

Ej. Suit No. 6763 of 2014

Order No. 14
03.09.2016

Plaintiff present by filing hazira.

Record taken up for passing order.

This is a suit for recovery of khas possession valued at Rs. 7360/- and damages of Rs. 100/-.

The plaint case in a nutshell is that the plaintiffs are the absolute owners/landlords of the suit schedule property and the defendant was the monthly tenant under the plaintiffs at a monthly rent of Rs. 605/- per month.

The further case of the plaintiffs is that the father of the defendant was the original tenant for his business purpose and after death of the parents of the defendant on 01.01.2014 and 04.12.2013, the defendant became the tenant in respect of the suit premises. The further case of the plaintiffs are that during the lifetime of the original tenant the plaintiffs were compelled to file Title Suit Being no. 1076 of 2013 before the Ld. Judge, 10th Bench, City Civil Court, Calcutta for restraining the them from making any illegal and unauthorised construction which is still pending and the plaintiffs crave leave to produce a relevant documents at the time of hearing of this suit. The defendant is a defaulter in payment of rent from the month of January, 2014. The further case of the plaintiffs are that the plaintiffs sent a notice dated 06.05.2014 to the defendant determining the tenancy with the expiry of the month of June, 2014 and called upon the defendant to quit and vacate the suit premises and deliver up peaceful possession to the plaintiffs. The notice was duly received by the defendant by signing on the acknowledgment card on 08.05.2014 and another copy of the notice upon the defendant was returned with endorsement "not claimed". The further case of the plaintiffs is that they reasonable require the suit premises for their own use and occupation and for the members of their family. In spite of service of notice, the defendant has wrongfully failed and neglected to quit, vacate and deliver up peaceful and vacant possession of the suit premises to the plaintiffs.

The plaintiffs have thus filed the present suit for recovery of possession.

Notice was duly served upon the defendant but they failed to appear and contest the suit for reason of which the suit was heard exparte against him.

The plaintiffs have examined only one witness in support of his case.

One Hiranmoy Seth as PW-1 was examined and discharged.

Contd...P/2

The following documents were marked as exhibits on behalf of the plaintiff.

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|-----|--|---|-----------------------------|
| 01. | Property tax receipt | - | Ext.-1, |
| 02. | Counterpart part of rent receipt | - | Ext.-2, |
| 03. | Letter | - | Ext.-3, |
| 04. | Certified copies of sheet of order | - | Ext.-4 & 4/a, |
| 05. | Eviction notice, postal receipts, A/D cards,
envelope and with A/D card | - | Ext.-5, 5/a, 5/b,
& 5/c. |
| 06. | 3 Nos. of Voter I. Card | - | Ext. 6, 6/a &
6/b, |
| 07. | 3 Nos. of Ration Cards | - | Ext.-7, 7/a &
7/b, |
| 09. | Certified copy of order sheet | - | Ext.-8, |
| 10. | Trade Licence, Income Tax Return, Sale Bill | - | Ext.-9, 9/a &
9/b, |
| 11. | Bill and challan of Ali Timber | - | Ext.-10
(collectively), |
| 12. | Registration certificate of motor vehicle | - | Ext.-11, |
| 13. | Rent receipt of garage dated 01.06.2015 | - | Ext.-12 |

Ld. Advocate on behalf of the plaintiff pressed the ground of defaulter and reasonable requirement at the time of argument.

PW-1 more or less supported the plaint case in his examination-in-chief.

I perused exhibit-1. It appears that tax was paid against the suit schedule property.

I perused exhibit-3. I find that this is the letter of change of tenancy executed in between the plaintiff and the defendant and duly signed by the defendant.

It appears from exhibit-5 (series) that the plaintiff has duly served notice upon the defendant. I find that the envelope was returned with endorsement "not claimed".

I rely upon case law reported in 70 CWN 676, 65 CWN 1239 and AIR 1989 SC 630 regarding service with endorsement "not claimed" to be proper service.

I perused exhibit-2. It appears therefrom that rent was paid lastly for the month of December, 2013.

I perused exhibits – 4, 4/a & 8. It appears therefrom that injunction order is granted by Ld. Judge, City Civil Court in respect of T.S. 1076 of 2013 and that Appeal is pending before the Hon'ble High Court due to which execution case no. 176 of 2003 has been stayed by the Hon'ble Court.

I perused exhibit- 9(series), 10, 11 & 12. It appears therefrom that the plaintiff has proved his reasonable requirement of the suit premises.

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From the evidence on record, both oral and documentary, I find nothing to disbelieve the unchallenged testimony of the plaintiff.

Thus the plaintiffs have successfully proved his case and is entitled to the decree for eviction.

Thus the suit succeeds.

Court Fee paid is correct .

Hence, it is,

ORDERED,

That the suit be and the same is hereby decreed exparte against the defendant without cost. The plaintiffs do hereby get a decree for ejection and recovery of khas possession of the suit premises by evicting the defendant. The defendant is hereby directed to quit, vacate and hand over vacant khas possession of the suit premises to the plaintiffs within 90 (ninety) days from the date of this order, in default, the plaintiffs will be at liberty to execute the decree through process of law.

The suit thus stands disposed of.

Dictated and corrected by me:

Sd/- S. Ghosh
Judge

Sd/- S. Ghosh
Judge, 3rd Bench.