him and there was no rent receipt, the onus was upon the defendant to establish that he was a tenant in respect of the suit room.

12. Defendant filed one alleged receipt showing advanced payment of rent to the tune of Rs.15,000/- for holding first floor of the suit building and that the advance to be adjusted at the rate of Rs.110/- per month with effect from 01.12.1974.

13. Said document was vehemently opposed by the plaintiff by denying his signature thereupon. The plaintiff also filed one petition under Section 340 Cr. P.C. in the Trial Court for drawing appropriate proceedings against defendant for filing said forged and fabricated document. Under these circumstances it was the duty of the defendant /tenant to get the signature appearing on said receipt to be compared with admitted signature of plaintiff by an expert to establish his claim of tenancy in the suit room since 01.12.1974 on payment of said advanced rent of Rs.15,000/-. Unfortunately defendant did not take any step in this regard. In 1974 Rs.15,000/- is not a meager amount. It is really hard to believe that a person who was admittedly to be a student and non-earning member will be asked to pay Rs.15,000/- as

advanced rent. It is also pertinent to note that if rent is alleged to be Rs.110/- per month inclusive of electric and other charges, then such advanced rent of Rs.15,000/- was meant for rents of more than 11 years. This also prima facie seems to be absurd. Again, it is also hard to believe that a landlord who wants to induct a tenant in a suit room on condition of receiving rent without payment of rent receipt will issue a rent receipt acknowledging taking advance of Rs.15,000/- as advanced rent. It is also pertinent to note that though it came out from the evidence on record that the room vacated by Dr. D. Rakhit was allotted to the defendant, but there was no scope of giving said room to defendant on 01.12.1974 when admittedly Dr. Rakhit vacated said room on 01.12.1975. So, from whatever angle said alleged receipt of advanced rent is examined it does not fit in the facts of alleged tenancy of the defendant in the said room. There was much argument on the point of having no relationship between plaintiff and defendant and as such it was not to be believed that plaintiff will permit defendant to occupy the said room as a licensee without license fee that too for long years. Learned First Appellate Court gave much stress on this point. In this connection, I just like to recapitulate the following lines of William Shakespeare "There are more things in heaven and earth, than are dreamt of in your philosophy." Exhibit 10 series are letters written by defendant's elder sister (D.W.2) to the family members of the plaintiff Subodh Chandra Chatterjee as well as to their maternal uncle Dr. D. Rakhit. These were of the year 1985 and these are marked as exhibit 10 series in the case. From these letters it is apparent that a strong family relationship grew in between the family members of plaintiff and family members of defendant. It appears from these letters that the defendant (nick name Monu) was even requested and tried to be persuaded by her elder sister (D.W.2) for vacating suit room but without any result.

From the tone of these letters it is apparent that defendant's elder sister (D.W.2) was ashamed of the conduct of defendant for not leaving the suit room in spite of request and persuasion. If the defendant had been a tenant on payment of rent in the suit room, certainly there would not have been so much subdued tone in those letters for inability of the defendant to vacate the suit room. These letters (exhibit 10 series) rather strongly support the case of licensee as pleaded by plaintiff.

14. It is true that from the evidence on record it came out that defendant was in exclusive possession of the suit room, but said exclusive possession by itself cannot be conclusive proof of tenancy particularly in view of the circumstances as stated above. Corporation inspection book is not a public document. As such noting of defendant as a tenant therein does not by itself prove anything. It is true that there is no document to show that plaintiff preferred an appeal against said notings in the Corporation inspection book. Again, I like to say that this by itself does not prove tenancy of the defendant in the suit room. The evidence of co-tenant (D.W.3) was denied and disputed by plaintiff.

15. It is true that after filing of the suit defendant approached the Rent Controller and deposited rents therein but said act of defendant is of no help to the defendant in establishing his alleged tenancy in the suit room since 1974. In the case of Jothika Basu versus lieutenant colonel A. N. Sharma as reported in (1992) 1 CLJ page 174, Hon'ble Division Bench of this Court held where no rent receipt is produced by the tenant to prove the tenancy or where the tenant has not invoked Section 25 (2) of the West Bengal Premises Tenancy Act, 1956 when it is his case that the landlord on receiving the rent did not grant the receipt, it goes a long way to disprove the alleged tenancy set up by the tenant which the landlord has disputed where

no independent tenancy document has been produced by the tenant in support of his tenancy. The ratio of said case law is squarely applicable in the facts of the present case. Learned First Appellate Court gave much stress on exclusive possession of the defendant in the suit premises comprising one room, varendah and common bath privy. But as per schedule of the plaint suit premises comprised of one room only. As per written statement the suit premises comprised of one room only. No where in the W.S. defendant has stated that he was in exclusive possession of anything more than the suit room. As such learned First Appellate Court was wrong to hold that defendant was in exclusive possession of a unit comprising of one room and other things.

16. Learned First Appellate Court also did not consider as to why plaintiff will not grant rent receipt to the defendant when he was granting rent receipt to all other tenants staying in the suit building.

17. In view of the discussions as stated above I am of the opinion that defendant was in occupation of the suit premises as a licensee and not as a tenant under the plaintiff and that learned First Appellate Court approached the case and appreciated the evidence from wrong angle and that impugned judgment of First Appellate Court is not sustainable in law. As a result, the appeal succeeds. The impugned judgment and decree dated 5th October, 2004 and 8th October, 2004 passed by learned District Judge, Sealdah, 24 Parganas (South), Fast Track Court – III in Title Appeal No. 10 of 2001 are hereby set aside. This revives the judgment of eviction passed by the learned Trial Court in Title Appeal No.72 of 1991 in this case.

18. Office is directed to send down Lower Court's records along with a copy of judgment by a special messenger to the learned Trial Court for information and necessary action.

19. Urgent xerox certified copy of this judgment be supplied to the learned Counsels of the party / parties, if applied for.

(Tarun Kumar Gupta, J.)