

**IN THE HIGH COURT AT CALCUTTA  
CIVIL APPELLATE JURISDICTION  
APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Jyotirmay Bhattacharya**

**AND**

**The Hon'ble Justice Debi Prosad Dey**

**S.A.T. 221 of 2015  
(CAN 5270 of 2015)**

**Rajendra Jaiswal & Ors.  
-Versus-  
Premnarayan Jaiswal.**

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For the Appellants : **Mr. Dilip Mondal,  
Mr. Nirmalya Roy.**

Heard on: 20<sup>th</sup> July, 2015.

Judgement on: 20<sup>th</sup> July, 2015.

**Jyotirmay Bhattacharya, J. :-**

This second appeal is directed against the judgement and decree dated 17<sup>th</sup> March, 2015 passed by the Learned Chief Judge, City Civil Court at Calcutta in Title Appeal No. 6 of 2014 affirming the judgement and decree dated 28<sup>th</sup> November, 2013 passed by the Learned 2<sup>nd</sup> Judge Presidency Small Causes Court at Calcutta in Ejectment Suit No.925 of 2002, at the instance of the defendants/appellants (tenant).

Let us now consider as to whether any substantial question of law is involved in this appeal for which the appeal is required to be admitted under the provision of Order 41 Rule 11 of the Code of Civil Procedure, or not.

An eviction suit was filed by the plaintiff/respondent against the defendants/appellants for ejection of the defendants/appellants from the suit premises on the ground of reasonable requirement of the plaintiff/respondent. The said suit was filed under the provisions of the West Bengal Premises Tenancy Act, 1956. In order to get a decree for eviction in such a suit for reasonable requirement under the 1956 Act, the landlord is required to prove the following three conditions:-

- i) the landlord is the owner of the suit property,
- ii) the landlord requires the suit premises for his own occupation and also for the occupation of the members of his family, and
- iii) the landlord has no other alternative reasonably suitable accommodation elsewhere.

Both the Courts below concurrently held that the landlord succeeded in proving that he reasonably requires the suit premises and he has no other reasonably suitable alternative accommodation elsewhere. Though the Learned Trial Judge discussed the issue regarding the ownership of the landlord in the suit premises and decided the said issue in favour of the landlord, but the Appeal Court has not come to an independent finding about the ownership of the landlord in the suit premises.

From the materials on record, we find that admittedly the landlord purchased the suit property from the erstwhile landlord/owner of the suit premises along with his two brothers.

Since an amicable settlement arrived at amongst the three brothers was subsequently reduced into writing and the said agreement was notarised, we have no hesitation to hold that

the plaintiff is the owner of the suit flat as the suit flat was allotted to the plaintiff by the said agreement. That apart, right of a co-owner landlord to evict the tenant from the suit premises is well recognised under the law. The plaintiff is no doubt a co-owner landlord. As such, his right to evict the tenant on the ground of reasonable requirement, cannot be denied.

Before parting with we like to mention here that Mr. Mondal, learned advocate appearing for the appellants submits that apart from the suit premises, there is another flat held by the landlord's son in the nearby locality. According to the tenant, sufficient accommodation is available in the said flat held by the landlord's son. As such, Mr. Mondal submits that relief should not have been granted to the plaintiff.

In our view, even availability of accommodation in the flat held by the landlord's son cannot be regarded as an alternative suitable accommodation for the plaintiff as the plaintiff cannot be compelled to move to his son's flat when he has his own flat in the suit house.

Thus, we do not find any substance in the contention of Mr. Mondal. We do not find involvement of any substantial question of law in this appeal. We decline to admit this appeal for hearing under the provision of Order 41 Rule 11 of the Code of Civil Procedure.

The appeal is, thus, dismissed.

Since the appeal is disposed of in the manner as aforesaid, no further order need be passed on the stay application.

The application for stay being CAN 5270 of 2015 is thus, deemed to be disposed of.

Urgent Photostat certified copy of this order, if applied for, be supplied to the Learned advocate for the appellants immediately.

**(Jyotirmay Bhattacharya, J.)**

I agree.

**(Debi Prosad Dey, J.)**

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