

THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Appellate Jurisdiction)

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

RFA No.03 of 2024

Appellant : Mahesh Chandra Sharma

versus

Respondents : Smt. Anikit Lepcha and Others

Appeal under Order XLI Rules 1 and 2 read with
Section 96 of the Code of Civil Procedure, 1908

Appearance

Mr. S. S. Hamal, Senior Advocate with Mr. Pradeep Sharma and Mr. Varun Pradhan, Advocates for the Appellant.

Mr. Rahul Rathi, Ms. Khushboo Rathi and Ms. Rupal Agarwal, Advocates for the Respondents.

Date of Hearing	:	03-09-2025
Judgment reserved	:	03-09-2025
Judgment pronounced & uploaded	:	06-11-2025

JUDGMENT

Meenakshi Madan Rai, J.

1. This Appeal questions the Judgment of the District Judge, Special Division – I, Gangtok, Sikkim, in Eviction Suit No.06 of 2020 (*Smt. Anikit Lepcha and Others vs. Mahesh Chandra Sharma*), dated 16-04-2024, which decreed the suit of the Plaintiffs (Respondents herein) and directed the Appellant (Defendant) to hand over vacant possession of the tenanted premises, within three months of the pronouncement of the impugned Judgment.

2. The original Plaintiff, Tshering Dorjee Lama (the husband of the present Plaintiff No.1) was duly substituted by her on his demise, vide the Order of the Trial Court, dated 10-04-2023 and arrayed as Plaintiff No.1. Their daughters Yangchen Tshering Lama and Peden Tshering Lama, were arrayed as Plaintiffs No.2 and 3 respectively.

3. The parties shall be referred to by their litigative status during trial.

4. Before delving into the merits of the matter, the facts are briefly enumerated herein. The Respondents as Plaintiffs filed a suit for eviction and other consequential reliefs before the Court of the District Judge, East Sikkim, at Gangtok. Their case is that the Appellant, the Defendant before the Trial Court is a businessman, involved in the trade and services of automobile and other accessories. He is in occupation of the second and third floors of a building which was recorded in the name of the original Plaintiff. The occupation of the second floor of the building as his business premises was from the year 2001 with a monthly rent of ₹ 6,000/- (Rupees six thousand) only and thereafter from February, 2019, he is also in occupation of the third floor of the building as his residential premises, vide agreement between the parties dated 08-02-2019, for both premises. The total rent for both the premises was fixed at ₹ 15,000/- (Rupees fifteen thousand) only, per month.

(i) That, as Plaintiff No.2 has completed her studies she seeks to begin her practice in law and is therefore in *bona fide* requirement of the second floor of the scheduled building, which is in the occupation of the Defendant. Besides, no rent was paid by him for both premises from February, 2020, hence the third floor also ought to be vacated by the Defendant on grounds of default of payment of rent.

(ii) The prayers in the Plaint *inter alia* are for eviction of the Defendant from the suit premises which are the second and third floor of the RCC building, recorded in the name of the original

Plaintiff (Tshering Dorjee Lama). A Decree for recovery of arrears of rent amounting to ₹ 1,35,000/- (Rupees one lakh and thirty five thousand) only, along with future rents @ ₹ 15,000/- (Rupees fifteen thousand) only, per month, and costs of the suit.

(iii) The Defendant contrarily averred *inter alia* that, since 2001, till date he is a 'tenant' in the suit premises as defined under Notification No.6326-600 H&W-B, dated 14-04-1949, of the Government of Sikkim. That, the lease deed, dated 08-02-2019, executed with the Plaintiffs is an unregistered document, his signature having been obtained therein surreptitiously, under duress, taking advantage of his old age. He claims to be eighty years of age. He denied the allegation of non-payment of rent or that the Plaintiff No.2 was in *bona fide* requirement of the premises.

(iv) The Trial Court on the basis of the pleadings of the parties settled the following issues for determination;

“(1) Whether the plaintiff is in bona fide requirement of the suit premises or not?

(2) Whether the defendant has defaulted in payment of the monthly rent in respect of the suit premises to the plaintiff on and from the month of February, 2020?

(3) Whether the plaintiff is entitled to recovery of arrears of rent from the defendant on and from the month of February 2020 till the disposal of the case?

(4) Whether the plaintiff is entitled for the reliefs claimed?”

(v) The Plaintiffs in support of their case before the Trial Court examined Plaintiff No.2 as PW-1 and one Nagendra Singha as PW-2. The Defendant was the sole witness for his case.

(vi) The Trial Court on consideration of the evidence before it observed *inter alia* that, (1) the Plaintiff No.2 is in *bona fide* requirement of the second floor of the scheduled premises; (2) That, the Plaintiffs are entitled to recovery of arrears of rent from

the Defendant, from the month of February, 2020, till final recovery, (no order with regard to interest payable was pronounced) and; (3) The Defendant was to be evicted from the second floor of the scheduled premises on *bona fide* requirement and from the third floor on the ground of default in payment of rent. The Defendant was directed to hand over vacant and peaceful possession of the tenanted premises to the Plaintiffs within three months.

(vii) Dissatisfied thereof, the Defendant has appealed before this Court.

5. Learned Senior Counsel for the Appellant advanced the arguments that, the Defendant a senior citizen has been in occupation of the second floor of the building, where he runs his automobile garage since 2001, which is his means of livelihood and the third floor where he resides with his wife from 2019. No tenancy agreement was drawn up for the disputed second floor from the date of his occupation but the monthly rents were enhanced by the landlord in 2007, 2012 and 2016 which the Defendant promptly paid. The Defendant was permitted to continue occupation of the second floor on lease, from 01-02-2019 to 31-01-2020, on payment of ₹ 6,000/- (Rupees six thousand) only, per month, by executing Agreement Exbt P-12, dated 08-02-2019. Vide another lease deed Exbt P-13 of the same date, the third floor of the said building was leased to the Defendant for residential purposes on payment of ₹ 9,000/- (Rupees nine thousand) only, per month. The amounts were paid in favour of the Plaintiff No.2 and Nagendra Singha PW-2 collected the said cheques till the month of January, 2020, but from February, 2020,

he failed to collect the amounts, following which legal Notice was issued to the original Plaintiff, informing him of the refusal of PW-2 to accept the rent of the suit premises sent through money order. PW-2 had also refused to furnish the bank account details of the original Plaintiff to enable depositing rents therein, despite requests. This circumstance arose on account of the COVID-19 pandemic. A legal Notice was issued to the original Plaintiff, despite which the bank account as sought for by the Defendant was not furnished. Left with no alternative, he opened a bank account in his own name at Canara Bank, Gangtok and started depositing the monthly rent of the suit premises therein from June, 2020, onwards. In October, 2020, when the Defendant met the original Plaintiff, he requested him to collect the rent of February to May, 2020, and also informed him that the rent of June, 2020, onwards was in his aforesaid bank account, which he could collect whenever he wanted but it was met with refusal and instead the Eviction Suit was filed. It was urged that the Trial Court erred in holding that although the Notification bearing No.6326-600 H&W-B, dated 14-04-1949, of the Government of Sikkim, does not deal with the eviction of a lessee by a lessor but it applies when the case for eviction is based on two unregistered lease agreements of 08-02-2019 i.e., Exbt P-12 and Exbt P-13. That, the Trial Court also failed to appreciate that there was no cause of action for the eviction of the Defendant from the suit premises, particularly from the third floor.

(i) In an alternative argument, it was canvassed that, under Notification dated 14-04-1949, a tenant can be evicted by his landlord from the premises on grounds of requirement for

personal occupation, on default of payment of rent for four consecutive months or for complete overhauling of the suit premises. In the two lease agreements Exbt P-12 and Exbt P-13 no such ground was agreed upon by the Defendant and the Plaintiffs. Besides, the lease term of five years mentioned in Exbt P-13 had not expired for the third floor, when the suit was filed and no Notice of eviction was given to the Defendant for the third floor of the concerned building. It was further urged that the Plaintiff No.2 admitted that her father had not insisted upon the Defendant vacating the third floor. In fact, the Plaintiff No.2 admitted that her father also owned a five storeyed RCC building at 5th Mile, Tadong, revealing the absence of *bona fide* requirement of the second floor. To fortify his submissions, Learned Senior Counsel drew strength from the decisions in ***R. V. Bhupal Prasad vs. State of Andhra Pradesh and Others***¹, ***Jiwan Ram vs. Tobgyal Wangchuk Tenzing and Others***², ***Gordhan vs. Ali Bux***³, ***Ramanand and Others vs. Girish Soni and Another***⁴, ***The General Manager, Bharat Sanchar Nigam Limited (BSNL) vs. Smt. Radhika Chettri***⁵ and ***Kanahaiya Lal Arya vs. Md. Eshan and Others***⁶. The Judgment of the Trial Court is therefore perverse and suffers from an erroneous appreciation of the law and deserves to be set aside.

6. Learned Counsel for the Plaintiffs for his part referred to the lease agreement Exbt P-12, which according to him expired on 31-01-2020 and Exbt P-13 which was to expire in five years in the year 2024. It was urged that, Nagendra Singha PW-2 had deposed that although he went to collect the rent the Defendant

¹ AIR 1996 SC 140

² AIR 1985 SIKKIM 10

³ AIR 1981 RAJASTHAN 206

⁴ AIR 2020 DELHI 96

⁵ RFA No.08 of 2016, decided by this High Court, on 20-05-2017.

⁶ 2025 SCC OnLine SC 432

failed to pay the rent to him and the cross-examination of the witness did not decimate this statement. The cross-examination of the Defendant extracted his admission that he was well aware of the account number of the original Plaintiff but he failed to deposit the rents in his account. He was also familiar with the location of the residence of Nagendra Singha PW-2 and had he been genuinely inclined to deposit the rent with him, he could have done so. The statements made in the Defendant's affidavit are untrue as he states that he has no other means of livelihood, whereas his cross-examination reveals that he has a shop in Deorali, from where he conducts business and earns a living. To fortify his submissions, reliance was placed on ***Taramani Devi Agarwal vs. M/s. Krishna Company***⁷ and ***Taramani Devi Agarwal vs. M/s. Krishna Company***⁸. Learned Counsel contended that the Trial Court has correctly observed that the Defendant defaulted in the payment of rent for the second and third floor. It was contended that the ground for non-payment of rent due to the COVID-19 Pandemic is a new ground raised in Appeal and was not urged before the Trial Court. If rent was not accepted by PW-2, steps could have been made for transfer by electronic mode but was intentionally not resorted to. Thus, there was willful non-payment of the rent amounts, as also revealed from the fact that, after the instant Appeal was filed on 24-06-2024, this Court vide order dated 02-07-2024, ordered payment of arrears of rent from February, 2020 to May, 2024. Consequent thereto, an amount of ₹ 7,29,300/- (Rupees seven lakhs, twenty nine thousand and three hundred) only, was deposited by the Defendant but since then no other deposits have

⁷ AIR 2014 SIKKIM 16

⁸ RFA No.10 of 2016, decided by this High Court, on 01-10-2018.

followed. On the grounds urged, the impugned Judgment warrants no disturbance.

7. The rival contentions of the parties were heard at length, averments in the Plaint and the documents annexed thereto perused. The questions for consideration before this Court are;

- (i) Whether there was a jural relationship between the Respondents/Plaintiffs and the Appellant/Defendant.
- (ii) Whether the second floor of the suit premises was required for *bona fide* use of the Plaintiff No.2.
- (iii) Whether the Appellant/Defendant defaulted in the payment of rent for both premises from the month of February, 2020.

8. While considering the first question settled for determination hereinabove, it is essential to consider that, Exbt P-12 and Exbt P-13 are the lease deed documents executed between the original Plaintiff Tshering Dorjee Lama and the Defendant. There is no evidence to demolish the execution of these documents or the signatures therein, except a cursory statement made in the evidence of the Defendant that, it was prepared under deception. This statement deserves no consideration as no complaint was lodged before any authority on this aspect nor did he make any effort to withdraw the documents on which his signatures indubitably appear. In Exbt P-12, the second floor of the RCC building was said to have been leased out to the Defendant on 08-02-2019. Exbt P-13 is also a lease deed executed between the original Plaintiff and the Defendant, whereby it was agreed between them that the third floor of RCC building was leased out to the Defendant for a period of five years, commencing from 08-02-2019. This is fortified by the evidence of PW-1 and PW-2.

(i) It is now imperative to consider that, both documents are unregistered documents. The lease deeds being unregistered,

it is essential to notice as to how leases are made. Section 107 of the Transfer of Property Act, 1882 (hereinafter, the "TP Act") makes provision for such preparation and reads as follows;

"107. Leases how made.—A lease of immoveable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument.

All other leases of immoveable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

Where a lease of immoveable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee:

Provided that the State Government may, from time to time, by notification in the Official Gazette, direct that leases of immoveable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession."

(ii) The law therefore mandates registration of lease deeds in terms of the foregoing provision. Although both Exbt P-12 and Exbt P-13 are un-registered instruments, there has undisputedly been delivery of possession of the scheduled premises owned by the Plaintiffs to the Defendant, towards which he was required to pay monthly rents to the Plaintiffs. The Defendant while denying that he was a lessor to the property, averred in his Written Statement that since 2001 the suit premises were occupied by him as a tenant under Notification bearing No.6326-600 H&W-B, dated 14-04-1949, of the Government of Sikkim, and not as a lessee under the TP Act. In his deposition, he reiterated as much, by stating that from 2001 onwards he was a tenant of the suit premises and he had not taken the said premises on lease. It is therefore undeniable from the foregoing circumstances, that the Defendant was in possession of the property of the Plaintiffs for which he paid monthly rents. It is however worth recapitulating

that Learned Senior Counsel during his submission has taken a stand contrary to the averments and evidence of the Defendant that he was a tenant and not a lessee. Learned Senior Counsel relied on Exbt P-12 and Exbt P-13 to buttress his submissions. Whether termed as tenant or lessor, the undeniable circumstance is that there was a jural relationship between the Plaintiffs and the Defendants in view of the aforementioned facts.

(iii) While augmenting the above discussions and reverting to the TP Act it is to be noticed that in the present matter, Exbt P-12 was executed on 08-02-2019 with the lease commencing from 01-02-2019 and ending on 31-01-2020. Section 111 of the TP Act deals with lease and provides at (a) of the Section that lease of immovable property determines by efflux of the time limited thereby. The Eviction Suit was filed on 26-12-2020 as can be gauged from the records of the case. Hence, the lease on the second floor had already determined when the suit was filed as the lease, vide Exbt P-12 was up to 31-01-2020. It is apparent that despite determination of the lease, the Defendant continued to occupy the suit premises. With regard to Exbt P-13, this document was also executed on 08-02-2019 for a period of five years, which thereby would have determined in the month of February, 2024. The provisions of Section 116 of the TP Act would kick into place only if on determination of the lease granted to the lessee the lessor or his legal representatives accepts rents from the lessee, or otherwise assents to his continuing in his possession. For easy comprehension the provision is extracted hereinbelow;

“116. Effect of holding over.—If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or

otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 106.”

(iv) No rent was paid or accepted and the Defendant remained in possession *sans* consent of the owner. From the evidence on record, PW-1 has deposed that from the month of February, 2020, till the date of filing of the suit no rent was paid by the Defendant for the suit premises i.e., the second and third floor of the said building. It is also admitted that in the month of February, 2020, her father had requested PW-2 to demand eviction of the Defendant from the third floor. Hence, for the purposes of the second floor, when the Defendant continued to remain in possession of the second floor even after determination of the lease agreement without payment of rent, he was a tenant at sufferance as he continued to be in wrongful possession of the premises. He cannot be considered to be a trespasser, as the inception to the possession was rightful.

(v) The consistent refrain of the Plaintiff No.2 is that she requires the second floor of the building for her *bona fide* use as she has completed her studies in law and seeks to embrace the profession of law. The Defendant insists that there are other properties of the Plaintiffs which she can well utilize for her practice. While at the same time in his cross-examination it is an admitted position that he runs a jewellery business and Government supply, from his shop located at Deorali bazaar. He also sells gem stones from the same shop. The Supreme Court has repeatedly held that it is not for the tenant to dictate the terms of how the landlord is to use his property. In ***Kanahaiya Lal Arya*** (*supra*), the Supreme Court has observed as follows;

"10. The law with regard to eviction of a tenant from the suit premises on the ground of *bona fide* need of the landlord is well settled. The need has to be a real one rather than a mere desire to get the premises vacated. The landlord is the best judge to decide which of his property should be vacated for satisfying his particular need. The tenant has no role in dictating as to which premises the landlord should get vacated for his need alleged in the suit for eviction."

(vi) The Plaintiffs are entitled to take a decision on how to utilize any of their properties and opt for their property which is most suitable for their purposes. From the evidence of Plaintiff No.2, it is clearly established that she requires the premises for *bona fide* use. She is making an effort to stand on her own feet and in my considered view, her attempt should not be thwarted, while at the same time noticing that the Defendant is also not deprived of his livelihood as he has a store for running his jewellery business in Deorali, from where he also does Government supply works. Apart from which there has been no deposit of rent for occupation of the second floor of the property from the month of February, 2020. The second question formulated is thus given a quietus.

(vii) Now, the question to be addressed is regarding default in payment of rent in terms of the third question (*supra*) settled for determination by this Court. So far as the payment of rent for the third floor of the building is concerned the allegation of the Plaintiffs is that the Defendant has failed to pay the rent from the month of February, 2020. PW-2 Nagendra Singha was given the responsibility of collecting the rent from the Defendant by the original Plaintiff. His deposition reveals that the Defendant was depositing monthly rent for the second and third floor vide cheque in the account of the Plaintiff No.2, maintained in the State Bank of

India on the request and instructions of her father. The witness fortified the stand of the Plaintiffs that the Defendant never deposited the entire monthly leased amount. That, from the month of February, 2020, till date, the monthly rents for both second and third floor of the suit premises was not deposited by the Defendant, who has been running his business from the second floor, since the last fifteen years and residing in the third floor from 2019. That, the Defendant had under taken to vacate the second floor premises on 31-01-2020 but the original Plaintiff never insisted that Defendant vacate the third floor. The witness further deposed that on the demise of the original Plaintiff the Defendant was not tendering the rent to the substituted Plaintiffs and continued defaulting in payment of rent.

(viii) On this aspect the Defendant in his evidence admitted that he did not send any money order for rents to the Plaintiffs from the month of June, 2020, till date i.e., when he was examined as a witness. His further admission was that he has not explained in his evidence on affidavit or in his written statement as to why he had not sent any money order for the rent from June, 2020, neither did he file any application before any Court to deposit the rent before or after the institution of the suit. As can be culled out from the arguments advanced before this Court, the Defendant claims to have deposited the lease/rent amount in a bank account opened by him, in his name, for the months when the rents were defaulted, relying on Exhibit D-2. A perusal of Exhibit D-2 indicates that, it is an account of the Defendant in the Canara Bank, M. G. Marg, Gangtok. It is not in the name of either the original Plaintiff or in the name of the Plaintiffs and hence his

evidence that the rents were deposited in a bank account hold no weight. Such utterances tantamount to an effort on the part of the Defendant to befool the Plaintiffs. The third question stands decided accordingly.

9. On consideration of the entire facts and circumstances of instant case and the discussion that have ensued therefrom, it is ordered as follows;

1. The Defendant shall vacate the second and third floor of the suit property and hand over peaceful and vacant possession to the Plaintiffs by March 15, 2026.

2. Should vacant possession of the suit premises not be handed over by the Defendant to the Plaintiffs as ordered hereinabove, then the Defendant shall pay interest @ 10 per cent, per annum, on the defaulted rent amount, till handing over of peaceful possession.

3. The findings of the Trial Court based on Notification of 1949 is apparently erroneous, in the teeth of the existence of the two lease deeds Exbt P-12 and Exbt P-13. The finding is accordingly set aside.

4. No orders ensue as to imposition of interest on the defaulted amounts or on costs.

5. The amount deposited by the Defendant in the Registry of this Court, as arrears of house rent w.e.f. February, 2020 to May, 2024, amounting to Rs.7,29,300/- vide Order dated 02-07-2024, be released to the Plaintiffs, the Defendant not having contested this facet.

10. The Judgment of the Trial Court is modified to the above extent.

11. Appeal is dismissed and disposed of.

12. Copy of this Judgment be transmitted to the Learned Trial Court forthwith along with its records.

13. Pending applications, if any, also stand disposed of.

(Meenakshi Madan Rai)
Judge

06-11-2025

Approved for reporting : **Yes**