
Goutam Dey Vs Jyotsna Chatterjee

C.O. No. 3424 of 2011 with C.O. No. 3425 of 2011

Court: Calcutta High Court

Date of Decision: Jan. 18, 2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Order 39 Rule 1, Order 39 Rule 2, 101#West Bengal Premises Tenancy Act, 1997 " Section 2(g), 2(h), 8(c)

Citation: (2013) 1 CHN 336

Hon'ble Judges: Dipankar Datta, J

Bench: Single Bench

Advocate: Haradhan Banerjee and A.K. Bhattacharya, for the Appellant; Sabyasachi Bhattacharya and Debjyoti Deb, for the Respondent

Judgement

Dipankar Datta, J.

These two revisional applications arise out of one set of facts and hence I propose to dispose of the same by this

common order. One Sunil Mukherjee (hereafter Sunil) was inducted as a tenant by one Debabrata Chatterjee (hereafter Debabrata) in a part of

premises No. 9B, Ramesh Mitra Road P.S. Bhowanipore, Kolkata-700 025 (hereafter the said premises). The tenancy comprised of one room

on the ground floor and a room in the mezzanine floor, besides a bath cum privy (hereafter the suit property).

2. On the death of Debabrata, his widow Jyotsna Chatterjee (hereafter Jyotsna) and his son Subhas Chatterjee (hereafter Subhas) became joint

owners of the said premises. Sunil continued as a tenant under Jyotsna and Subhas till his death on May 4, 1997. He died intestate leaving behind

him his daughter Subhra Dey (nee Mukherjee) (hereafter Subhra) as his sole heir. After such death, Subhra continued as tenant in respect of the

suit property.

3. Subhra passed away on March 20, 2011 leaving behind her Gautam Dey (hereafter Gautam), her husband, as her sole heir.

4. A month later i.e. on April 20, 2011, two suits were instituted. Title Suit No. 1144 of 2011 (hereafter the former suit) was instituted by Jyotsna

and Subhas impleading Gautam as defendant for declaration and injunction. It was alleged therein that on the death of Sunil, his daughter Subhra

became the monthly tenant under Jyotsna and Subhas subject to her right of remaining in possession of the suit property for a period not exceeding

five years from May 4, 1997 i.e. the date of death of Sunil having regard to the provisions of section 2(g) of the West Bengal Premises Tenancy

Act, 1997 (hereafter the Act of 1997). According to them, with effect from June 2002, Subhra became a trespasser in respect of the suit property

and consequently Gautam has no right or authority to remain in possession thereof. To prevent Gautam from trespassing into the suit property.

Jyotsna and Subhas prayed for the following relief:

a) a decree for declaration that the defendant is a trespasser in respect of the suit property and has got no right to enter into the suit property;

b) a decree for permanent injunction restraining the defendant and his men and agents from entering into the suit property in any manner

whatsoever;

c) cost of the suit;

d) such other relief/reliefs to which the plaintiffs are entitled to in law and in equity.

5. Gautam instituted Title Suit No. 1155 of 2011 (hereafter the latter suit) impleading Jyotsna as the sole defendant. It was pleaded that Subhra

had been inducted as a monthly tenant under Jyotsna in respect of the suit property at a rental of Rs. 300A per month payable according to English

Calendar month; that Subhra had tendered rent through money order to Jyotsna who received it for the last time in September, 2010; that on

refusal on the part of Jyotsna to receive rent for the month of October, 2010 and onwards, rent is being deposited in the office of the Controller

regularly; that Subhra was suffering from cancer and other female diseases and she ultimately passed away on March 20, 2011; that on March 25,

2011 Gautam came to the suit property and found the same to have been locked by someone; that his attempt to enter into the suit property was

resisted by Jyotsna and Subhas as a result whereof he visited Bhawanipore Police Station and lodged a diary, but without any effective result; that

on 31st March, 2011, Gautam came to the suit property for performing the last rites of Subhra and made a request to Jyotsna and Subhas to

remove the pad-lock put by them, which they are refused; that Gautam was threatened with dire consequences if he attempted to enter into the suit

property in future; that the incident was again diarised pursuant where to the police came over to the suit property and requested Jyotsna to remove

the pad-lock but she refused to do the same; and that the police, in the circumstances, advised Gautam to obtain order from the appropriate Court

for removal of the pad-lock. In view of the aforesaid facts, Gautam prayed for relief as follows:

a) A decree of declaration that the plaintiff is the tenant in respect of the suit property which is specifically mentioned in the schedule below,

b) For a decree of permanent injunction restraining the Defendant and her men or agents from obstructing the plaintiffs from entering into the suit

property and from dispossessing the plaintiff from the suit property.

d) For a mandatory injunction thereby directing the defendant and her men and agents from removing the padlock from the doors of the suit

property.

c) Costs.

d) Such other relief or reliefs.

6. In connection with the former suit, Jyotsna and Subhas prayed for ad interim injunction. The learned Judge of the Trial Court vide order No. 2

dated April 20, 2011 refused the prayer. The order was carried in appeal by Jyotsna and Subhas, which was registered as Misc. Appeal No. 196

of 2011. In connection therewith, Jyotsna and Gautam applied for temporary injunction and prayed that Gautam and his men and agents be

restrained from entering into the suit property in any way or from inducing any third party/stranger therein till the disposal of the appeal.

7. Gautam also filed an application under Order 39 Rules 1 and 2 read with section 101, CPC (hereafter the Code) before the selfsame learned

Judge who had refused the prayer for ad interim injunction of Jyotsna and Subhas. By order No. 2 dated April 20, 2011, the learned Judge

refused to pass any ex-parte order of injunction and disallowed the prayer at that stage. The aforesaid order was challenged by Gautam by

preferring an appeal, registered as Misc. Appeal No. 205 of 2011. In connection with the appeal, Gautam also filed an application for mandatory

injunction thereby praying for an order on Jyotsna and Subhas to open the pad-lock for the purpose of securing his access to the suit property.

8. The learned Judge of the appellate Court by separate judgments dated September 9, 2011 disposed of both the appeals. Misc. Appeal No.

196 of 2011 was allowed restraining Gautam and his men and agents from entering into the suit property in any way or manner or from inducing

any third party/stranger therein till the disposal of the temporary injunction application pending before the learned Trial Court. In so far as Misc.

Appeal No. 205 of 2011 is concerned, the same was dismissed on contest together with the application for injunction.

9. The judgment allowing Misc. Appeal No. 196 of 2011 is the subject matter of challenge in C.O. 2434 of 2011 whereas C.O. 2435 of 2011 is

directed against the judgment dated September 9, 2011 whereby Misc. Appeal No. 196 of 2011 has been allowed.

10. I have heard Mr. Banerjee, learned advocate for Gautam and Mr. Bhattacharya, learned advocate for Jyotsna and Subhas.

11. The reason assigned by the learned Judge of the Appellate Court, while holding in favour of Jyotsna and Subhas, reads as under:

Having regard to the scope of the relevant provisions of the West Bengal Premises Tenancy Act, 1997 and section 2(g) of the W.B.P.T. Act of

1997, I find that after the demise of the previous tenant of the suit premises Sunil Kumar Mukherjee on 4.5.1997 (as Annexure D reveals) his only

successor in interest in the form of his daughter, Subhra Dey had the right to remain in possession of the suit premises as tenant for a period not

exceeding five years from the date of death of Sunil Kumar Mukherjee or maximum for a period of five years from the date of coming into force of

the W.B.P.T. Act on 10.7.2001, whichever is later.

In the premises, the right of possession of the suit premises as tenant over there by Subhra Dey appears to have expired long before her expiry on

20/3/2011 and in the premises, the defd/Respdt has also prima facie lost his locus standi over the suit premises long ago, much prior to the filing of

T.S. 1144/2011 by the appellants on 20.4.2011.

Having due consideration to the submissions, *****, I feel inclined to hold that Subhra Dey, being married daughter of Sunil Kumar

Mukherjee i.e. tenant of the suit premises, had lost her right of tenancy in the suit property five years after the death of her father on 4.5.97 and

independent of her own she could not be entitled to continue her tenancy in the suit property on the death of her father since five years time had

expired from the date of death of her father.

In the premises, Subhra Dey lost her locus standi as tenant in the suit premises five years after the death of her father, Sunil Kumar Mukherjee on

4/5/1997, her (Subhra"s) widower husband Gautam Dey has got no locus standi, prima facie, in the suit premises.

12. The same reason appears to have influenced the mind of the learned Judge while he proceeded to dismiss Misc. Appeal No. 205 of 2011.

13. The aforesaid reasoning of the learned Judge has to be examined keeping in mind the provisions contained in section 2(g) of the Act of 1997,

the same having come into force with effect from July 10, 2001. Section 2(g), insofar as the same is relevant for a decision on these applications,

reads as follows:

"Tenant" means any person by whom or on whose account or behalf the rent of any premises is or, but for a special contract, would be payable,

and includes any person continuing in possession after termination of his tenancy and, in the event of death of any tenant, also includes, for a period

not exceeding five years from the date of death of such tenant or from the date of coming into force of this Act, whichever is later, his spouse, son,

daughter, parent and the widow of his pre-deceased son, who were ordinarily living with the tenant up to the date of death of the tenant as the

members of his family and were dependent on him and who do not own or occupy any residential premises and.....

14. The Act of 1997, as noted above, came into force on July 10, 2001 i.e. more than four years after Sunil passed away. The West Bengal

Premises Tenancy Act, 1956 (hereafter the Act of 1956) was in force when Sunil died.

15. The Act of 1956 in section 2(h) defined tenant as follows:

"Tenant" means any person by whom or on whose account or behalf, the rent of any premises is, or but for a special contract would be payable

and includes any person continuing in possession after the termination of his tenancy or in the event of such person's death such of his heirs as were

ordinarily residing with him at the time of his death, but shall not include any person against whom any decree or order for eviction has been made

by a Court of competent jurisdiction.

16. On a comparative reading of section 2(h) of the Act of 1956 and section 2(g) of the Act of 1997 defining the word "tenant", one important

addition relevant for the purpose of disposal of these applications appears in the latter i.e. a fixed term of five years from the date of death of the

tenant during which time the tenancy would continue, except in the case of the spouse of the tenant, since deceased, to whom the provision shall

not apply.

17. Admittedly, Sunil was the original tenant, previously under Debabrata and subsequently under Jyotsna and Subhas. Since Subhra was the sole

surviving class I heir of Sunil, the monthly tenancy did not extinguish on his death. In view of section 2(h) of the Act of 1956, the monthly tenancy

was heritable. According to Gautam, on Sunil's death, Subhra became the tenant in respect of the suit property. It is further claimed by Gautam

that Subhra tendered rent to Jyotsna and Subhas and the same was received by them. At this juncture, I need not decide such claim but cannot

refrain from observing that such claim deserved the consideration of the learned Judge of the Appellate Court. He appears to have been swayed

by the time frame in section 2(g) of the Act of 1997 and in the process totally overlooked the claim of Gautam that after the death of Sunil, Subhra

was accepted by Jyotsna and Subhas as the tenant.

18. However, to support the impugned judgments, Mr. Bhattacharya has drawn my attention to that part of section 2(g) of the Act of 1997 which

provides, inter alia, that the word "tenant" would include, in the event of death of the tenant, his spouse, son, daughter, parent and the widow of his

predeceased son ""****for a period not exceeding five years from the date of death of such tenant or the date of coming into force of this Act,

whichever is later, *****". For the time being, I shall assume that the aforesaid extract does carry a meaning, Subhra, if at all any occasion arose for

her, could have legally and validly claimed that the Act of 1997 did not affect her status as tenant and her possession of the suit property as a

tenant ought to continue, she being the daughter of Sunil i.e. the erstwhile tenant, provided the conditions (ordinarily living with Sunil as a member

of his family, being dependant on him and not owning or occupying any residential premises) were fulfilled, at least till July 9, 2006 i.e. Five years

from July 10, 2001. This is because the Act of 1997 came into operation long after the death of Sunil and, therefore, she would have been entitled

to take advantage of the phrase "whichever is later". The learned Judge of the Appellate Court, in any event, could not have reached the

conclusion that Subhra ceased to be a tenant in 2002. In his usual fairness, Mr. Bhattacharya did not join issue.

19. Even otherwise, I am of the further view that portion of section 2(g), as extracted in the preceding paragraph starting from ""or"" and ending with

later"" , and on which Mr. Bhattacharya laid emphasis, if read literally would produce absurd results and, therefore, the provision must be so read

so as to make it meaningful. Law is well settled that in exceptional circumstances, it would be proper for the Court to depart from the literal rule

and such rule of interpretation could be adopted that is just, reasonable and sensible, and does not offend the sense of justice. In the context, one

may possibly conceive either of three inevitable situations, - death of a tenant (i) before July 10, 2001; (ii) after July 10, 2001; and (iii) on July 10,

2001. Regarding situation (i) i.e. death of a tenant before July 10, 2001 and the case with which I am concerned (Sunil died on May 4, 1997),

undoubtedly it was the Act of 1956 that was in force and had a tenant governed by the provisions of the Act of 1956 died on July 9, 2001 or even

previous to that date, the tenancy would be governed by that Act meaning thereby that the tenancy being heritable, the heirs would be justified in

claiming tenancy right subject to fulfilment of the residence requirement in section 2(h) of the Act of 1956 but unfettered by the other two

conditions newly inserted and the stipulation of five years in section 2(g) of the Act of 1997. Law appears to be settled that provisions of a new

statute which touch a right in existence at the date it is enforced are not to be applied retrospectively in the absence of express provision or

necessary intentment. The Act of 1997 has not been given retrospective effect so as to bring within its coverage death of tenants occurring prior to

July 10, 2001 and a different intention does not appear on a reading of the Act of 1997 so as to affect any right or privilege that has been acquired

or has accrued in favour of the specified heirs of the deceased tenant under the Act of 1956, since repealed. Having regard to section 8(c) of the

Bengal General Clauses Act, 1899, a vested right that accrued in favour of an heir like Subhra on the death of the tenant i.e. Sunil cannot be

abrogated. There is a presumption against curtailment of or washing away a vested right by a repealing legislation, and a construction involving such

curtailment of or washing away the right accrued ought not to be adopted unless a contrary intention clearly appears in the repealing legislation. It

could not have been and it does not seem to be the intention of the legislature to fix July 9, 2006 as the last date till which tenancy of an heir of a

deceased tenant would continue (assuming all the other conditions were fulfilled), no matter when he died prior to July 10, 2001. The absurd result

that the aforesaid extract of section 2(g) of the Act of 1997 has the potential of producing is best illustrated by the facts of the present case and

needs no further elaboration. Insofar as situations (ii) and (iii) are concerned, it is obvious that the definition of tenant in section 2(g) of the Act of

1997 shall apply and for achieving the purpose that it seeks to achieve, it was not necessary to insert the phrase ""or from the date of coming into

force of this Act, whichever is later"". The period of five years mentioned in section 2(g) automatically would have application only in respect of

death of tenants occurring on and from July 10, 2001 and in such case the portion extracted above, is in my considered view, a piece of loose

drafting and ought to be considered redundant unless in a given case, which I have been unable to perceive, the same is shown to have application.

I hasten to record here that the above observation regarding redundancy has been made by me despite my best effort to make the statute effective

with all the words that have been used by the legislature and conscious of the principle that legislature is presumed not to waste words.

20. Be that as it may, it passes my comprehension as to how a finding could be returned that Subhra lost her locus standi to occupy the suit

property as a tenant, five years after the death of Sunil. I am of the further considered view that the learned Judge misdirected himself in ruling in

favour of Jyotsna and Subhas and against Gautam.

21. Since the injunction applications filed by the parties in connection with their respective suits are pending before the Trial Court, any observation

on the merits of the rival claims is likely to influence the learned Judge of the Trial Court; hence, I refrain from assigning further reason as to why the

impugned judgments cannot be sustained. However, at the same time, I wish to observe that the learned Judge of the Trial Court while hearing the

applications pending before him may advert due attention to the point as to whether Jyotsna and Subhas could lock the suit property and thereby

prevent Gautam from having access thereto without due process of law and also having regard to absence of any apparent claim of surrender of

possession in their favour by Gautam in T.S. 1144 of 2011. The learned Judge may also consider as to whether Gautam, prima facie, could be

treated as a tenant under Jyotsna and Subhas after the death of Subhra, if evidence to the effect that Gautam (i) was ordinarily living with Subhra at

the suit property as member of her family; (ii) was dependent on Subhra; and (iii) does not own or occupy any residential premises, are not

produced. An appropriate decision in this behalf may also require consideration of the permanent address of Subhra, as mentioned in her death

certificate.

22. The impugned judgments stand set aside. Status quo in respect of the suit property as it stands today (it is under lock and key) shall be

maintained and no third party interest shall be created therein by Jyotsna and Subhas till the disposal of the injunction applications pending before

the learned Judge of the Trial Court. Depending on the decision on the injunction applications, the parties shall be free to take further course of

action.

23. The learned Judge shall endeavour to dispose of the injunction applications as early as possible but not later than April 30, 2012 upon granting

adequate and reasonable opportunities to the parties to present their respective cases in the light of, inter alia, the observations made herein.

24. C.O. 3424 of 2011 and C.O. 3425 of 2011 stand disposed of accordingly, without order for costs. Photocopy of this order, duly countersigned by the Assistant Court Officer, shall be retained with the records of C.O. 3425 of 2011.

Urgent photostat certified copy of this order, if applied for, shall be furnished to the applicant at an early date.