In the Court of District Judge, Hooghly at Chinsurah, District Hooghly.

Present: Amit Chakravorty,

District Judge, Hooghly

(**J.**O Code WB-00615)

Title Appeal 83 of 2025

(Registration No. 83 of 2025)

(Arising out of Title Suit No. 282/2018)

(CNR No.WBHG010036182025)

Dated, the 06th May, 2026.

Sri Arindam Ghosh……Appellant.

Versus

Abbasuddin Sarkar……Respondents.

Learned Advocate for the Appellant: Smt. Swati Sadhu.

Learned Advocate for the Respondent: Sri Sanjoy Bandopadhyay.

Judgement

1. The defendant of the suit has instituted the present appeal, challenging the Judgement dated 28.07.2025 passed by the Ld. Civil Judge (Junior Division), 2nd Court, Hooghly, in Title Suit No. 282 of 2018. In the Appeal, an application under Order XLI Rule 5 of CPC,

read with section 151 CPC, has been filed by the defendant/appellant.

2. For the sake of convenience, the parties to the appeal will be addressed as per their rank and status in the suit as “the plaintiff” and “the defendant”.

3. Backdrop of the instant appeal is that the plaintiff (“the appellant” herein) filed the Title Suit No. 282 of 2018 against the defendant for decree of eviction of the defendant from the suit property and a decree of khas possession of the plaintiff in respect of the suit property along with mesne profits and other equitable relief.

4. The defendant contested the suit by filing written statement denying the contentions made by the plaintiff against him in the plaint and divulging specific case to dismiss the suit with costs.

5. In paragraph 6 of the impugned judgement, after going through the pleadings of the parties, examination and cross examination of witnesses and hearing argument of the learned advocates, the learned Trial Court re-casted the issues as follows:

    1) Whether the suit is maintainable in its present form and nature?

    2) Whether the plaintiff has any cause of action to file the instant suit against the defendant?

    3) Whether the notice to quit dated 28th May, 2018 is valid and sufficient and properly served to defendant?

    4) Whether the defendant is liable to be evicted from the suit property?

    5) Whether there is a landlord and tenant relationship in between the plaintiff and the defendant?

6) To what other relief/reliefs, if any, are the plaintiff entitled as per law and equity?

6. During trial, the plaintiff produced and examined the following witnesses:

(i) Abbasuddin Sarkar (PW1) and

(ii) Masuma Bibi (PW2).

7. The defendant adduced oral evidence of the following witnesses:

(a) Arindam Ghosh (DW1);

(b) Biswajit Nandi (DW2); and

(c) Lakhi Narayan Halder (DW3).

8. The following documents have been relied on by the plaintiff in the suit:

(i) Eviction notice dated 28.05.2018 along with postal receipt and Acknowledgement Due Card (Exhibit 1 series);

(ii) Reply Letter dated 28. 06. 2018 (Exhibit 2); and

(iii) LRROR in respect of Khatian No. 49 dated 1st March, 2023 (Exhibit 3 series).

9. On the following documents, reliance has been placed by the defendant in the suit:

(a) Tenancy Agreement (Exhibit ‘A’) and

(b) Signature of DW2 (Exhibit ‘B’).

10. After completion of the trial, the learned Trial Court decreed the suit on contest in favour of the plaintiff against the defendant and passed a decree of eviction against the defendant from the suit premises mentioned in the schedule of the plaint and delivery of khas possession of the same to the plaintiff. The defendant has been directed to quit and vacate the suit property as shown in the

plaint within 90 days from the order, failing of which, the plaintiff will be at liberty to file Title Execution Case against the defendant as per due process of law. In the form of other relief, the plaintiff has been directed to pay/return the balance amount of Rs.18060/- to the defendant, if the defendant will quit and vacate the suit property.

11. Being aggrieved by and dissatisfied with the impugned judgement, the defendant has come up with the present appeal.

Point for consideration

12. The points for consideration in the instant appeal are as follows:

(i) Whether the application under order XLI rule 27 of CPC filed by the defendant/appellant in the appeal for adducing additional evidence should be allowed?

(ii) Whether the learned Civil Judge (Junior Division), was justified in decreeing the suit, in the facts and circumstances of the case and in view of the materials on record,

(iii) Whether the impugned judgement of the learned Trial Court suffers from illegality, irregularity, impropriety or incorrectness?

(iv) Whether the impugned judgement requires interference of the Appellate Court?

(v) Whether the impugned judgement of the learned Trial Court is liable to be set aside?

Decision with reasons

13. At the time of advancing argument, learned counsel for the defendant submits that the learned Trial Court has been failed to consider the tenancy agreement from which it could be revealed that there is no description in respect of the floor of the tenanted premises but the plaint disclosed that the same is situated on the

ground floor. The Eviction Notice was not made in accordance with law but the learned Trial Court has relied on the same. Tenancy agreement disclosed no specific period of time or duration of the tenancy. The plaintiff failed to comply the provisions of the Transfer of Property Act. The Eviction Notice was not served in accordance with law. The learned Trial Court should not have adjusted the amount of Rs.18,060/-as arrears of rent for 7 years with the selami amount of Rs.37,000/-. In order to prove a case under section 106 of the Transfer of Property Act, the title and ownership of the property should be proved by the plaintiff. Admittedly, the defendant is a tenant of the plaintiff. The notice of eviction disclosed that the defendant along with his brother was the tenant of the suit premises but no such brother was made party in the suit. The plaintiff has to prove his own case without banking upon the pleading of the defendant. As such, the plaintiff has failed to establish his case and so the instant suit is liable to be dismissed.

14. In support of his submission Ld. Counsel for the defendant refers the judicial decision of **Ligakath Ali Khan versus Syed Wazeed, Haseema Khatun & others** reported in **2013(3) ICC 106**, wherein the Hon'ble Karnataka High Court has observed that while writing a judgement of reversal the Appellate Court must remain conscious of two principles. Firstly, the findings of fact based on conflicting evidence arrived at by the Trial Court must weigh with the Appellate Court, more so when the findings are based on oral evidence recorded by the same Presiding Judge, who authors the judgement. This does not mean that when an appeal lies on facts, the Appellate Court is not competent to reverse a finding of fact arrived at by the Trial Judge.

15. Reliance has also been placed in the case of **Raj Rani and another versus Naranjan Singh through Dalit Kaur and**

another reported in **2017 (1) ICC 561 (Pb. & Hry)** to convince that an application for additional evidence at an appellate stage is to be considered and decided by the Court while hearing the appeal on merits as the Appellate Court would be in a position to say if the additional evidence is necessary or otherwise for doing substantial justice as well as complete and effective adjudication of the matter in controversy only while appreciating merits of the appeal.

16. According to Ld. Counsel for the defendant, admissions are not conclusive proof of the matters admitted against any party. If from the facts it could be shown that the admission was wrong, it would fail to have any effect. Ld. Counsel refers the case of **Smt. Matto and others versus Naino and others** reported in **2008 (2) ICC 86** to convince that admission has to be read as a whole and once the admission is said to have been made in ignorance of right and the same was contrary to law, the same was not binding on the plaintiff.

17. Ld. Counsel for the defendant further cites the judicial decision of **M/s Roy and Co. and Nani Bala** reported in **AIR 1979 Calcutta 50** to show that the plaintiff can succeed only on his own case and not on defendant’s weakness.

18. Per contra, learned counsel for the plaintiff argues that the defendant after receiving notice of eviction sent by the plaintiff, acknowledged the same by filing a reply of such notice (Exhibit 2) and in that notice categorical admission was made by the defendant that he is a tenant of the scheduled property. In the written statement similar admission is being made by the defendant. But during trial, one unregistered tenancy agreement was relied on by the defendant. The defendant has also admitted in the evidence that he was a defaulter in payment of rent. No plea was taken in the written statement of the defendant regarding non-joinder of

necessary party. The plaintiff has successfully proved his case by adducing cogent evidence and the learned Trial Court has rightly decreed the suit.

19. The crux of the plaint case is that the plaintiff is the owner of the suit property; whereas the defendant was a tenant under the plaintiff at a monthly rent of Rs. 215/-. The defendant is a habitual defaulter of payment of rent and he last paid the rent on 01.10.1424 B.S. The property was reasonably required for the plaintiff himself and for his son to start business. Whenever the plaintiff requested the defendant to pay rent, the defendant misbehaved with him and also used abusive languages addressing the plaintiff. He also denied the ownership of the plaintiff in the suit property as well as also denied the tenancy agreement with the plaintiff. The defendant also used to damage the suit property by digging in the wall and floor of the same. Ultimately, the plaintiff terminated the tenancy on 28th May, 2018 and also sent notice of eviction on 29th May, 2018 through registered post with Acknowledgement Due Card and gave the defendant 15 days' time to vacate the suit premises. Defendant received the notice of eviction on 11th June, 2018. Thereafter, 15 days have passed after receiving such eviction notice but the defendant had been occupying the suit property illegally as trespasser. The defendant has replied the notice of eviction through his learned advocate, wherein he has admitted his tenancy with the plaintiff but falsely claimed that the right of tenancy was permanent and heritable and dependent on his wish and the plaintiff has no right to evict him there from. Hence, the suit for eviction has been filed.

20. The specific case disclosed by the defendant in his written statement is that he was inducted in the suit property as perpetual tenant. The plaintiff is the owner of the suit property. But the

tenanted room was constructed by the material purchased at the cost of the defendant. The plaintiff raised up to foundation of the suit property and thereafter, it was completed by the defendant. It was agreed upon that the defendant would be permanent tenant under the suit property. The defendant spent Rs. 37,000/- for the purpose of such construction. On 1st March, 2002, one tenancy agreement was prepared and the plaintiff was requested to put his signature but the plaintiff told him to show the amount as 'selami'. Initially, the defendant did not agree but the plaintiff made him understand that there would be no harm because he was given the suit property on rent as permanent tenant. It was further agreed that after every six years, the amount of rent would be increased. So, the defendant put his signature on the tenancy agreement. Thus, the defendant could not be evicted by the plaintiff from the suit property. The defendant is not the defaulter of rent as the plaintiff did not accept the rent from the defendant and demanded Rs. 2000/- as rent and he also refused to issue a receipt to that effect. As such, the defendant has been compelled to send the rent to the plaintiff by money order but the plaintiff also refused the same. The tenancy of the defendant could not be terminated by the notice of eviction dated 28th May, 2018. The defendant has given appropriate reply to the notice through a letter by his learned advocate.

33. PW1 in his examination in chief by way of affidavit has stated that he is the owner of the suit property and the defendant was a tenant under him at a monthly rent of Rs.215/-. The defendant is a habitual defaulter of payment of rent. The suit property is reasonably required for himself and also his son to start business. Whenever he requested the defendant to pay rent, the defendant misbehaved with him and also used abusive languages addressing him and denied him as the owner of the suit property and he also denied the tenancy agreement with him. The

defendant has been damaging the suit property by digging in the wall and floor of the suit property. The defendant entered into tenancy agreement with him to start business in the suit property but the defendant is irregular to run his business thereon. As the plaintiff has been depriving of getting full benefit of the suit property, he terminated the tenancy agreement on 28th May, 2018. He also sent notice of eviction to the defendant on 29th May, 2018, through registered post with A/D postage and he gave 15 days' time to the defendant to vacate the suit property. The defendant received the notice on 11th June, 2018. But the defendant did not vacate the suit property and occupying the same illegally as trespasser. Thereafter, on 28th May, 2018 the defendant has replied the eviction notice through his learned advocate, wherein the defendant has admitted the tenancy but falsely claimed that the right of tenancy is permanent and heritable and eviction is dependent upon his wish and falsely also stated that the plaintiff had no right to seek eviction.

34. In his cross-examination, PW1 replied that defendant is a tenant in the suit property and one tenancy agreement was executed in between him and the defendant but it was not acted upon. The total quantum of the suit property is 14 decimal but the entire 14 decimal does not belong to him. The said suit property originally belonged to his father, who died leaving behind the plaintiff and his two brothers. His father has executed a *bantannama* in the name of his brothers and himself. The plaintiff has two brothers and they never gave any gift in his favour. He has need of the entire property for his son. PW1 categorically mentioned that there was once an agreement of tenancy which was invalid as the purpose was not served. He has constructed shop rooms over the suit property in the year 2002. He along with his brothers are owners in respect of entire 16 annas property. He identified the signature and contents of the agreement (Exhibit 'A' series). PW1 admitted that a meeting was held between him and the defendant in respect of vacating

the suit property. He has not taken consent of other brothers for evicting the tenant.

35. PW2, the wife of PW1, has deposed that the defendant is the tenant in respect of one shop room, measuring about 63 square ft., in plot No. 1296 of Mouza Chapahati under the police station of Pandua, at a monthly rent of Rs.215/-. PW2 filed record of rights of plot No. 1296. Defendant did not pay the rent regularly and the defendant did not pay rent since the month of Magh, 1424 B.S. The plaintiff and his son can run business in the suit shop room. On being asked for monthly rent, the defendant used to misbehave with the plaintiff. The plaintiff has issued eviction notice through learned advocate to the defendant but in spite of receipt of such notice, the defendant did not deliver possession of the same to the plaintiff.

36. After perusal of Exhibit ‘2’, PW2 replied in her cross-examination that the total quantum of the suit property was 14 decimals in suit plot No. 1296. Her husband has 4 (Four) decimals out of 14 decimals share in the above plot. The remaining 10 decimals of land belongs to the brothers of PW1. PW2 has made it clear explicitly that there is no share of her brother-in-law or sister-in-law over the suit property and the same is exclusively belonged to her husband.

37. In the suit, the defendant as DW1 submitted his affidavit-in-chief but did not complete his deposition and his examination-in-chief was deferred on the prayer of his learned advocate but thereafter he did not turn up. He did not face cross-examination by the plaintiff. As such, the affidavit filed by DW1 cannot be taken as evidence. Consequently, it can be deduced therefrom that the defendant (DW1) did not adduce his evidence in the suit.

38. DW2, being witness of the Agreement, has alleged that the plaintiff and the defendant executed a tenancy agreement and the plaintiff received Rs. 37,000 as selami from the defendant. The plaintiff

has demanded rent at a higher rate from the defendant. The defendant did not damage the suit property. But he did not know regarding the return of selami amount.

39. It was known to DW3 that the defendant is the tenant of the suit property belonged to the plaintiff. Before inducting the defendant as tenant, the plaintiff took Rs.37,000/- from the defendant and constructed room thereon.

40. Before entering into conclusive discussion in the appeal, relevant provisions of law are required to be discussed to arrive at a just decision in the appeal. Section 58 of the Indian Evidence Act, 1872 specifically provides about facts admitted need not be proved as:

“No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by the pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.”

41. Section 116 of the Indian Evidence Act, 1872 specifically provides that no tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given.

42. In the instant suit before the learned Trial Court, by filing the written statement the defendant specifically claimed himself as a tenant in respect of the suit property under the plaintiff. PW1 in his affidavit in

chief deposed that the defendant was a tenant under his ownership in the suit property at a monthly rent of Rs.215/-. In the cross examination PW1 confirmed that the defendant is a tenant in the suit property under him. PW2 also corroborates the same. There is no evidence in the case record to show that the defendant is not the tenant of the suit property. Therefore, it has been duly proved that the plaintiff and the defendant have relationship of landlord and tenant. As per Section 116 of the Indian Evidence Act, the defendant being tenant is not legally entitled to challenge the ownership of the plaintiff, who is the landlord. The suit before the learned Trial Court has been filed under section 106 of the Transfer of Property Act which requires only valid service of notice for eviction to the tenant. The section does not require proof of ownership of the landlord. The section also does not suggest any necessity of establishing any ground for such eviction. But the defendant could not file any scrap of paper to show that he made the payment of rent to the plaintiff from the Bengali Calender month of Magh, 1424 BS. PW1 specifically proved that the defendant is a defaulter in payment of rent. That apart, PW1 disclosed that the suit shop room is reasonably required for the business of him and his son. PW2 corroborates the same. No contrary evidence is there.

43. Regarding notice for eviction, it is the main thrust of contention of the learned counsel for the defendant that the notice was defective as it was mentioned therein that the defendant and his brother were tenants of the suit room. Such plea was not taken by the defendant in his written-statement or in the reply letter to eviction notice. Neither DW1 nor did any other witness for him take such plea before the learned Trial Court. As a matter of fact, the defendant refrained himself from adducing any evidence in this regard before the learned Trial Court.

44. A careful perusal of the plaint as well as the schedule of the notice for eviction dated 28th May, 2018 (Exhibit 1) makes it evidently

clear that both the schedules therein are identical and same. The plaint and the notice for eviction (Exhibit 1) disclosed the L.R plot number of the suit shop room as 1296 of Mouza Champahati, J.L No.52, Khatian No.49 of Pandua Police Station in the district of Hooghly. The suit property consists of one room in the ground floor measuring about 64 ft^2 and the schedule contains the boundary of the suit property also. So, the suit property can be identified with certainty from the description given in the plaint as well as the notice for eviction (Exhibit '1'). Surprisingly, the defendant replied the notice for eviction by the letter dated 28th June, 2018 (Exhibit 2), through his learned advocate, wherein the defendant claimed his separate tenancy in the schedule property. He did not contend that he was not the tenant of the suit property mentioned in the Notice for Eviction (Exhibit 1). The Acknowledgement Due Card [Exhibit 1(b)] and the Reply Letter (Exhibit 2), undoubtedly, established that the Notice for Eviction (Exhibit 1) was duly served upon the defendant. The defendant, thus, has received the Notice for Eviction (Exhibit 1) sent by the plaintiff through his learned advocate.

45. In the Reply Letter (Exhibit 2), the defendant has taken plea that the tenancy of the defendant is permanent and heritable. According to the Reply Letter, the end of tenancy depends upon the wish of the defendant and not of the plaintiff, according to the terms of tenancy, as there was a contract that the defendant would remain tenant so long as he continues his business in the premises. The defendant has intention to continue his business and has been continuing the same accordingly. The learned advocate for the defendant in the reply letter has also mentioned about one agreement between the parties.

46. The defendant has produced one Tenancy Agreement (Exhibit 'A') on non-judicial stamp paper of Rs. 10/-. During his cross-examination, PW1 replied that one agreement was executed between him and the defendant but it had not been acted upon. He further confirmed in his

cross-examination that there was once an agreement of tenancy which was invalid as the purpose was not served. Nothing contrary is available in the evidence of the adversary. Such unregistered deed cannot be executed for perpetual lease or long-term lease because in such case, the deed requires registration.

47. In the case of **Satish Chand Makhan and others versus Govardhan Das Byas and others** reported in **AIR 1984 SC 143**, it was decided that the unregistered lease deed cannot also be taken into consideration on the ground that such deed can be admitted in evidence for collateral purpose, invoking proviso to section 49 of the Registration Act, as terms of the lease are not a collateral purpose within its meaning. There being no change in the circumstances by virtue of such unregistered lease deed Order VII Rule 7 of Civil Procedure Code is not also attracted.

48. The Hon’ble Apex Court has further held that in case of the unregistered deed of lease of an immovable property the tenancy must be taken as month by month and in that case the service of notice under section 106 of the Transfer of Property Act is necessary.

49. According to section 106 of the Transfer of Property Act, every notice under this section must be in writing, signed by or on behalf of the person giving it and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants, at his residence or if such tender or delivery is not practicable affixed to a conspicuous part of the property.

50. As such, the notice under section 106 of the Transfer of Property Act, signed by the learned advocate for his client, can be considered as the notice signed on behalf of the person giving it. There is no necessity for putting signature of the plaintiff in the eviction notice. The signature of the learned advocate on behalf of the plaintiff is a sufficient compliance of notice under section 106 of the Act.

51. In the said notice, it was mentioned that the same was issued against the name of the defendant with his postal address. But in the body of the notice, it was stated, “you and your brother are tenants in the schedule mentioned property……” But the evidence on record has proved that defendant is the only tenant in respect of the suit property. In the plaint also the plaintiff has claimed that the defendant is the tenant under him. There is no whisper in the pleadings of the parties that the brother of the defendant was tenant in respect of the suit property at any point of time. A plain reading of the Eviction Notice (Exhibit 1) explicitly disclosed the intention of the plaintiff, which is nothing but to evict the defendant from the suit property.

52. The Hon’ble Supreme Court has held in **Bhagabandas versus Bhawandas** reported in **AIR 1977 Supreme Court 1120** that a notice to quit must be construed not with the desire to find fault in it, which would render it effective but it must be constructed *ut res magis valeat quam pereat*. All the authorities in this question have been considered in **Bhagyanagar Khadi Samiti versus S.B. Chitnis (1988) 5 ALT 199**. It was held in **B. Chitra versus National Remote (AIR 2001 AP 29)** that a notice to quit should not be held bad merely because of inaccuracies either in description of premises or the name of the tenant or date of expiry of notice. From the language in the quit notice, it must be endeavoured to ascertain the intention of the parties and the effect thereof and it should not be read in hyper- technical manner but should be construed in commonsense way.

53. So, the Notice for Eviction dated 28.05.2018 (Exhibit 1), issued on behalf of the plaintiff, cannot be held as improper merely because the notice contained the words, “you and your brother are tenants in the schedule mentioned property……”. From the language of the notice to quit the intention of the plaintiff can be gathered clearly and without any obscurity.

54. The pleadings of the parties as well as evidence adduced in the suit did not disclose any existence of brother of the defendant. Nothing is there to show that any brother of the defendant has/had any tenancy right in the suit property. Written statement is bereft of any plea that the suit is bad for non-joinder of necessary party. Furthermore, in the plaint no relief has been claimed against any brother of the defendant. As a result, no brother of the defendant is the necessary party in the suit.

55. There is not an iota of evidence to prove that the tenancy between the plaintiff and the defendant in the suit property is a perpetual lease. The defendant could not establish that shop room was let out to him as perpetual lease.

56. The learned Trial Court has rightly concluded that the suit is maintainable and the plaintiff has sufficient cause of action to file the suit. There is no necessity for interference regarding the observation of the learned Trial Court that the notice to quit dated 28.05.2018 is valid and sufficient and it was properly served upon the defendant. Relationship between the plaintiff and the defendant in respect of the scheduled property is that of landlord and tenant and the plaintiff requires the suit property for business purpose. Basing on sound principles of law, Ld. Trial Court has decided properly that the defendant is liable to be evicted from the suit property. No doubt, the learned Trial Court has rightly decided the issue No. 1 to 5. But in case of issue No. 6, learned Trial Court has erroneously placed reliance upon the so-called Tenancy Agreement as well as oral evidence of DW2 to DW3 wrongly holding that they by adducing their evidence corroborated the fact of receiving advance money of Rs.37,000 by the plaintiff. The learned Trial Court has overlooked that the Tenancy Agreement (Exhibit ‘A’) was not acted upon as per evidence on record. The defendant did not adduce any evidence in this regard. The defendant (DW1) did not dare to face cross examination to establish his case as alleged in the written statement.

The defendant himself did not adduce any evidence regarding the alleged payment of selami. As such, the payment of salami or advance money by him to the plaintiff has not been proved. The statements of DW2 and DW3 are inconsistent in that regard. DW2 contended that the amount was taken as selami; whereas DW3 divulged that the amount of money was taken before letting out the suit property to the defendant by the plaintiff, who constructed room by that money.

57. The learned Trial Court, thus, has decided erroneously the issue No. 6 and adjusted the alleged amount of Rs.37,000 with the arrears of rent due, directing the plaintiff to pay/return the balance amount of Rs. 18060/- to the defendant, if the defendant will quit and vacate the suit property.

58. Surprisingly, the learned Trial Court has refused to pass the decree in respect of mesne profit as the suit ran for seven years causing huge expenses for both the parties. Termination of tenancy has been sufficiently established by the plaintiff by proving the service of notice to quit (Exhibit 1) upon the defendant on 11th June, 2018, as evident from the postal mark/seal on the A.D Card [Exhibit 1(b)], signed by the defendant. The defendant also gave reply to the notice on 28th June, 2018. So, the tenancy in respect of the suit property was terminated by the plaintiff with the service of notice to quit from the 1st day of July, 2018. As the defendant did not quit or vacate the suit shop room after that day, his possession in the suit property became unlawful. As stated earlier, the defendant could not file any document or even a scrap of paper to show that he has paid rent to the plaintiff since the Bengali month of Magh, 1424 B.S.

59. Order XLI rule 33 of the Code of Civil Procedure empowers the Appellate Court to pass any decree and make any order which ought to have been passed or made or to pass or make such further or other decree or order as the case may require, and this power may be

exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection, and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees.

60. Section 2(12) of the Code of Civil Procedure states “mesne profits” of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession.

61. As mentioned above, the defendant remained in illegal possession of the suit property even after termination of tenancy without any rent and as such, the defendant has gained profits by remaining in wrongful possession of suit property. Consequently, the plaintiff is entitled to get a decree for mesne profits against the defendant.

62. Order XX Rule 12 of the Code of Civil Procedure provides about decree for possession and mesne profits as follows:

(1) Where is suit is for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree------

(a) for the possession of the property;

(b) for the rent which have accrued on the property during the period prior to the institution of the suit or directing an inquiry as to such rent;

(ba) for the mesne profits or directing an inquiry as to such mesne profits;

(c) directing an inquiry as to rent or mesne profits from the institution of the suit until-------

(i) the delivery of possession to the decree holder;

(ii) the relinquishment opposition by the judgement debtor with notice to the decree holder through the Court; or

(iii) the expiration of three years from the date of the decree, whichever event first occurs'

(2) Where an inquiry is directed under clause (b) or clause (c), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry.

63. In the light of the discussion made in the fore-going paragraphs, it can be concluded without any hesitation that the decision arrived at by the learned Trial Court in respect of the issue No. 1 to 5 should be affirmed but the issue No. 6 is required to be modified. As such, the points for consideration nos. (i), (iii) and (v) are decided in negative; whereas the same no.(ii) is decided in affirmative but the point no.(iv) is decided in affirmative as interference is required in order to modify the order/operative portion of the impugned judgement forp substantial justice.

64. In short, the instant appeal fails.

65. Memo. of appeal is correctly stamped.

66. In the result, I proceed to pass

ORDER

that the instant Appeal be and the same is dismissed on contest against the Respondent.

The Judgement dated 28.07.2025 passed by the Ld. Civil Judge (Junior Division), 2nd Court, Hooghly, in Title Suit No. 282 of 2018, is hereby modified as follows:

"that the instant suit be an same is hereby decreed on contest in favour of the plaintiff against the defendant.

The plaintiff does get a decree of eviction against the defendant from the suit premises mentioned in the schedule of the plaint and delivery of khas possession of the same to the plaintiff;

The defendant is hereby directed to quit and vacate the suit property as shown in the plaint, within 90 days from the order, failing of which, the plaintiff is at liberty to file execution case against the defendant as per due process of law.

The plaintiff does get a preliminary decree of mesne profits, which is required to be inquired into under Order XX Rule 12 CPC, from the institution of the suit until---

(i) the delivery of possession to the decree-holder;

(ii) the relinquishment of possession by the judgement debtor with notice to the decree-holder through the Court; or

(iii) the expiration of three years from the date of the decree, whichever event first occurs.

In accordance with the result of such inquiry, a final decree will be passed.

Parties of the suit must bear the respective costs of the suit.

Decree in compliance of the provisions under Order XX Rules 6 & 6A of the Code of Civil Procedure be drawn up accordingly.”

The application under Order XLI Rule 5 of the Code of Civil Procedure, being infructuous due to conclusion of the appeal, is rejected.

Consequently, the Appeal is disposed of.

Appellate decree be also drawn up.

Let a copy of this judgement along with the case record of Ld. Trial Court be transmitted to the concerned Court at once.

Typed by me. **District Judge,**

District Judge. **Hooghly.**