

Title Suit No. 3058 / 2010

West Bengal Form No. 3701

HIGH COURT FORM NO. (J) 2

HEADING OF JUDGEMENT IN APPEAL SUIT/CASE.

DISTRICT : KOLLATA.

IN THE COURT OF : CITY CIVIL COURT, BENCH NO.-VIII, CALCUTTA

Present : **Shri Bhaskar Bhattacharjee**

Judge, (J.O.No. WB00640)

Bench No.VIII, City Civil Court, Calcutta

Date of delivery of Judgment : Tuesday, The 30th day of June, 2026.

Title Suit No. 3058 / 2010

(CNR No.WBCC01-006729-2010)

1) NARYAN MULLICK

2) TAPAN MULLICK

.....Plaintiffs.

-Versus-

ARUN KUMAR DAS, since deceased substituted by his legal heirs,

a) PRATIMA DAS

b) ARUP DAS

c) SWARUP DAS

.....Defendants.

This Suit/ case coming on for final hearing on **23.06.2022**.

In presence of

Sri Kaushik Jana

.....Ld. Advocate for the plaintiffs.

Smt. Juthika Sadhukhan

.....Ld. Advocate for the defendants.

And having stood for consideration to this day, the Court delivered the following judgement :-

Title Suit No. 3058 / 2010**J U D G M E N T****Plaint case : —**

1) The plaintiffs have instituted this suit praying for a decree for recovery of possession by evicting the defendants from the suit premises, damages and other consequential reliefs.

2) The plaintiffs are the owners of the premises No.30B, situated at Haralal Das lane, PS Jorabagan, Kolkata - 700006 which is under the Kolkata Municipal Corporation. The plaintiffs have purchased the said property vide a registered deed of sale dated 14th March, 1983 from the vendor Monindra Krishna Mitra @ Monindra lal Mitra and have recorded their names in the assessment book maintained with the Kolkata Municipal Corporation.

3) That one Chitaranjan Das was a tenant under the plaintiffs in respect of one room situated on the first floor of the said premises at a monthly rental of Rs.23/-. It has been stated by the plaintiffs that Chittaranjan Das has left the suit premises in the year 2003 and thereafter the suit premises has been occupied by the predecessor-in-interest of the present defendants, namely, Arun Kumar Das (since deceased) as a licensee and a trespasser without the consent from the plaintiffs. The plaintiffs have stated that they have requested the defendants to vacate the suit premises but the defendants did not do so and hence the plaintiffs issued a notice through registered post with A/D for revoking the license and sought for the ejectment of the defendants from the suit premises and the same was duly received by the defendants on 22.07.2010. It has been further stated by the plaintiffs that having no other alternative accommodation for their use and occupation they asked the predecessor in interest of the defendants, namely, Arun Kumar Das (since deceased) to vacate the suit premises. The plaintiffs have further stated that the defendants are not a tenant under them and thus have no right to use and occupy the said premises. Hence,

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the instant suit has been filed by the plaintiffs praying for recovery of khas possession and ejectment of the defendants from the suit premises, damages and other consequential reliefs.

Defence Case : —

4) The defendant Arun Kumar Das (since deceased) contested the suit by filing written statement thereby denying each and every allegation made in the plaint.

5) The defendants, namely, Arun Kumar Das (since deceased) in his written statement has challenged the maintainability of the Suit. It has been further stated in his written statement that the present suit is bad for non-joinder of necessary parties and that the suit is bad for want of proper cause of action. That this Court has no jurisdiction to try the subject matter of the suit as the same is a ejectment Suit. The defendant has stated that the plaintiffs have also filed another title suit being T.S No. 1944/2010 which is pending before this Court.

6) The Defendants have denied and disputed the contents of the plaint and have stated that one late Chandi Charan Mitra, as landlord inducted late Bhupati Mohan Das who was the father of the defendant Arun Kumar Das (since deceased) in respect of the entire premises being no.30 Haralal Das lane under P.S.- Jorabagan, Kolkata - 700006. After the death of Chandi Charan Mitra, his wife Nalini Bala Mitra became the landlady of the father of the defendants. The said Nalini Bala Mitra died on 4th August, 1958 without leaving any legal heirs. It has been further stated by the defendants that one Bihari lal Mitra claiming the ownership of the entire premises compelled Chittaranjan Das (since deceased), who is the elder brother of the defendant Arun Kumar Das (since deceased), to pay rent to him in respect of one room situated in the first floor at the rate of ₹ 23 per month. After the death of Bihari lal Mitra, his son, Monindra Krishna Mitra became the landlord of the said premises.

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7) The defendants have further stated that the plaintiffs in the year 1983 took the suit premises from Monindra Krishna Mitra. Thereafter, the plaintiffs compelled the defendant to pay rent at the rate of Rs.30/- per month in respect of one room situated in the ground floor of the said premises against proper rent receipts.

8) It has been further stated by the defendants that Chittaranjan Das (since deceased), who was the elder brother of the erstwhile defendant, namely, Arun Kumar Das (since deceased), was a tenant under the plaintiffs in respect of one room situated in the first floor of the suit premises and the family members of Chittaranjan Das (since deceased) are still in possession of the first floor of tenanted premises which is the subject matter of this Suit. Further the defendants have categorically stated that they have no nexus in respect of the suit premises situated in the first floor. The defendants have denied the plaintiffs' claim that they have no other alternative accommodation for their own use and occupation. It has been specifically stated by the defendants that plaintiffs have sufficient accommodation in other areas of the entire premises and also elsewhere within the jurisdiction of the Kolkata Municipal Corporation. These substituted defendants have prayed for dismissal of the suit with costs.

9) Record reveals that five issues were framed by my predecessor-in-office on 11.07.2011. After hearing the Ld. Advocates appearing for the respective parties and on going through the pleadings of both sides, I feel it expedient to recast the issues in the following manner for just and proper adjudication of the Suit.

ISSUES (RECASTE)

1. Is the suit maintainable in its present form and law ?

2. Have the plaintiffs any cause of action to file the present Suit against the defendants ?

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3. Is the suit bad for non-joinder of necessary parties ?
4. Are the defendants trespassers in respect of the suit premises ?
5. Are the plaintiffs entitled to get a decree in terms of their prayer?
6. To what other relief/ reliefs, if any, the plaintiffs are entitled ?

Plaintiffs' Evidence

10) In order to prove their case, the plaintiffs have examined only one witness, namely, Narayan Mullick (Plaintiff No.1) who has been examined as P.W.-1.

11) In course of evidence on behalf of the plaintiffs, the following documents were admitted into evidence and have been marked as Exhibits, namely :-

Exhibit No. - 1	Original Ration Card
Exhibit No. - 2	Original Voter Identity Card
Exhibit No. - 3	Certified copy of the Deed of Sale being No.2530 for the year 1983
Exhibit No. - 4	Tax receipt issued by Calcutta Municipal Corporation
Exhibit No. - 5	Letter of attornment issued by Chittaranjan Das on 01.04.1983
Exhibit No. - 6	9 rent bills issued in favour of Chittaranjan Das
Exhibit No. - 7	Death Certificate of Chittaranjan Das issued by Calcutta Municipal Corporation
Exhibit No. - 8 series	Copy of Ejectment Notice, A/D Card and Postal Receipt

Defendants' Evidence

12) On the other hand, defendants have examined one witness, namely, Arun Kumar Das (Original defendant, since deceased) as D.W.-1.

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The following documents have been admitted into evidence and marked as Exhibits, namely :-

Exhibit No. - A series	Original Electricity Bill, Original Voter I.D. Card, Original Ration Card and Original rent bills (4 Nos.)
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DECISION WITH REASONS

13) In the light of the aforementioned pleadings for both sides, evidence collected on record, written arguments of both sides and post hearing of the illuminating arguments advanced by the Ld. Advocates appearing for the respective parties, issues are hereunder discussed and determined in the following manner.

14) Issue No.3

On going through the materials on record, this Court feels it expedient to discuss this issue at first leaving other issues at this stage. Accordingly, this issue is taken up for discussion.

15) The plaintiffs case is that one Chittaranjan Das (since deceased) was a tenant under their predecessor-in-interest in respect of one room situated in the first floor of the suit premises at a monthly rental of Rs.23/-. Said Chittaranjan Das left the suit premises in the year 2003 and since then the defendants are enjoying the suit premises as licensee. The plaintiffs have revoked the license by sending a legal notice upon the erstwhile defendant, namely, Arun Kumar Das (since deceased) which was duly received by him on 22.07.2010. After revocation of the licence the defendants did not vacate the suit premises and are still occupying the suit premises illegally as trespassers.

16) On the other hand, the defendants have stated in their written statement that they are tenants in respect of one room situated in the ground floor of the suit premises at a monthly rental of Rs.30/-.

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17) It has been categorically stated by the defendants that the suit premises as mentioned in the plaint is in the possession and occupation of Chittaranjan Das (since deceased) and his family members and these defendants have no nexus in respect of the suit premises as mentioned in the plaint.

18) On perusal of the materials on record more particularly from the cross-examination of P.W.-1 Narayan Mullick it is evident that he has stated that Chittaranjan Das was a tenant under them in respect of the suit room and he died in the year 2011. P.W-1 during his cross-examination held on 29.01.2015 has categorically stated in the following manner :-

“The widow and children of Chittaranjan Babu have been residing in that suit room since the death of Chittaranjan Babu.”

19) On scanning the evidence of DW.-1, Arun Kumar Das, since deceased, it appears that he in no uncertain terms has stated during his examination-in-chief, at para 11, which runs as follows :-

“I state that the suit premises as mentioned in the plaint are still in the possession and occupation of the family members of Chittaranjan Das, since deceased. I have no nexus in respect of the suit room as mention in the plaint.”

20) The examination-in-chief of D.W.-1, Arun Kumar Das was affirmed on 07.05.2015. Even on the date of swearing of the affidavit in chief by D.W.-1 he remained consistent and which is at per with his pleadings. The defendants have reiterated that they are neither trespassers nor taken illegal forceful possession of the suit premises as mentioned in the schedule of the plaint.

21) Record reveals that this suit has been filed in the year 2010. Chittaranjan Das died in the year 2011. Said Chittaranjan Das himself has not been impleaded as a necessary party at the time of institution of the

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suit. Nor his legal heirs who are occupying the suit premises, as per admission of P.W.-1, have been impleaded as necessary parties in this suit rendering the suit defective and fatal.

22) In my considered opinion, the recorded tenant, namely, Chittaranjan Das and after his death his legal heirs are all necessary parties in this suit and in their absence no effective executable decree can be passed in this suit. Therefore, I feel no hesitation to hold that the present suit is bad for non-joinder of necessary parties and this suit fails on this point.

23) This issue is answered in the affirmative and against the plaintiffs.

Issue Nos. 2, 4, 5 and 6

24) While dealing with the issue No.3 it has already been held that this suit is bad for non-joinder of necessary parties.

25) The result of the discussion made while dealing with the issue No.3 itself cuts the root of all issues, but still this court has to record its finding on each issue and accordingly, all the above issues are taken up jointly for discussion for the sake of convenience and brevity.

26) The plaintiffs have stated in the plaint that the defendants were enjoying the suit premises as licensee. It has not been stated in the plaint that how and when the licence was granted to the defendants. Not only that it is not clear that who has granted the said licence and when the same was revoked. Whereas the notice dated 19.07.2010 (Exhibit No.8) goes to show that it is a notice of ejectment against the licence. There is nothing written in the said notice (exhibit -8) that the licence has been revoked. Therefore, the case of grant of licence has no legs to stand on.

27) In the plaint it has been stated that Chittaranjan Das left the suit premises in the year 2003. Whereas during cross-examination P.W.-1 has categorically stated that said Chittaranjan Das vacated as well as handed

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over the peaceful possession of his tenanted room in his favour in the year 2010. There is a massive variant between the pleadings of the plaintiffs and the evidence of P.W.-1 on this score which creates doubt about the veracity of the plaintiffs case.

28) Another point is required to be discussed is that the notice (Exhibit No.8) is bad in law as it has been served upon a wrong person in view of the fact that as per evidence of P.W.-1 the widow and children of Chittaranjan Das have been residing in the suit room since the death of Chittaranjan Das. I hold that this suit has been filed against a wrong person who has no nexus with the suit premises as described in the plaint.

29) This Court is also of the considered opinion on going through the entire case record, that the plaintiffs do not have any cause of action to proceed against the defendants, when it has been plainly established that the suit has been instituted on vague and illusory cause of action given the fact that the defendants have no connection or nexus in the suit premises and the veritable cause probably exists against Chittaranjan Das and his family members. The plaint and its contents are contradictory and inconsistent with the evidence led by the plaintiffs which is itself a pointer towards the fact that cause of action never accrued to the plaintiffs to institute the suit against the defendant/ substituted defendants. Thus, this suit also fails on the score of cause of action, ever accrued to the plaintiffs to institute this Suit against these defendants.

30) The instant Suit is a glaring example of confusion where the plaintiffs were at a loss what should be the main cause of action against the identity of these defendants. Once plaintiffs picked up the defendants as a licensee. Next he brands the defendants as trespassers. Thereafter, he issued a notice (Exhibit – 8) against the defendant for ejectment, not as a tenant but against the licensee which is altogether a novel approach preferred before this forum.

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31) A suit stands or fall its on merit. If the suit lacks any merit it is bound to fall. It is the established principle of law that plaintiffs shall prove his own case on the evidence he produces. Plaintiff cannot reap any benefit from the weakness of the defendants. By applying the same principle I arrived at a irresistible conclusion that the plaintiff has failed to prove his case.

32) None of the issues can be decided in absence of Chittaranjan Das or his family members who are the original tenants of the suit premises.

33) Thus, the issue Nos. 2, 4, 5 and 6 are decided against the plaintiffs.

Issue No.1

34) In view of my decisions on issue Nos.2, 3, 4, 5 and 6, I do conclude that the instant suit is not maintainable in its present form.

This issue is answered in the negative accordingly.

Taking an overall view of my whole discussion, I am compelled to hold that the instant suit is liable to be dismissed with costs.

The plaintiffs are not entitled to get any relief as prayed for.

In the result, the suit fails.

Court fees paid is correct.

Hence, it is,

ORDERED

that the instant title suit being No.3058 / 2010 be and the same is hereby dismissed on contest with costs of Rs.5000/-.

Dictated and Corrected me.

Judge Bench VIII
City Civil Court, Calcutta.

(Bhaskar Bhattacharjee)
Judge Bench VIII
City Civil Court, Calcutta.
J.O.Code : WB00640