

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Civil Appeal No(s). 2997/2010

BRIJ RAJ PANDEY (D) THR. LRS.

Appellant(s)

VERSUS

SMT. CHAYA KARMAKAR

Respondent(s)

O R D E R

1. The property in the suit premises is 197A, Muktram Babu Street, Calcutta. The property devolved on one Siddheswar Ghosh as a beneficiary of a Will who in turn appointed Mr. Saral Kumar Ghose as his power of attorney. Mr. Saral Kumar Ghose in turn executed a rent agreement in favour of one Mr. Mahadeb Shaw which *inter alia* gave right to create sub-tenancy as per Clause-8 of the said rent agreement (Exhibit Q).

2. It is the case of the appellant Brij Raj Pandey (now represented through his legal heirs) that in pursuance of the aforesaid right a sub tenancy was created in his favour by Mahadeb Shaw as set out in a letter dated 7.01.1983 (Exhibit R). M.R. Shah passed away and his daughter Rajwanti Devi claimed to have

been attorned as a tenant. There are certain exchange of correspondence relied upon by the appellant before us (legal heirs of Brij Raj Pandey) to claim that there was arrangement of surrender of tenancy rights in respect of the premises by Rajwanti Devi and the appellant became the direct tenant. The fact, however, remains that the power of attorney holder Saral Kumar Ghose executed a sale deed in favour of respondents on 16.08.1978.

3. Late Brij Raj Pandey and apparently certain other sub-tenants were feeling apprehensive in respect of their rights with a threat of dispossession and thus filed suit for injunction bearing No.893 of 1979 before the City Civil Court, Calcutta with the relief of permanent mandatory injunction. This suit was however dismissed on 26.03.1983 with the finding that the plaintiff was a trespasser and not recognising the right as a sub-tenant on the ground that no prior written consent has been taken in terms of Section 16(1) of the West Bengal Premises Tenancy Act, 1956. The first appeal was preferred against the Judgment and decree before the Calcutta High Court bearing No.222 of 1983. During the course of the pendency of

the appeal, the appellant sought to bring on record certain additional documents by preferring an application under Order 41 Rule 27 of the Code of Civil Procedure, 1908. In terms of the Judgment dated 18.07.1998 the Division Bench of the Calcutta high Court dismissed the appeal as also the application. However, while doing so, it granted liberty to the appellant to bring the documents sought to be relied upon on record in a suit filed in the meantime by respondent for eviction of the appellant from the premises in question.

4. The documents are stated to have been filed in the Suit No.2038 of 1983 pending before the City Civil Court at Calcutta. In the suit, it was prayed for declaration/injunction and the delivery of the possession of the suit premises. The suit was decreed as per Judgment and decree dated 25.11.2005. The finding was arrived at that Mr. Saral Kumar Ghose accepted the surrender of tenancy from Rajwanti Devi but did not accept the appellant as tenant and thus in the absence of any written consent, there could not be any valid tenancy in favour of the appellant. The additional documents appeared to have been considered

not by reference to each document but collectively to come to the conclusion that it could be the proof of the possession of the appellant but not their legal rights as tenants. The appellant aggrieved by this decree preferred regular first appeal before the Calcutta High Court which has been dismissed by the impugned Judgment dated 6.03.2008.

5. The impugned judgment is predicated on the reasoning that the finding arrived at in the previous suit about the status of the appellant being trespasser would be res-judicata in the subsequent proceedings. The mere fact that the appellant was permitted to file some additional documents as per the appeal order of the High Court in the earlier proceedings would not make a difference on this aspect as the findings of appellant being a trespasser has been affirmed.

6. We have heard learned counsel for the appellant(s) at length who has taken us through the documents on record. However, despite a valiant and articulate attempt made by learned counsel for the appellant(s) that this Court should interfere with the

impugned order and remit the matter back to the High Court to consider the additional documents, we are not persuaded to do so.

7. The conspectus of the aforesaid facts shows that the first suit filed by the appellant itself was based on a claim of status as a tenant. Learned Counsel drew our attention to the issues framed in that suit.

Issue no. 2 reads as under :

“Are the plaintiffs entitled to permanent injunction restraining the defendants from interfering with their possession in respect of their respective tenancies and/or in any way ousting them therefrom otherwise than in due course of law and also from putting the main door and/or Gate under their lock and key?”

8. We are not persuaded by the argument of learned Counsel for the appellant(s) that there was no specific issue framed on the plea of rights as a tenant. The issue framed before us is comprehensive enough specifically as the claim of the appellant(s) is based on the surrender of tenancy rights by Rajwanti Devi in favour of the appellant(s).

9. The High Court in its judgment dated 18.07.1998 in appeal affirmed the findings of the status as a trespassers and did not consider it appropriate to

disturb the same. The mere fact that the additional documents are permitted to be placed on record in the subsequent suit will not amount to disturbing the categorical findings already arrived at *qua* the status of the appellant as a trespasser.

10. The appeal must thus fail and is dismissed leaving the parties to bear their own costs.

....., J.
(SANJAY KISHAN KAUL)

....., J.
(R. SUBHASH REDDY)

NEW DELHI
MARCH 28, 2019

ITEM NO.108

COURT NO.12

SECTION XVI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No.2997/2010

BRIJ RAJ PANDEY (D) THR. LRS.

Appellant(s)

VERSUS

SMT. CHAYA KARMAKAR

Respondent(s)

Date : 28-03-2019 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE R. SUBHASH REDDY

For Appellant(s) Ms. Anisha Upadhyay, Adv.
Mr. Pawan Upadhyay, Adv.
Mr. Nishant Kumar, Adv.
Mr. Surender Kumar, Adv.
Ms. Vanshika Gupta, Adv.

Ms. Sharmila Upadhyay, AOR

For Respondent(s) Mr. Abhijit Sengupta, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order leaving the parties to bear their own costs.

Pending application(s), if any, shall also stand disposed of.

(POOJA ARORA)
COURT MASTER

(ANITA RANI AHUJA)
COURT MASTER

(Signed order is placed on the file)