

West Bengal Form No.3701

HIGH COURT FORM NO. J(2)

HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE

District : Calcutta

In the 2nd Bench of City Civil Court at Calcutta

Present: Sonia Majumdar (WB01128)

Judge, Bench II

City Civil Court, Calcutta

Title Suit No. 1480 of 2021

(CNR: WBCC 01-005657-2021)

Date of Judgment :

THIS WEDNESDAY THE 6th DAY OF MAY, 2026

Smt. Bhaswati Paul (Garai) Plaintiff

VS

Smt. Aparajita Roy. Defendant

(1) Give date or dates

31.03.26

in presence of

Sri Kausik Jana

Advocate(s) Plaintiff(s)

_____ for _____

Pleader(s) Petitioner(s)

Sri Niladri Banerjee

Advocate(s) Defendant(s)

_____ for _____

Pleader(s) Opposite Party(s)

And having stood for consideration to this day the court delivered the following Judgment :-

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J U D G E M E N T

1. This is a suit for declaration and recovery of possession against the trespasser.

2. In short, the case of the plaintiff is that the plaintiff is the owner of the property being premises No.123/2/H/88, Acharya Prafulla Chandra Road, P.S. Burtolla, Kolkata – 700006. It is the further case of the plaintiff that the defendant was inducted as licensee under the plaintiff in the year February, 2016 in respect of one room on the ground floor of the suit premises at a monthly licence fees of Rs.4000/- only, payable according to English Calendar month. At the time of induction as licensee, the defendant deposited a sum of Rs.1,00,000/- as security deposit to the plaintiff which will be refunded by the plaintiff without any interest at the time of vacating the said suit room by the defendant. The said period of 11 months has already lapsed in last day of December, 2016 and still then, the defendant is occupying the said room without any payment and on asking of payment, the defendant requested the plaintiff to adjust the said amount with the advance, paid by him and accordingly, another 25 months has already passed away and the said amount i.e. Rs.1,00,000/- has already been adjusted towards the occupation of the plaintiff till the last day of January, 2019. It is the further case of the plaintiff that after adjusting the said amount, since February, 2019 the defendant is occupying the said room as trespasser without any permission from the plaintiff and when the plaintiff asked the defendant to pay the monthly licence fees, the defendant refused to pay anything towards her occupancy of the said room. Thereafter, the plaintiff sent a notice dated 15.12.2020 to the defendant through her Ld. Advocate, asking the defendant to quit and vacate the suit premises immediately within 15 days from the date of receipt of the said notice. The defendant received the said notice but failed to consider the aspect of the said notice and hence, the plaintiff is constrained to file the instant suit.

3. It appears from the record that the defendant appeared by filing vakalatnama and also filed written statement denying all material allegations made out in the plaint against her. According to the defendant the suit property is a Thika Tenancy property and the plaintiff cannot claim herself as the owner of the property. Thika Controller is the only authority to adjudicate this dispute. This court has no jurisdiction to adjudicate the issue involved in this matter. It is the further case of the defendant that originally landlord of the defendant was Durga Rani Garai, since deceased. The defendant has stated that the defendant is not at all a licensee, she is a

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tenant in respect of the suit property. The defendant has stated that the original tenancy agreement was lying under the custody of the plaintiff. The plaintiff promised to handover the said original tenancy agreement but subsequently, the plaintiff refused to handover the said tenancy agreement to the defendant on a plea that the plaintiff lost such tenancy agreement. The defendant has alleged that the defendant is not a wrongful occupier in the suit premises. As such, the defendant has prayed for dismissal of the suit.

4. On the basis of the respective pleadings of the parties, the following issues have been framed in this suit.

Issues

- 1. Is the suit maintainable in its present form and prayer ?
- 2. Whether the plaintiff has any locus standi to file this suit ?
- 3. Whether the suit is barred by law of limitation ?
- 4. Whether the defendant was inducted as a licensee in the year 2016 ?
- 5. Whether the notice dated 15.12.2020 is legal, valid and duly served upon the defendant ?
- 6. Whether the suit is liable to be dismissed ?
- 7. Whether the plaintiff is entitled to get decree of declaration and recovery of khas possession as prayed for ?
- 8. To what other relief/reliefs, if any, is the plaintiff entitled to ?

5. Evidence:-

In order to prove the case of the plaintiff, one Debabrata Sadhukhan has adduced the evidence as PW 1. Besides such oral testimony, some documents have also been admitted into evidence by the plaintiff and marked as exhibits.

1.	Original special power of attorney	Exbt. 1 (with objection)
2.	Property tax bill for the year 2021-22	Exbt. 2 (with objection)
3.	Copy of letter of complaint dated 25.12.2016	Exbt. 3
4.	Copy of the notice dated 15.12.2020	Exbt. 4 (with objection)
5.	Postal receipt	Exbt. 4/1

6. As against the case of the plaintiff, the sole defendant Aparajita Roy, has examined herself as DW-1 and documents were also placed on record marked as Exbts. A to C respectively on behalf of the Defendant, which are as follows:-

1.	Self attested copy fo Aadhaar card	Exbt. A
2.	5 rent receipts	Exbt. B series
3.	Death certificate of Durga Rani Gorai	Exbt. C

DECISION WITH REASONS

Issue No.1 :-

7. There is nothing against the maintainability of the suit and the suit property lies within the jurisdiction of this Court. Thus, this issue is decided in the affirmative in favour of the plaintiff.

Issue Nos. 2 to 8 :-

8. All the issues are taken up together for the sake of convenience and being interlined with one another.

a. During evidence of P.W. 1 Debabrata Sadhukhan, Power of Attorney holder has corroborated the plaint of the suit and has submitted several documents in support of the plaintiff's case which have been marked as Exbts. 1 to 4/1.

During cross-examination, he has stated that the plaintiff has filed the suit for recovery of arrear rent and recovery of possession upon eviction of defendant. He has stated that the amount of rent is Rs.4000/- per month. It is he who was realizing the rent from the defendant and he accompanied the plaintiff to the Court for presentation of the plaint and have personal knowledge as regards to the facts of the suit. He himself inducted the defendant in the suit premises as tenant. He has stated that when the defendant failed to pay rent he had discussion with the plaintiff and decided to file this suit against the defendant. He has also stated that a tenancy agreement was executed by and between the parties at the time of induction but the said agreement of tenancy is lost. He has also stated that Durga Rani Garai was the owner of the suit property and after her death her grandson also died and at present

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plaintiff being granddaughter of Durga Rani Garai is the sole owner of the suit property. He has stated to have furnished documents of title in respect of the suit property standing in the name of the plaintiff. He has also admitted that the word 'hut' is used in describing the property. He could not say whether the suit property is a thika property or not. He had no knowledge as to whether the suit property is the exclusive property of the plaintiff or thinka tenanted property.

During cross-examination he has denied the suggestion put to him by the defendant.

b. DW-1, Aparajita Roy has corroborated the written statement in her Evidence-in-chief on affidavit. In support of her claim, she has filed some documents marked Ext.A to C.

During cross-examination she has stated that she is residing in the suit property for the last 8 years and she paid a sum of Rs.1 Lakh to the plaintiff by way of selami at the time of induction. She has stated that a written agreement has been entered into by and between the parties but she has no copy of the same and she came to the suit premises through intervention of a broker who gave her to understand that she was the sole and absolute owner of the suit property but when , after one year of induction, she asked her to produce the title deed, she could not produce any document of title.

She has stated to have paid money to the plaintiff for about 6-7 years and furnished total five rent receipts. She has stated that other than those five rent receipts, plaintiff never issued any other receipt despite accepting rent from her. The entire payment was made by her in favour of the plaintiff in cash, but she could not state whether such statement has been incorporated in her affidavit in chief or not. She came to know that the suit property is a thika tenant property but she could not say whether such facts have been incorporated in her written statement and affidavit in chief or not. She has admitted that as the plaintiff did not produce any document or title so she has presumed that the plaintiff has no such right, title or interest in the suit property. She has not disclosed in her written statement about the issuance of rent receipt in her favour. Later on she has admitted that she has not submitted any rent receipt before the Court. Though she has stated that one written agreement of tenancy was executed between her and the plaintiff, but she could not state the exact year and could not have copy of the tenancy agreement. She has admitted that when the

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plaintiff stopped issuance of rent receipt, she also stopped payment of rent. Though she is ready to pay rent but she never requested the plaintiff to issue rent receipt. She has stated that the plaintiff did not put her signature in her presence on Exbt.B. She has stated that she used to pay rent directly to the plaintiff but rent receipt was issued by one Debabrata Sadhukhan. She has admitted that at present she is not paying any rent and she could not say when she paid last. She has denied the suggestions put to her by the plaintiff.

c. On proper scanning of the evidence and other materials on record, it comes out that the plaintiff has filed this suit for eviction of trespasser and recovery of possession and to substantiate her claim she has submitted documents which have been marked as Exbts. 1 to 4/1. On the other hand, the defendant argued that it is a thika property and the plaintiff is not the owner of the property and the Court has no jurisdiction to try the suit. Now, the Court is to see how far the plaintiff has been able to prove his case.

On consideration of the same, I find that though Bhaswati Paul (Garai) is the plaintiff but evidence has been given by one Debabrata Sadhukhan who is the authorized agent and brother in law of the plaintiff claiming to be fully conversant with the facts and circumstances of the suit. Exbt.1 is the special Power of Attorney executed by Smt. Bhaswati Paul (Garai) authorizing P.W.1 Debabrata Sadhukhan to act in her name and on her behalf in this suit. During evidence, P.W. 1 has filed property tax bill 2021-2022 issued by Kolkata Municipal Corporation which has been marked as Exbt.2. From Exbt.2 it comes out that the said document is in respect of premises No. B/123/2/H/88, Acharya Prafulla Chandra Road, Kolkata – 700006 in the name of Smt. Durga Rani Garai. Now, it is the case of the plaintiff that she is the granddaughter of Durga Rani Garai and she is the owner of the suit property. The defendant claims that the plaintiff is not the owner of the suit property but it is a thika tenant property. Here, it is to be noted that the defendant herself has submitted five rent receipts during evidence which have been marked as Exbt.B series. Consideration of Exbt.B series it appears that it bears the signature of Bhaswati Paul (Garai)/the plaintiff and the rent was taken from Aparajita Roy/defendant. Therefore, the defendant has submitted rent to the plaintiff treating her as landlord and thus, now, she cannot challenge the title of the plaintiff as owner of the property. In support of ownership the plaintiff has filed Exbt.2 i.e. the property tax bill which is a better title than the defendant herself. It comes out from the evidence that the defendant has filed death certificate of Durga Rani Garai which has been marked as Exbt.C in this suit. It

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is also apparent from the Exbt.2 that the property tax bill has been deducted in the name of Durga Rani Garai in respect of the suit property which has been submitted by the plaintiff in this suit claiming herself as granddaughter of Durga Rani Garai.

It appears from the evidence of the defendant that as D.W. 1 she has admitted that as the plaintiff did not produce the title deed in respect of the suit property to her, so she has stopped giving rent to the plaintiff. Therefore, she has admitted that she is staying there without giving any rent to the plaintiff or any body else and not even to the rent controller, though she herself has claimed that it is a thika property. If, on argument's sake, the property is to be treated as thika property then according to section 8 (8) of West Bengal Thika Tenancy (Acquisition & Regulation) Act, she is liable to deposit rent with the Controller as there it is provided that "where there is no thika tenant or the thika tenant is not traceable for any reason whatsoever, a Bharatia shall be liable deposit rent with the Controller in respect of the area of the structure as is occupied by him at such rate and in such manner, as may be prescribed." But it is pertinent to mention here that no scrape of paper like challan in the four corners of the record filed by the defendant to show that she has submitted rent to the thika controller.

Therefore, it comes out to the conclusion that the defendant stayed in the suit property since 2016 with a licence for 11 months and thereafter, she stayed there in lieu of the selami (advance money) of Rs.1 Lakh and thereafter, she is actually residing there without paying a single farthing to the plaintiff and thus, her status has become that of a illegal occupier trespasser. It comes out from the record that the plaintiff has issued a notice dated 15.12.2020 to the defendant through her Ld. Advocate asking the defendant to quit and vacate the suit premises within 15 days from the receipt of this notice. The said notice has been submitted by P.W.1 during evidence which has been marked as Exbt.4 in this suit. From Exbt. 4/1 , which is the postal receipt it appears that it has been sent to the defendant with proper address.

Under such circumstances, all the issues are considered in favour of the plaintiff.

9. In view of my above discussion about the facts and circumstances of the case and on scanning of evidence on record, I am constrained to hold that the plaintiff has been able to establish her case and as such, she is entitled to decree in this suit.

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10. As a result, the instant suit succeeds.
C.F. paid is correct and sufficient.

Hence, it is

ORDERED

that the instant Title suit being No. 1480 of 2021 be and the same is, hereby decreed against the defendant but without any order as to cost.

The plaintiff does hereby get a decree of declaration that the defendant is a trespasser in respect of the suit premises as described in schedule to the plaint.

The plaintiff does hereby further get a decree for recovery of khas possession of the suit premises by evicting the defendant from the suit premises. The defendant is hereby directed to quit and vacate the suit premises and deliver up vacant and peaceful possession thereof in favour of the plaintiff within a period of two months from this date; in default, the plaintiff will be at liberty to recover vacant possession of the suit premises from the defendant by putting the decree into execution.

Decree be drawn up accordingly.

D/C by me,

Sd/-

Smt. Sonia Majumdar

Judge
City Civil Court, Calcutta.

Sd/-

Smt. Sonia Majumdar

Judge 2nd Bench,
City Civil Court, Calcutta.