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**(1958) 04 GAU CK 0005**

**Gauhati High Court**

**Case No:** Misc. Appeal (F) 36 of 1955

Niresh Chandra Das

APPELLANT

Vs

Paresh Chandra Routh

RESPONDENT

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**Date of Decision:** April 25, 1958

**Acts Referred:**

- Assam Urban Areas Rent Control Act, 1946 - Section 6, 6(1)
- Civil Procedure Code, 1908 (CPC) - Section 60
- Transfer of Property Act, 1882 - Section 105, 108, 6

**Citation:** AIR 1959 Guw 61

**Hon'ble Judges:** H. Deka, J; G. Mehrotra, J

**Bench:** Division Bench

**Advocate:** N.M. Dam and G.K. Talukdar, for the Appellant; G.K. Deb, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

G. Mehrotra, J.

This is a miscellaneous appeal arising out of an execution proceeding. The respondent obtained a decree against the appellant and in execution of that decree he attached the tenancy right of the appellant, The appellant has a right under a lease to remain in possession of certain premises on payment of monthly rent. This right of the appellant is sought to be attached and sold in execution of the decree. An objection was raised by the judgment-debtor that this is not a property which is liable to be attached u/s 60, Civil Procedure Code. The objection was repelled by the Subordinate Judge and the present appeal has been filed against that order.

2. The main question is whether u/s 60 of the CPC the right of the appellant to remain in possession of the house as a tenant is liable to be attached or sold in execution of the decree or not. Section 60 of the CPC provides that any property which is saleable can be attached in execution of a decree. The question therefore to be considered is whether the appellant's right to remain in occupation of house as a

tenant is a property and the next question that will have to be considered is whether it is saleable or not. Section 105 of the Transfer of Property Act provides that "a lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms."

From this definition of the word "lease" it is clear that a lease creates an interest in the property in favour of the lessee and he has got a right to remain in occupation of the premises on payment of the rent. It cannot therefore be seriously contended that this right is not a property within the meaning of Section 60. The word property has nowhere been defined under the Transfer of Property Act. Section 6 of the Transfer of Property Act only provides that property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force. Then various sub-sections of Section 6 specify the properties which cannot be transferred and which cannot be regarded as properties within the meaning of the law.

Reliance was placed by the counsel for the appellant on Sub-section (d) of Section 6 which says that "an interest in property restricted in its enjoyment to the owner personally cannot be transferred by him." It cannot be said in the present case that the enjoyment of the tenancy right has been restricted to the tenant personally under the terms of the lease under which the right was created or that there was any enactment which restricts the enjoyment of the property i.e. the tenancy right to the appellant himself. Reliance was placed on Section 6 of the Assam Urban Areas Rent Control Act, 1955 (Assam Act III of 1956). We shall deal with that section later on. From this it is clear that the right of the appellant is a property.

3. The next question to be considered is whether it is a saleable property or not. Section 108(j) of the Transfer of Property Act provides as follows :

"(j) the lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease.

This section in our mind clearly lays down that the right of a lessee is transferable and saleable. The question therefore to be considered is how far Section 6 of the Assam Urban Areas Rent Control Act takes it out of the purview of Sub-section (j) of Section 108 of the Transfer of Property Act. If on the interpretation of Section 6 of the Assam Urban Areas Rent Control Act it can be said that it places any restriction on the nature of the property, and renders it not saleable, then certainly there will be some force in the contention raised by the appellant, Section 6(1)(d) of the Assam Urban Areas Rent Control Act which is relevant for the purpose of this case, reads as

follows :

"6 (1) No order or decree for the recovery of possession of any house shall be made or executed by any Court so long as the tenant pays rent to the full extent allowable under this Act and performs the conditions of the tenancy :

Provided that nothing in this sub-section shall apply in a suit or proceedings for eviction of the tenant from the house :

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(d) where the tenant sublets the house or any part thereof or otherwise transfers his interests in the house or any part thereof without permission in writing from the landlord."

What this section says is that so long as the tenant continues to pay the rent he cannot be ejected by an order or decree, but in case of transfers the tenant is liable to be ejected by an order or decree. It can be said that this sub-section itself assumes that there is a power of transfer in the lessee. The only restriction which is placed on the exercise of this power is that in case he transfers it without the permission of the landlord, he is liable to be evicted from the house. It cannot be said that this section has the force of rendering the tenancy right as non-saleable. The appellant relied upon a number of cases in support of his arguments. It is conceded by him that the facts of these cases do not apply mutatis mutandis to the facts of the present case but the principle laid down in those cases according to him applies to the facts of the present case.

The first case relied upon is [Khitnarain Sahi and Others Vs. Surju Seth and Others](#), In this case it was held by a Bench of the Patna High Court that "under Section 12-A, Chota Nagpur Encumbered Estates Act read with Section 60, Civil Procedure Code, a sale in execution of a money decree of property released u/s 12-A, without the sanction of the Commissioner, is void." There the provisions of Section 12A, Chota Nagpur Encumbered Estates Act were very clear in terms. They expressly provided that any sale of such a property without the sanction of the Commissioner was void. There was an express prohibition to the sale of the property and therefore it could be very well argued that by the force of the law the property became non-saleable and could not be attached u/s 60 of the Civil Procedure Code.

The same principle cannot be made applicable to the present case where Section 6 only lays down that in the event of the transfer by the tenant he is liable to be evicted by the landlord. The next case is reported in [Amir Uddin and Another Vs. Panchaiti Akhara Bara Udasi Nanak Shahi](#) There also it was held that the occupancy right in view of the provisions of Section 23 of the Agra Tenancy Act was not saleable and attachable in execution of a decree. Section 23 of the Agra Tenancy Act expressly makes the occupancy right not saleable and the case is similar to the Patna case referred to by us. The other case relied upon is reported in [Ganjhu](#)

[Upendra Singh Vs. Ganjhu Meghnath Singh,](#)

It is not necessary to refer in detail to this case because it only follows the earlier decision referred to by us which is reported in [Khitnarain Sahi and Others Vs. Surju Seth and Others,](#) That also was a case where the right was conferred on the judgment-debtor under a grant. That grant expressly contained the prohibition against alienation of the estate and therefore under the grant which conferred the right on the grantee, there was an express prohibition and the right which the grantee acquired under the grant was not saleable under the terms of the grant itself. Then reference may also be made to the case of Joti Prasad v. Har Prasad reported in [L. Joti Prasad and Others Vs. B. Har Prasad,](#) In that case prior to the coming in force of the Transfer of Property Act a certain lease of land was granted to one Mr. John Lemaistre.

Under that lease he was permitted to make certain constructions on the land. After his death his heirs transferred the right under the lease and the transfer was challenged on the ground that there was no right in the successors of the lessee to transfer the property. In that case it was held that in view of the provision of Section 108(j) of the Transfer of Property Act, the lessee as well as his successors had a right to transfer the interest which they acquired under a lease. These cases therefore cited by the appellant are distinguishable and unless we hold that Section 6 itself changes the nature of the property held by the tenant so as to make it non-transferable, we cannot accept the contention raised by the appellant. There is another aspect of the matter.

Section 6 of the Assam Urban Areas Rent Control Act only speaks of the voluntary transfers. It only says that if the lessee transfers his right, he is liable to be evicted. It does not speak of the transfer by operation of law. It is also significant to note that the whole object of the Assam Urban Areas Rent Control Act was not to create any right in the tenants, but to regulate the payment of the rent and having regard to the entire object of the Act itself, it cannot legitimately be argued that it speaks of the contents of the tenant's right itself in respect of the property. It only places a restriction on the right of the tenant to continue to be in possession if he transfers the property without the sanction of the landlord or enables the landlord to get an ejectment decree against him. In effect it removes the bar on the landlord's right to get a decree for ejectment and has no connection with the nature of the tenant's right.

We see therefore no force in the contention raised by the appellant. Lastly it was contended that even if the property is held to be saleable and the decree-holder purchases the property, the tenant appellant if he continues to pay the rent, is not liable to be evicted. The consequence will be that the auction purchaser will not be entitled to get possession of the property and this Court will not pass any order which may ultimately become infructuous. We do not think there is any force in this contention either. We do not think that at this stage it can be conclusively said that if

the auction purchaser purchases the property, he shall not be able to get possession of the right, title and interest of his judgment-debtor.

The purchase by the auction purchaser no doubt will not put any bar on the right of the landlord to get ejectment of the tenant or auction purchaser but it cannot be said that under the auction sale, he will not acquire the right of the judgment-debtor. Apart from this, it is not a case where this Court is called upon to pass a decree and all those equitable considerations which guide a Court in passing a decree, will not arise in the present case,--more particularly in the present stage when the only question to be considered is whether the property is liable to be attached or sold u/s 60 of the Civil Procedure Code. We therefore see no force in this appeal and it is dismissed, but in the circumstances we make no order as to costs.

H. Deka, J.

4. I agree.