

IN THE HIGH COURT OF SIKKIM

R.F.A.No.2 of 2000

Karma Loday Bhutia Appellant

Versus

Sonam Topgay Bhutia Respondent

Date of Decision : 21st August, 2000.

Coram:

The Hon'ble Mr. Justice Ripusudan Dayal, Chief Justice.

Present : Mr. S. R. Sarkar with Mr. U. P. Sharma,
Advocates for the appellant.

Mr. S. P. Wangdi, Senior Advocate with
Mr. Karma Thinlay, Advocate for the
respondent.

JUDGMENT

Dayal CJ.

This appeal is directed against the judgment and decree dated 28th October, 1999 by the learned District Judge, East and North dismissing the suit brought by the plaintiff/appellant for recovery of possession of a strip of space measuring 3' x 22' situated on the top floor of the shop house at Mahatma Gandhi Marg, Gangtok, East Sikkim stating that the defendant/respondent was a licensee under him. The defendant/respondent has pleaded in his written

M. S. R. Sarkar

statement that the disputed strip forms part of the premises in his occupation as a tenant.

2. After giving opportunity to the parties to produce evidence, the learned trial Court held that there is no evidence at all on the record to prove that the disputed strip was ever given to the defendant/respondent on licence or the defendant was in possession of the land on an understanding that he would vacate the strip when the plaintiff would ask him to do so.

3. After hearing the learned Counsel for the parties and having gone through the evidence on record, I see no reason to differ from the learned trial Court. It is an admitted fact that the plaintiff/appellant became the owner of the strip in question much after the defendant/respondent had come in possession. The plaintiff has deposed in his evidence that the suit premises is occupied by the defendant on the understanding that he would vacate it after some time and that the suit premises was not leased or tenanted to the defendant, and, as such, the defendant did not make any payment for use and occupation of the same. He also stated in his cross-examination that he never gave the suit premises to the defendant saying that this was on license. The previous owner has not entered the witness box to support the case of the plaintiff. The case of the defendant is that the disputed land is a passage for ingress to and

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gress from the kitchen which is in his tenancy. The defendant has produced evidence to support his case. There is no written agreement regarding lease or licence on the record. As the plaintiff/appellant has failed to prove that the disputed strip was given to the defendant/respondent on licence, the suit must fail. However, it is submitted on behalf of the plaintiff/appellant that the defendant/respondent has failed to prove that the disputed strip forms part of the tenanted premises and so it should be held that the defendant was a licensee. It was for the plaintiff to prove his case. It is not open to the plaintiff to say that the defendant has failed to prove his case satisfactorily and so the case should be decided in favour of the plaintiff. It is not necessary to decide whether the defendant is the lessee or not. In view of the fact that the agreement of lease has not been produced, it would be hazardous to render a finding whether the defendant was the lessee. Since there is not even an iota of evidence to show that the disputed strip was given to the defendant/respondent on licence, the plaintiff/appellant must fail.

In the result, the appeal is dismissed with costs.

R. Dayal
(R. Dayal)
Chief Justice
21.08.2000

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