IN THE GAUHATI HIGH COURT
THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA, MIZORAM AND ARUNACHAL PRADESH
SHILLONG BENCH

F.A.O. No. 3(SH) of 2005

Shri Rafatulla Khan
R/o Shillong Muslim Guest House
Room No. 1, 1st Floor
Quinton Road, Shillong : Appellant

-vs-

Shillong Muslim Union
Represented by Secretary
Shillong EID-GAH Laban
Shillong : Respondent

BEFORE
THE HON'BLE MR JUSTICE T VAIPHEI

For the Appellant	:	Mrs PDB Baruah, Adv.
For the Respondent	:	Mr AS Siddiqui, Mrs SA Pandit, Advs.
Date of hearing	:	22.09.2011
Date of Judgment & Order	:	02.12.2011

JUDGMENT AND ORDER

This first appeal under Order 41, Rule 1, CPC (which is to be registered as RFA) is directed against the decree dated 14-7-2005 passed by the learned Assistant District Judge, Shillong in Title Suit No. 5(H) of 2005 decreeing the suit for eviction of appellant from the suit property i.e. Room No. 1 of Shillong Muslim Union Guest House situate at Jail Road, Shillong and for delivering of vacant of possession of the suit room in favour of the respondent.

2. The facts of the case leading to the filing of the appeal, as pleaded in the plaint, are that the plaintiff-respondent, which is a registered society formed for the benefit of Muslim community particularly living in the State of Meghalaya, is the owner of the plot of land situate at Jail Road, Shillong covered by Holding No. 119 of Shillong Municipality and Patta No. 119 issued by the Deputy commissioner, East Khasi Hills District and constructed a guest house known as "Muslim Union Guest House" for the use by Muslim community and for sheltering the people in distress. The respondent let out some of the rooms to tenants on monthly rent. In the year 1988, when there was law and order problem at Shillong, the then Vice-President of the respondent-society, without the permission of the Union, on verbal agreement, temporarily accommodated the appellant and his wife as a tenant in the guest house, for which the appellant paid `15,000/- as an advance towards the monthly rent, which was fixed at ` 900/- per month vide receipt dated 17-10-87 and 8-3-88: the arrangement was done solely for sheltering the appellant and his wife during such emergency situation as was done to some other members of Muslim community facing similar accommodation problem. There had been a tacit understanding among them including the appellant that they would vacate the premises when normalcy returned to the locality. However, even after normalcy had returned to the locality, the appellant refused to vacate the suit room nor was he willing to enter into a tenancy agreement with the respondent-society. The respondent-society thereafter passed a resolution on 10-4-88 requiring the appellant to vacate the suit room, but the appellant through his letter dated 11-4-88 sought three months' time.

3. It also the case of the plaintiff-respondent that the advance of `15,000/- paid by the appellant had also been adjusted, but the society, keeping in mind the difficulty faced by him to find alternative accommodation immediately, on verbal understanding, granted sometime to him for entering into an agreement of tenancy on payment of `900/- per month or to vacate the suit room. When he refused to do so, he was asked to vacate the suit room on two occasions. On receipt of the letter, the appellant gave verbal assurance that he would pay the arrear rents to the plaintiff-respondent and asked for allowing him to occupy the suit room as a tenant. He also in his meeting with the respondent promised to clear the rent arrears and to pay a monthly rent of `900/- per month if he did not vacate the suit room by 1st June, 1990. Sometime in the months of March or April, 1990, a dispute arose in the management of the plaintiff-society and the Meghalaya Board of Wakf on 19-8-90 took over the management of the plaintiff-society till the dispute was resolved. On 19-11-90, a complaint was lodged by a tenant against the appellant for house-breaking, destruction of properties and for threat to their lives, which resulted in the arrest of the appellant by the police. The wife of the appellant, who was arraigned as the pro-forma defendant, and their children left the suit room. To avoid further encroachment, the Secretary of Meghalaya Board of Wakf put the suit room under lock and key on 24-10-90 till 24-10-94.

4. The respondent further pleaded that the pro-forma defendant thereupon initiated a proceeding against the Board under

Section 145 CrPC before the Additional Deputy Commissioner, Shillong, which was registered as MCR 11(S) 91. The ADC after hearing both the parties, passed an order on 22-10-94 restoring possession of the suit room to the pro-forma defendant and her family till they were legally evicted therefrom in accordance with law. In the meantime, a new Managing Committee was formed to which the administration of the respondent-society was handed over. Even after the induction of the appellant and his family, they were still not paying the rent or the rent arrears. This prompted the respondent to issue the pleader's notice dated 23-4-97 asking the appellant to clear the rent arrears and vacate the suit room before 1-6-1997. Resultantly, the status of the appellant has now been reduced to a trespasser, who was liable to eviction. The respondent-society then adopted a resolution on 5-11-2001 to initiate eviction proceeding against illegal occupants of the guest house including the appellant. This was how the suit came to be filed. The appellant claimed eviction of the appellant from the suit room and recovery of possession of the suit room and payment of rent arrears from him.

5. The suit was contested by the appellant by filing his written statement of defence by denying all the allegations made against him. The appellant contended that the respondent did not have the locus standi to institute the suit inasmuch as the plaintiff-society as well as the Constitution 1995 had been declared by the order of the learned Munsiff to be null and void and inoperative. The accommodation was originally allotted to him for a monthly rent of `300/- per month and after possession of the suit room was restored

to the proforma defendant (his wife), she has been depositing the rent in the Court of Munsiff/Shillong @ `300/- per month. The appellant admitted that he could be evicted in accordance with law, but he was not a party to the suit or the tenant in the suit room: he was legally the tenant only upto 20-11-90 whereafter he was no longer the tenant. He also claimed that neither he nor the proforma defendant ever stayed at Room No. 1 of the ground floor: they have been occupying Room No. 1 of the first floor. He also denied that any rent arrear is pending against him. These are the principal defence taken by the appellant.

6. The learned Assistant District Judge, on the pleadings of the parties, framed the following issues:

1. Whether the suit is maintainable?
2. Whether the plaintiff has locus standi to file the suit for eviction?
3. Whether there is any cause of action against the defendant?
4. Whether this Hon'ble Court has jurisdiction to try this suit?
5. Whether the defendant and his family are tenants in Room No. 1 under the plaintiff?
6. Whether the defendant is a defaulter?
7. Whether the defendant has deposited the rent in the Court on refusal by the plaintiff to accept the same?
8. Whether the rent deposited by the defendant in Court is as per law?
9. Whether the present body of the Shillong Muslim Union is legally entitled to file the suit against the defendant?
10. Whether the defendant is liable to be evicted from Room No. 1 for being a defaulter?

11. To what extent the parties are entitled to the relief/reliefs as prayed for in the plaint?

All the issues were found by the trial court in favour of the plaintiff-respondent whereupon the suit was decreed by the impugned judgment. Unfolding her arguments, Mrs. PDB Baruah, the learned counsel for the appellant, submits that the plaint did not clearly spelt out from which portion/premises eviction is sought for, and a decree for eviction could not have been passed in the absence of proper description of the suit property. She relies on the decision of the Orissa High Court in ***Bandhu Das v. Uttam Charan Pattanaik, AIR 2007 Orissa 24***, in support of her submission. She further contends that the appellant has categorically stated in his written statement and evidence that it is the pro-forma defendant (his wife) who is the tenant under the respondent and the relief should have been claimed against her by making her the main defendant, and the trial court has completely overlooked this vital fact with the result that the decree cannot be made binding him. She maintains that the trial court without any evidence has decided that the amount of rent payable by the appellant is `900/- per month, which is no sustainable in law. On the other hand, Mr. AS Siddqui, the learned counsel for the respondent supports the impugned decree and submits that the findings of the trial court are based on adequate evidence and do no suffer from any infirmity warranting the interference of this Court. On the first contention of the learned counsel for the appellant, in my judgment, the mere wrong description of the suit room by the respondent in the plaint cannot non-suit the respondent. The deposition of the respondent would go to show that the appellant and

his family have been occupying Room No. 1 of the first floor of the guest house in question. It is true that Order 7, Rule 3, CPC requires that where the subject-matter of the suit is immovable property, the plaintiff shall contain a description of the property sufficient to identify it. In the instant suit, the respondent described the suit room as Room No. 1 of the ground floor of the guest house, but referred to the same as Room No. 1 of the first floor of the guest house in his examination-in-chief. Even then, no issue was framed by the trial court in this behalf. No question was also asked by the appellant on this apparent discrepancy. On the contrary, both the parties have in their respective evidence deposed that it is Room No. 1 of the first floor and not Room No.1 of the ground floor which is the suit property. Under the circumstances, I have no alternative but to conclude that the parties have well identified and understood the description of the suit room and had gone to trial with the clear understanding: no prejudice can be said to have been caused to the appellant because of error in the description of the suit room. In my opinion, this makes ***Bandhu Das case*** *(supra)*, the case cited by the learned counsel for the appellant, distinguishable where the controversy about the description of the suit property was raised till the end.

7. Coming to the second contention of the learned counsel for the appellant that the pro-forma defendant should have been made the main defendant, as she is admittedly the person to whom possession of the suit room was restored in terms of the order of the criminal court in a proceeding under Section 145 CrPC, and, as a result, the decree is not binding upon the appellant and is inexecutable. In my opinion, this contention has no merit inasmuch

as the appellant and the pro-forma defendant, who are husband and wife, cannot be separated from each other or be treated as different parties as long as their marriage subsists. It must be noted that possession of the suit room was ordered by the learned Executive Magistrate U/s 145 CrPC on the basis of the possession enjoyed by the pro-forma defendant with the appellant, who is the one to whom the suit room was temporarily rented out by the respondent. Therefore, the non-impleadment of the pro-forma defendant as the main defendant in place of the appellant can at the most be a technical defect, which cannot be used as a ground for non-suiting the respondent. On the question as to whether the appellant is a defaulter in rent or not, the trial court rejected the evidence of the appellant that he paid an advance of `15,000/- for an accommodation of a rental value of `300/- per month paid by him. The trial court reasoned that taking into consideration the monetary value in the year 1987, payment of an advance of `15,000/- for one room was not sustainable in law and that for a monthly rent of `900/- p.m., the advance money imposed for a rental value of `900/- p.m. for an accommodation was somehow reasonable and logical. The trial further held that the payment of `300/- per month regularly with effect from October, 1994 till date was merely a device to avoid payment of `900/- per month, which was the monthly rent due from him for occupying the suit room. As the rent deposited by him was not the agreed rent amount, according to the trial court, the appellant was a defaulter. The trial court further held that there was no evidence to show that the landlord refused to accept the rent offered by him and that mere

depositing of the rent of `300/- p.m. in Court under that circumstances was not tenable in law: the appellant also conceded that no notice was served upon the respondent before depositing the rent in Court. On the basis of the evidence available on record, the aforesaid findings of the trial court that the rent deposited by the appellant was not as per law cannot, therefore, be faulted with.

8. For the reasons stated in the foregoing, there is no merit in this appeal, which is hereby dismissed with costs. Transmit the L.C. record forthwith.

JUDGE

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