

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

FA 63 of 2022

CAN 3 of 2023

CAN 4 of 2023

Nawal Sultania & Ors.

Vs.

Hemant Kumar Chabria & Anr.

For the Appellants	: Mr. Jaydip Kar, Sr. Adv. Mr. Anuj Singh, Adv. Mr. Pradeep Jewrajka, Adv. Ms. Pooja Jewrajka, Adv. Mr. Rahul Poddar, Adv. Ms. Trinisha De, Adv.
For the respondents	: Mr. Ashok Kumar Banerjee, Sr. Adv. Mr. Ashim Kumar Routh, Adv. Mr. Subhayan Barik, Adv. Mr. Asif Hossain, Adv.
Hearing Concluded on	: September 3, 2025
Judgement on	: September 24, 2025

DEBANGSU BASAK, J.:-

1. Appellants have assailed the judgment and decree dated September 30, 2020 passed in Title Suit No. 134 of 2016 by the learned Civil Judge (Senior Division) at Sealdah.
2. By the impugned judgment and decree, learned Trial Judge has allowed the suit for eviction instituted by the

respondents and directed the appellants to quit and evict the suit property and deliver peaceful possession thereof to the respondents within a period of four months from the date of the judgment and decree.

3. Learned Senior Advocate appearing for the appellants has contended that, the appellants are monthly tenants in respect of the suit property. The appellants had applied under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 seeking to deposit rents with the appropriate authority. He has contended that, by an order dated January 8, 2015 learned Trial Judge held that, such application will be taken up for hearing along with main suit. However, without deciding the application under Section 7(2) of the Act of 1997, learned Trial Judge has decreed the suit erroneously holding that the appellants were licensees.

4. Learned Senior Advocate appearing for the appellants has contended that, the judgment and order dated July 5, 2023 passed in WPLRT No. 76 of 2022 does not operate as res judicata so far as the parties herein are concerned. He has contended that, there is difference in the issues raised in WPLRT No. 76 of 2022 and the Title Suit. He has contended

that, the High Court did not enter into the merits of the Title Suit and the issue as to whether, the appellants were licensee or not, in WPLRT No. 76 of 2022. In support of the contention that, the judgment and order dated July 5, 2023 passed in WPLRT 76 of 2022 does not operate as res judicata, learned Senior Advocate appearing for the appellants has relied upon ***2000 Volume 3 Supreme Court Cases 350 (Sajjadanashin Sayed Md. Vs. Musa Dadabhai Ummer and Others)***.

5. Learned Senior Advocate appearing for the appellants has relied upon the order dated November 24, 2023 passed by the Hon'ble Supreme Court in Special Leave Petition (C) No. 21773 of 2023 arising out of the judgment and order dated July 5, 2023 passed in WPLRT No. 76 of 2022. He has contended that, the Supreme Court observed that the first appeal would be decided as per its own merits.

6. Learned Senior Advocate appearing for the appellants has contended that, since, the issues raised in the Title Suit are not res judicata, therefore, the entire evidence led at the trial should be examined. He has pointed out, that there are two applications under Order 41 Rule 27 of the Code of Civil

Procedure, 1908 filed by the parties to the proceedings, which are pending.

7. Learned Senior Advocate appearing for the appellants has contended that, the learned Trial Judge has failed to appreciate the contents of the agreements being Exhibits 3 and 4 and the conduct of the parties. He has contended that, Exhibits 3 and 4 coupled with the conduct of the parties established at the trial, demonstrate that the relationship between the appellants and the respondents were that of tenants and land lords. He has contended that, description of a document may at times be misleading. In support of such contention, he has relied upon **2011 Volume 5 Supreme Court Cases 270 (Pradeep Oil Corporation vs. Municipal Corporation of Delhi and Another).**

8. Learned Senior Advocate appearing for the appellants has contended that, Exhibits 3 and 4 established exclusive possession of the appellants in the suit property. He has also pointed out to the conduct of the parties. He has contended that, both taken together establish a relationship of landlord and tenant.

9. Learned Senior Advocate appearing for the appellants has contended that, the agreement dated September 6, 2007 being Exhibit 4 is binding upon the parties. He has relied upon **1999 SCC OnLine Cal 66 (Allahabad Bank vs. Saday Chand Mahatab & Ors.)** for the proposition that an instrument of licence cannot be assigned nor can it survive the death of the licensor.

10. Learned Senior Advocate appearing for the appellants has contended that, Exhibits 3 and 4 have created interest in respect of the immovable property concerned, in favour of the appellants. In this regard, he has referred to Clause 2 of Exhibit 3 and Clause 1 of Exhibit 4. He has also referred to the deposition of the witnesses of the parties in this regard.

11. Learned Senior Advocate appearing for the appellants has contended that, since the entry of the respondents into the lease property was restricted, therefore, the claim that suit property was governed by a licence agreement was without any basis. In this regard he has referred to the deposition of various witnesses. He has also relied upon **Saday Chand Mahatab & Ors. (supra)** as well as **1985 UKHL 4 (Street vs. Mountford)**.

12. Learned Senior Advocate appearing for the appellants has contended that, the appellants were granted right to alter and/or add to the suit property in accordance with their commercial interest. In this regard, he has referred to Clause 2 of Exhibit 3 as well as Clauses 7 and 8 thereof. He has also referred to the deposition of the witness of the plaintiff. Therefore, according to him, the appellants were in possession of the property concerned as tenants.

13. Learned Senior Advocate appearing for the appellants has contended that, the suit property was demised of to the appellants as tenants with a period of two years against periodical payment of rent. In support of such contention, he has referred to various exhibits. He has also relied upon ***Saday Chand Mahatab & Ors. (supra)*** as well as ***1982 Volume 1 MLJ 25 (R. Srinivasa Chetty vs. G. Nagarajan)***.

14. Learned Senior Advocate appearing for the appellants has contended that, the appellants paid charges for the consumption of electricity in the suit property against an electric sub-meter maintained by the appellant No. 1. He has referred to various documentary evidence as well as testimony of the witnesses at the trial.

15. Learned Senior Advocate appearing for the appellants has contended that, Exhibits 1, 2, 3 and 4 read together would establish that, the parties treated the suit property as that of tenancy not as a licence.

16. Learned Senior Advocate appearing for the appellants has contended that, the grounds of the memorandum-of-appeal does not restrict the appellants from agitating an issue of law particularly the issue that, Exhibits 3 and 4 as well as conduct of the parties demonstrate that the tenancy was created.

17. Learned Senior Advocate appearing for the respondents has contended that, the suit for eviction was on the basis of licence agreements. He has contended that, the licence agreements executed from time to time between 2005 and 2007 makes it explicit that the appellants will not claim tenancy in support of the suit property.

18. Learned Senior Advocate appearing for the respondents has contended that, the appellants raised a plea of Thika Tenancy before the Thika Controller. He has referred to the fact that, the issue as to Thika Tenancy was ultimately set at rest by the judgment and order dated July 5, 2023

passed in WPLRT No. 76 of 2022. He has contended that, Special Leave Petition filed against the judgment and order was dismissed on November 24, 2023.

19. Learned Senior Advocate appearing for the respondents has contended that, the issue as to whether, the property was governed by a tenancy or a licence agreement was decided by the judgment and order dated July 5, 2023. According to him, such issue had fallen for consideration in those proceedings since, the plea of Thika Tenancy was required to be adjudicated upon. In adjudicating as to whether the property was a Thika Tenancy or not the Court has rightly held that, there was a licence agreement between the parties.

20. Learned Senior Advocate appearing for the respondent has contended that, the appellants repeatedly shifted stands from a tenancy to a Thika Tenancy and thereafter to a tenancy again only to prolong the occupation.

21. The respondents had filed Title Suit No. 134 of 2016 against the appellants herein before the learned Civil Judge (Senior Division), Sealdah, South 24 Parganas seeking declaration, eviction and recovery of khas possession and damages valued at Rs. 68,02,500/-.

22. Briefly stated, the respondents as plaintiffs have stated in the plaint that : –

- (i) the plaintiffs had purchased the immovable property by 3 registered deeds of conveyances
- (ii) at the request of the defendant No. 1 and his brother the plaintiffs had allowed the defendants to occupy the suit property, as a licensee on the condition that the defendants would vacate the property as and when asked by the plaintiffs and that, the defendants would never claim any tenancy rights with regard to the suit property
- (iii) relying upon such assurances given by the defendants and his brother, the plaintiffs had allowed the defendant No. 1 and his brother to occupy the suit property on as is where is basis as a licensee on September 20, 1997 for a temporary period of 2 years with effect from September 1997 to August 31, 1999 under a written agreement of leave and licence

- (iv) plaintiffs had received license fee and additional license fee by granting two receipts in favour of the defendant No. 1 and his brother
- (v) period of licence had been extended from time to time since September 1, 1997 with the enhancement of licence fee and additional license fee and/or occupational charges up to September 6, 2009
- (vi) plaintiffs had granted receipts for the occupational charges in favour of Sultania Marble Enterprise since 2000 as occupational charges used to be paid by cash and cheque from the account of such firm represented by the defendant No. 1 and his brother although no agreement was ever entered into with such firm
- (vii) on the expiry of the leave and licence on September 9, 2009, the plaintiffs requested the defendant No. 1 to deliver vacant possession of the suit property since, the plaintiffs decided to develop the same

- (viii) the defendants assured the plaintiff to deliver peaceful possession of the property within a fortnight by removing the goods therefrom
- (ix) however the defendants failed and neglected to comply with such promise
- (x) plaintiffs issued a notice to the September 16, 2009 calling upon the defendant No. 1 to vacate and deliver possession of the suit property
- (xi) despite receipt of such notice the defendants failed to deliver possession of the suit property to the plaintiffs
- (xii) the defendants lodged a false complaint against the plaintiffs with the local police station and filed a suit being Title Suit No. 299 of 2009 for declaration of tenancy rights under the plaintiffs by suppressing material facts and actual state of things
- (xiii) the defendants filed a suit being Title Suit No. 70 of 2011 against the plaintiffs with the identical claims

- (xiv) the plaintiffs issued a notice dated June 15, 2011 calling upon the defendants to quit, vacate and deliver possession of the suit property on expiry of the month of December 2011
- (xv) despite receipt of such notice the defendants did not reply thereto nor did they vacate and deliver possession of the property to the plaintiffs
- (xvi) the plaintiffs had filed a written complaint with the police station on July 23, 2011 and filed a proceeding under Section 144 (2) of the Criminal Procedure Code
- (xvii) the defendants dismantled and demolished 2 rooms wrongfully and illegally constructed two sheds without the consent of the plaintiffs
- (xviii) the defendant No. 1 and his brother namely Ashok Sultania were the licensees and that, on the death of Ashok Sultania his right as a licensee came to an end and therefore, the defendant No. 2 as his wife did not acquire any right or interest over the suit property

(xix) there was no agreement between the plaintiffs and the defendant No. 3 and that, on good faith, the plaintiffs issued receipts in favour of the defendant No. 3

23. The defendants had contested the suit by filing a written statement. The defendants had denied all material allegations in the plaint and contended that, the defendants were inducted into the suit property with the right to raise construction for the purpose of business. The defendants had contended that the tenancy under the plaintiffs was governed by the West Bengal Premises Tenancy Act, 1997. The defendants had claimed that, they maintained good relationship with the plaintiffs and paid the annual rent which was received by the plaintiffs without any objections.

24. In their written statement the defendants had contended that, the agreement of September 1997 was renewed from time to time and continued till 2009. The defendants had filed suit for declaration of tenancy being Title Suit No. 299 of 2019 which was withdrawn for defect in the cause title. Thereafter, the defendants had filed another suit

being Title Suit No. 70 of 2011 praying for declaration of tenancy.

25. The defendants have claimed that the rent paid by the defendants was consolidated for a year and that, the defendants are tenants who cannot be evicted save and except by the due process of law.

26. At the trial, several issues had been framed. The plaintiffs had examined one witness and tendered documents in evidence which were marked as Exhibit 1 to 15. The defendants had examined one witness and tendered documents which were marked as exhibits A to F.

27. At the trial, the parties had acknowledged that the appellants were in possession of the suit property. The parties have contested the status of occupation of the appellants in respect of the suit property. While, the respondents have claimed that the appellants were licensees, the appellants have claimed in their written statement that they were monthly tenants governed by the provisions of the Act of 1997, initially. Thereafter, they have applied for amendment of the written statement to incorporate a plea of thika tenancy. This attempt has failed up to the Hon'ble Supreme Court.

28. In addition to incorporating the plea of thika tenancy in respect of the suit premises, the respondents have approached the Thika Controller with the same plea in respect of the suit property. Various litigations had ensued between the parties with regard thereto. Ultimately, the plea as to whether or not the suit property was thika tenancy has been decided in WPLRT 76 of 2022 on July 5, 2023. Supreme Court, in the Special Leave Petition directed against such judgement and order dated July 5, 2023 and has held on November 24, 2023 that no case to interfere with the same was made out. It has however clarified that the present First Appeal will be decided as per its own merits.

29. The present First Appeal has arisen out of the impugned judgement and order dated September 30, 2020 passed prior to the judgement and order dated July 5, 2023 in WPLRT 76 of 2022.

30. While deciding WPLRT 76 of 2022 on the plea as to whether or not the suit property was a thika tenancy, the court has interpreted exhibits 3 and 4 involved herein, being the two documents described on its body as Licence Agreement. In the Title Suit which has resulted in the

impugned judgement and decree, exhibits 3 and 4 have fallen for interpretation. In this appeal also, it has been contended on behalf of the appellants that, on a true and proper construction of exhibits 3 and 4, the suit property has to be held as a monthly tenancy.

31. Same parties as that of the present First Appeal were parties to WPLRT 76 of 2022 in which, the judgement and order dated July 5, 2023 was rendered. Same immovable property was involved. Interpretation of same documents and in particular exhibits 3 and 4 were involved.

32. Judgement and order dated July 5, 2023 passed in WPLRT 76 of 2022 has held as follows: –

“15. The writ petitioners had been allowed to use and occupy the subject premises on and from September 20, 1997 by an unregistered written document dated September 20, 1997. Further unregistered written documents had been executed between the private parties at almost 2 years intervals and the last of such a written document had been executed on September 6, 2007.

16. In the unregistered written documents, the writ petitioners had been described as licencees while the private respondents had been described as licensors. The unregistered written documents have alluded to a license being granted by the licensors to the licencees. The first unregistered written document dated September 20, 1997 has a clause being Clause 9 which speaks of hoardings to

be present in the immovable property concerned in the possession of the licensors and that the possession thereof would remain with the licensors. Such position continued till the last written document between the private parties.

17. We have considered the written documents between the parties placed on record. Such documents have a clause which speaks of advertisement hoardings at the concerned premises to be under the possession of the licensors. Licensors had retained the right to change the advertisements put up the concerned hoardings. Written documents have also postulated the licencees obtaining a sub meter under the licensors for the purpose of electricity. Written documents read as a whole allows an inference that the licencees had not been put in exclusive possession of the concerned premises by the licensors and that there were pre-existing structures at the premises concerned prior to the licencees coming into licenced possession.

18. On a true and proper interpretation of the various clauses of the written documents executed between the private parties it can be held that the licencees had been granted a licensee of the property concerned for a limited period which was renewed from time to time. Licencees had never been in exclusive possession. Licensors had retained possession. There had been pre-existing structures at the property concerned. Interpretation of the six several written documents in the light of the Transfer of Property Act and the Act of 2001 had been undertaken by the learned Tribunal. Learned Tribunal had held that the written documents created a licensee and not a tenancy. We have no material placed before us to disagree with such interpretation.

19. The writ petitioners had filed a civil suit being Title Suit No. 299 of 2009 for declaration of their premises

tenancy right over the immovable property against the private respondents. The writ petitioners had subsequently withdrawn such suit.

20. The writ petitioners had filed another civil suit being Title Suit No. 70 of 2011 claiming premises tenancy rights over the immovable property concerned. The writ petitioners had also withdrawn such suit.

21. The private respondents had filed Title Suit No. 4 of 2012 which was subsequently renumbered as Title Suit No. 134 of 2016 against the writ petitioners for eviction of the licencees and other reliefs in respect of the immovable property concerned. In such suit, the writ petitioners had filed a petition under Section 7 (2) of the West Bengal Premises Tenancy Act, 1997 claiming themselves as premises tenants in respect of the immovable property concerned. This suit had been decreed against the writ petitioners for their eviction with other reliefs. The writ petitioners had preferred an appeal therefrom which is pending.

22. In the suit for eviction, the writ petitioners had filed a written statement claiming themselves to be tenants governed by the West Bengal Premises Tenancy Act, 1997 in respect of the immovable property concerned. The writ petitioners had applied for amendment of the written statement subsequent to their filing form A with the Controller seeking to enter in a plea of thika tenancy. Such a prayer for amendment had been refused by the Trial Court, on appeal by the Appeal Court and also by the Hon'ble Supreme Court.

23. The writ petitioners had therefore taken the stand that the premises concerned was governed by the Act of 1997 in three different civil suits; two filed by them and one

against them. Having taken a stand of tenancy they cannot be allowed to take a different stand before a different forum. They cannot be allowed to approbate and reprobate at the same time.

24. On September 25, 2012, the writ petitioner No. 1 had submitted Form A claiming himself as a thika tenant in respect of the immovable property concerned with the Controller. The writ petitioners had thereafter jointly submitted another Form A with the Controller on October 31, 2012 claiming themselves as thika tenants in respect of the immovable property concerned. They had also filed a petition for accepting their Form A under Rule 5 (3)(1)(a) of the West Bengal Thika Tenancy (Acquisition and Regulation) Rules, 2004 which was disposed of by an order dated December 31, 2014.

25. The writ petitioners had filed an appeal under Section 12 of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 against the order dated December 31, 2014 which was dismissed with costs by the impugned order dated May 17, 2022.”

33. On interpretation of exhibits 3 and 4, the court rendering the judgement and order dated July 5, 2023 passed in WPLRT 76 of 2022 has, in respect of the same immovable property, in a proceeding between the same parties, held that the documents created a license in favour of the appellants. Such conclusive finding has not been upset in the Special Leave Petition.

34. *Sajjadanashin Sayed (supra)* has held that, if the matter was in issue directly and substantially in a prior litigation and decided against a party then such decision would be res judicata in a subsequent proceeding. However, if a matter was only collaterally or incidentally in issue and decided in an earlier proceeding, the findings would not ordinarily be res judicata in later proceeding where the matter is directly and substantially in issue. It has explained that, the test as to whether, the issue was directly and substantially or collaterally and incidentally in issue or not, is to be decided on the basis as to whether, the issue was necessary to be decided for adjudicating on the principal issue and was decided.

35. In the facts and circumstances of the present case, the issue whether the appellants were licensees under the respondents in respect of the suit property or not, has to be decided. In WPLRT 76 of 2022, the issue whether the appellants were licensees under the respondents in respect of the suit property or not, had fallen for consideration directly and substantially, in order to decide whether or not the suit property was a thika tenancy. Such issue has been

conclusively decided by holding that exhibits 3 and 4 created a licence.

36. Therefore, applying the test as has been laid down in ***Sajjadanashin Sayed (supra)*** the irresistible conclusion is that, the issue as to whether the appellants were licensees under the respondent in respect of the suit property or not was directly and substantial in issue between the same parties and stood decided by the judgement and order dated July 5, 2023 passed in WPLRT 76 of 2022, finally.

37. In the judgement and order dated July 5, 2023 passed in WPLRT 76 of 2022, it has been conclusively held that, the appellants were licensees under the respondents. Such decision is binding upon the parties to the present First Appeal.

38. Since, the issue as to license has been conclusively decided, and since, the learned Trial Judge has prior to the judgement and order dated July 5, 2023 passed in WPLRT 76 of 2022 arrived at the same finding, the question of upsetting the same does not arise.

39. All other contentions of the appellants revolve around the plea of monthly tenancy on the basis of exhibits 3 and 4.

Since exhibits 3 and 4 have been interpreted to create a license, and since such interpretation is binding upon the parties to the first appeal, contentions of the rival parties advanced in this regard need not be dealt with any further.

40. In view of the discussions above, the impugned judgement and decree dated September 30, 2022 passed in Title Suit No. 134 of 2016 is affirmed. FA 63 of 2022 is dismissed. All connected applications are disposed of.

[DEBANGSU BASAK, J.]

41. I agree.

[MD. SHABBAR RASHIDI, J.]