

## Sumilita Bhattacharya and Another Vs Nila Chatterjee

**Court:** Calcutta High Court

**Date of Decision:** Sept. 12, 1989

**Acts Referred:** Hindu Succession Act, 1956 " Section 19

Transfer of Property Act, 1882 " Section 106

West Bengal Premises Tenancy Act, 1956 " Section 17(2), 2(h)

**Citation:** 94 CWN 564

**Hon'ble Judges:** Pabitra Kr. Banerjee, J; G.N. Ray, J

**Bench:** Division Bench

**Advocate:** Sudhis Dasgupta and P.K. Bhowmick, for the Appellant; R.N. Mitra, Tarun Basu and R.K. Ghose, for the Respondent

**Final Decision:** Dismissed

### Judgement

G.N. Ray, J.

This appeal is directed against the judgment and decree passed by the learned Judge, 10th Bench, City Civil Court, Calcutta

in Ejectment Suit No. 979 of 1977. The plaintiff respondent instituted the said Title Suit for eviction of the defendants appellants from the disputed

premises at 12, Badur Bagan Lane, P.S. Amherst Street in the city of Calcutta on the ground of reasonable requirement of the disputed premises

by the plaintiff and the members of her family and also on the ground of default in payment of rent. The case of the plaintiff respondent was, inter

alia, that she became the landlady of the disputed premises on account of her purchase of the said property and by letter of attornment she

informed the original tenant Shri Aswini Kumar Ghosh about her title to the property and thereafter the said tenant Aswini Kumar Ghose paid rents

to the plaintiff. After the death of the said tenant, the son and the daughter of Aswini Kumar Ghose namely the defendants appellants by two

separate letters informed the plaintiff that in view of the death of the said Aswini Ghose, the original tenant, they become tenants in respect of the

premises and rent receipt should be issued to them. The plaintiff contended that the said defendants however failed and neglected to pay rent and

they defaulted in payment of rent for more than four months within a period of 12 months. The plaintiff further contended that the plaintiff

reasonably required the suit premises and she had no suitable alternative accommodation. She had been residing in one room belonging to her

mother-in-law but the said accommodation was quite insufficient because the plaintiff's family consisted of the plaintiff, her husband and an adult

son. It was also contended that the tenancy was determined by notice to quit and such notice was served on the defendants by registered post and

such notice was received by them by putting their signatures on the acknowledgement cards. The plaintiff also contended that the brother of the

plaintiff's husband who was a Doctor, after return from abroad, also started residing in the house of her mother-in-law and it become very difficult

to accommodate the said brother and to provide suitable accommodation for his chamber. It, however, appears that subsequently in view of the

order passed in a proceeding u/s 17(2) of the West Bengal Premises Tenancy Act in the suit, the plaintiff gave up the case for eviction on the

ground of default. It may also be noted that an application for amendment of the plaint was allowed by the learned trial Judge and by such

amendment the plaintiff contended that in view of the extreme bitterness with her mother-in-law and other members in the said house for want of

proper accommodation the plaintiff had to leave the said house of her mother-in-law and she was compelled to reside in a flat belonging to her

elder sister as her licensee in Behala. The aforesaid suit was contested by the defendant appellant by filing a written statement inter alia disputing

the allegations made in the plaint. An application for amendment of the written statement made by the defendants was allowed by the learned trial

Judge and by the amendment of the written statement the defendants further contended that the original tenant Aswini Kumar Chose having died,

his interest devolved not only on the defendants who were his son and one of the daughters but such interest in tenancy also devolved on two other

daughters. No name and other particulars of the other daughters were however disclosed in the additional written statement. At the hearing of the

suit, the husband of the plaintiff deposed to the effect that the plaintiff and the members of the family reasonably required the suit premises and the

premises belonging to the mother-in-law of the plaintiff had been sold and before the sale of the said property because of the family dispute for

want of accommodation the plaintiff had to leave the suit premises and she had been residing in a flat belonging to her sister at Behala. The

Secretary of the Cooperative Housing Society under which such flats belong, has been examined by the plaintiff as an witness and it has been

stated in deposition by the said Secretary that without the permission of the Go-operative Society such flat cannot be let out to any tenant and the

plaintiff and the members of her family were residing in the said flat belonging to a member of the Co-operative Society as a licensee of such

member. The husband of the plaintiff has further stated in his deposition that the son of the plaintiff being grown up has since been married and a

son has also been born to him. Accordingly, there is urgent need of accommodation for the plaintiff, her husband and son and daughter-in-law and

the grandson and precisely for the said purpose, the decree for eviction on the ground of reasonable requirement should be passed. On behalf of

the defendants, the husband of the defendant no. 1 deposed and it was stated by the husband of the said defendant no. 1 that the plaintiff had

suitable alternative accommodation in the house belonging to her mother-in law and the husband of the plaintiff and that the original tenant Aswini

Kumar Ghose having died, the interest in tenancy devolved on the defendants and one of the daughters who was then living and the heirs of a pre-

deceased daughter. It was stated by the said husband that two of the grand daughters of the said Aswini Kumar Ghose had in fact stayed with the

said Aswini Kumar Ghose while he was alive. The husband of the defendant no. 1 also stated in his deposition that no notice determining the

tenancy had been served on any of the defendants and the signatures on the postal acknowledgment receipts were not the signatures of the

defendants. The learned trial Judge on comparison of the admitted signatures of the defendants on other documents in the suit, with the signatures

in the letters written by the said defendants after the death of Aswini Kumar Ghose to the effect that they became the tenants and the rent receipt

should be issued to them and also with the signatures of the defendants appearing on the postal acknowledgment receipts by which the notices of

eviction were stated to have been served on the said defendants, came to the finding that the said letters had been written by the said defendants

and they also accepted the service of the notice by registered post by putting their signatures. The learned trial Judge also came to the finding that

the plaintiff had no suitable accommodation and she had been residing in two rooms in flat at Behala only as a licensee of her elder sister because

of want of any accommodation and the plaintiff and the members of the family reasonably required the suit premises. It appears that a serious

dispute was raised before the learned trial Judge that since the other heirs of the original tenant of Shri Aswini Kumar Ghose had not been

impleaded in the suit and no notice determining pendency of the disputed premises had been issued and served on the said other heirs, the suit for

eviction was not maintainable. The learned trial Judge, however, came to the finding that at no point of time, the defendants disclosed the names of

other heirs of late Aswini Kumar Ghose. On the contrary, the defendants informed the plaintiff landlady that they become the tenants after the

death of their father Sri Aswini Kumar Ghose and rent receipts should be issued in their names. In the aforesaid circumstances, the learned trial

Judge held that there was no question of giving any notice determining the tenancy on the alleged other heirs and the suit was therefore maintainable

in the absence of the said other heirs. In that view of the matter, the learned Judge decreed the suit for eviction on the ground of reasonable

requirement and the instant appeal has been preferred by the defendants appellants.

2. Mr. Dasgupta, the learned counsel for the appellant has strenuously contended before us that the tenancy right being heritable, such right had

devolved on all the heirs of the original tenant, Sri Aswini Kumar Ghose. He has submitted that it is not the case that Sri Aswini Kumar Ghose was

a statutory tenant after the determination of contractual tenancy. Admittedly, the original tenant had died during the continuance of the contractual

tenancy. In such circumstances, all the heirs of Sri Aswini Kumar Ghose had inherited the tenancy rights and all of them became tenants-in-

common. Accordingly, it was the bounded duty of the plaintiff landlady to determine tenancy by issuing notice to all the said heirs, but admittedly

such notice of determination of tenancy had been served only on defendants nos. 1 and 2 and the other heirs not being impleaded as parties

defendants in the suit, the suit was bound to fail for want of proper determination of the tenancy of all the tenants and for not impleading necessary

parties in the suit. In support of this contention, Mr. Dasgupta has referred to a Bench decision of this Court made in the case of Krishna Dhone

Pramanik v. Ram Palat Sahoo reported in 84 CWN 447. It has been held in the said decision that Section 2(h) of the West Bengal Premises

Tenancy Act only refers to such heirs of statutory tenancy who had been living with the statutory tenant at the time of his death, but where the

contractual tenant dies before the institution of the suit, all the heirs of the deceased contractual tenants are tenants under the West Bengal Premises

Tenancy Act. He has also referred to another Bench decision of this Court reported in ILR 1966(1) Cal 252. In the said case, after the death of a

contractual tenant the landlord issued rent receipts in respect of only one of the heirs of the original tenant and after determination of the tenancy in

respect of the said heir, the suit for eviction was instituted. The question arose for consideration before this Court as to whether or not the suit was

maintainable in the absence of the other heirs. It was held in the said decision that the said suit was bad for want of necessary parties, namely, the

other heirs of the original tenant. It was, however, held in the said decision that the notice for determination of tenancy was required to be issued in

the name of all the co-tenants but. service of such notice on one of the tenants was sufficient. Mr. Dasgupta has also referred to another Bench

decision of this court made in the case of Ajit Kumar Roy v. Satya Bala Duti reported in 78 CWN 19. Referring to the provision of Section 19 of

the Hindu Succession Act, the Division Bench held in the said case that all the heirs of a contractual tenant would inherit the tenancy right and they

would become tenants-in-common. Hence, notice of termination must be addressed to all the heirs but service could be effected on some and it

was not necessary to serve on all the said tenants-in-common. Mr. Dasgupta contended that it was the bounden duty of the plaintiff landlady to

enquire, on being intimated by the defendants about the death of the original tenants Shri Aswini Kumar Ghose, about the names and particulars of

all the heirs of the said Aswini Kumar Ghose because all such heirs became tenants in common in respect of the disputed tenancy. The landlady

failed and neglected to make such enquiries and had only determined the tenancy of two tenants-in-common namely the defendant nos. 1 and 2

and brought the suit for eviction only against the said tenants-in-common. Accordingly, on the admitted position, the suit was bound to fail and the

learned trial Judge was wrong in holding that the suit was maintainable and decree for eviction should be passed. Mr. Dasgupta has also contended

that it has been only brought in evidence on behalf of the plaintiff that the plaintiff and the members of her family had been residing in a flat

belonging to her sister as a licensee. Unless it can be established to the satisfaction of the court that licence was a precarious licence, the plaintiff

was not entitled to get the decree for eviction on the ground of reasonable requirement for want of any suitable alternative accommodation. This

important aspect of availability of alternative suitable accommodation has not been taken into consideration by the learned Judge in the proper

perspective.

3. Mr. Mitter, the learned counsel for the plaintiff has however submitted that on the face of the evidence that for want of suitable accommodation,

the entire family of the plaintiff has been forced to live as a licensee of her sister in two rooms of the flat of her sister at Behala which was away

from the disputed premises and from her place of work, the case of want of suitable accommodation has been convincingly established. Any

temporary accommodation given to a relation by way of a licensee cannot be held to be a suitable alternative accommodation. Therefore, the

learned Judge was justified in holding that the plaintiff reasonably required the premises for her occupation and also for the occupation of the

members of the family. Mr. Mitter has also submitted that at the time of hearing of the suit the family of the plaintiff consists of plaintiff herself, her

husband, a grown up son, his wife and a child. For such composition of the family, occupation of two rooms in the said flat at Behala is not

sufficient. Mr. Mitter has further contended that the defendants after the death of the original tenant Aswini Kumar Ghose did not inform the

plaintiff that there were others heirs of the deceased original tenant. On the contrary by two separate letters written by both the defendants they

informed the landlady that they had become the tenants after the death of the original tenant and rent receipts should be issued in their name.

Although attempts were made by the defendants to deny the writing of such letters (Ext. 7 series), the learned Trial Judge on comparison of the

admitted signatures of the defendants with the signatures appearing on the said letters has held that the said letters had been written by the said

defendants. Mr. Mitter has also before this Court that the defendants although asserted that such letters had not been written, they did not take any

step to get the signature appearing in those letters verified by any handwriting expert and such inaction on the part of the defendants has been

rightly commented upon by the learned Trial Judge. Mr. Mitter has further contended that tenancy right is heritable and the heirs of the deceased

tenant inherit such tenancy right but simply because such tenancy right is heritable, such tenancy cannot be imposed on any of the heirs inheriting

such tenancy right against the will of such heir. It is entirely a discretion on the part of such heir of the original contractual tenant either to accept the

heritable right of tenancy and/or to denounce the same. Mr. Mitter has contended that none of the other alleged heirs of Aswini Ghose has been

residing in the suit premises at the time of death of the original tenant or at the time of determination of tenancy and none of them had ever

exercised the right of tenancy by claiming such right and/or by making any payment of rent. On the contrary, only the defendant nos. 1 and 2

claimed the tenancy right by inheritance and by writing letters to the plaintiff landlady requested the plaintiff landlady to issue rent receipts in their

names. In such circumstances, it must be held that the defendant nos. 1 and 2 only accepted the right of tenancy on the basis of the heritable right

of such tenancy. In this connection, Mr. Mitter has referred to a Bench decision of this Court in the case of Uma Roy v. Smt. Maghmala Dey &

Anr., reported in 1988(2) Calcutta Land Journal 128 . In the said case, all heirs of the original tenant were impleaded but later on the names of all

the other heirs excepting two daughters were struck off. The question arose for consideration before this Court as to whether or not the suit was

maintainable in the absence of other heirs whose names had been struck off. It was held in the said decision that although the tenancy is heritable

but such tenancy cannot be imposed upon the heirs, of the original tenant and if any tenant abandons or relinquishes such right such heir ceased to

be a tenant. In the said case, however, the defendants in their written statement accepted the position that the defendant nos. 3 and 4 whose names

were not struck off were the only tenants and others had surrendered the tenancy. Accordingly it was held that the suit was maintainable in the

absence of such heirs. Mr. Mitter also has referred to a recent decision of Supreme Court made in the case of H.C. Pandey Vs. G.C. Paul, . In the

said case, on the death of original tenant, besides the respondent in the Appeal"" before the Hon"ble Supreme Court, there were other heirs of the

original tenant namely the mother, brothers and sisters of the respondent. A notice for determination of the tenancy u/s 106 of the Transfer of

Property Act was issued only in the name of respondent and such notice was not served and addressed to any other heir. The suit for eviction was

filed against the respondent, namely, one of the sons of the original tenant. The question arose for consideration before the Supreme Court as to

whether or not such notice for determination not having been addressed to other heirs of the original tenant was a valid notice and whether or not

the suit for eviction instituted only against one of the heirs was maintainable. It has been held by the Hon"ble Supreme Court in the said decision

that on the death of the original tenant, subject to any provision to the contrary either negating or limiting the succession, the tenancy right

devolves on all the heirs of the deceased tenant. The incidence of the tenancy are the same as those enjoyed by the original tenant. But it is a single

tenancy which devolves on the heirs. There is no division of the premises or of the rent payable therefore. That is the position as between the

landlord and the heirs of the deceased tenant. In other words, the heirs succeed to the tenancy as joint tenants. The Supreme Court over-ruled the

decision of the Allahabad High Court reported in Ramesh Chand Bose Vs. Gopeshwar Pd. Sharma, wherein it was held that the heirs of the

deceased tenant succeeded as tenants-in-common. Mr. Mitter has submitted by relying on the decision of the Supreme Court that as all the heirs

of the original contractual tenant were joint tenants such tenancy had in fact been represented by the defendants who had paid rent in respect of

such joint tenancy. Accordingly, the determination of tenancy by issuing notice to the said defendants was a valid notice determining the joint

tenancy and the suit for eviction instituted against the defendants representing the joint tenancy was also maintainable.

4. Mr. Dasgupta in reply to the aforesaid contentions of Mr. Mitter has submitted that even if it is accepted that the defendants claimed tenancy

right after the death of their father and requested the landlady to issue rent receipts in their names by writing letters to that effect it was not stated in

the said letters that there was no other heir or the other heirs did not claim tenancy right. He referred to the decision of the Privy Council reported

in 60 I. A. 167 and a decision of this court reported in 17 CWN 833. The case decided by the Privy Council related to sale of tenure under

Chotanagpur Tenancy Act and the case decided by this Court related to a suit for rent of a raiyat under the Bengal Tenancy Act. It was held in the

said decisions that in such suits all the heirs of the deceased tenant should be impleaded. Mr. Dasgupta has submitted that no effective decree for

eviction can be passed binding all the heirs of a deceased tenant if the tenancy is not determined against them and if the suit is not brought against

them.

5. After considering the respective contentions of the parties, it appears to us that in the facts of the case, the learned trial Judge has rightly held

that the letters had been written by the defendants intimating the plaintiff landlady that after the death of their father they became tenant in respect of

the disputed premises and the not receipts should be given names. We also uphold the finding of the learned trial Judge that notice for suit by

determining the tenancy had been sent by registered post to both the defendants and they accepted the same by putting their signatures on the

acknowledgment receipts. The denial of such signatures by the said defendants could not be established by the defendants and it may be noted that

none of the defendants came forward to deny such signatures but such attempt was made through the husband of the defendant no. 1 and for

cogent reasons indicated in the judgment, the learned Trial Judge has rejected the case of the defendants that the said letters had not been written

by the defendants and the notice for eviction had not been received by the defendants.

6. Considering the facts and circumstances of the case, it appears to us that the plaintiff succeeded in establishing by convincing evidences that

under a very compelling circumstance, she was forced to remain as a licensee in her elder sister's flat and no tenancy is permissible in respect of

such flat without the leave of the Cooperative Housing Society of which the sister is a member. It appears to us that the accommodation as

licensee in the said flat is insufficient and such accommodation on the face of it must be held to be a precarious accommodation absolutely

depending on the good gesture and kind permission of a sister. If a close relation considering the acute hardship permits a close relation to reside

for some time in a flat of such relation such accommodation is inherently a temporary and precarious accommodation and not a reasonable

alternative accommodation. So far as the maintainability of the suit for not determining the tenancy of the alleged other heirs of contractual tenant and



for not bringing the suit against such other heirs is concerned, it appears from the evidence of the husband of the defendant no. 1 that one of the

married daughter long pre-deceased the original tenant and none of the married daughters and/or their successors had been residing in the disputed

premises. Although it has been stated in the evidence of the husband of the defendant no. 1 that some of the grand daughters had stayed with their

grand-father Aswini Ghose, such fact of stay of some of the grand children with their grand father while he was alive even if accepted does not

establish that the other heirs had ever exercised their right of tenancy when such rights devolved on them after the death of the original contractual

tenant. The heritable tenancy right may be accepted or abandoned or relinquished by the heirs of the original tenant. In our view, such tenancy right

may be abandoned or surrendered either expressly or by conduct of the parties. In the instant case, it is quite evident that the heirs of the pre-

deceased daughter and the other married daughter of the original tenant had never exercised any right of joint tenancy in the disputed premises

after the death of Aswini Kumar Ghose. On the contrary only the defendants asserted such right and claimed to be the tenants by way of

inheritance of the tenancy right and they requested the plaintiff landlady to issue rent receipts in their names and rents were also paid by them. It

should be noted here that even in the additional written statement the names of the other heirs of the deceased Aswini Kumar Ghose have not been

disclosed and it has not been stated either in the original written statement or in the additional written statement that such heirs has also exercised

their right in tenancy, after the death of the original contractual tenant. It has been held by the Supreme Court in H. C. Pandey's case that a suit in

respect of the joint tenancy by issuing notice determining the tenancy to only one of the heirs of the original tenant and impleading only one of such

heirs and leaving aside the other heirs is maintainable because the joint tenancy of the heirs of a deceased tenant is represented by one of the heirs

who is also one of the joint tenants. In our view, the decision of the Supreme Court squarely applies to the facts of this case more so when the

alleged heirs had never come forward to assert their heritable right in the joint tenancy and the defendants 1 and 2 had only exercised such

heritable right of tenant and had paid rents for such tenancy right. In such circumstances, even assuming for the argument's sake that the alleged

heirs had become joint tenants in respect of the tenancy after the death of the original contractual tenant and they had not surrendered and/or

abandoned their tenancy right, the defendants must be held to have represented the other joint tenants. We, however, hold that in the facts of the

case the other alleged heirs of Aswini Ghose by their conduct, must be held to have surrendered and/or abandoned their heritable right, in the joint

tenancy, accordingly, the determination of tenancy by issuing notice to the defendants was sufficient and the suit for eviction against the defendants

representing the joint tenancy is also maintainable and the decree for eviction binds all the joint tenants.

In the circumstances, no interference is called for against the judgment and decree passed by the learned trial Judge and the appeal therefore fails

and is dismissed with costs.

Pabitra Kumar Banerjee, J.

I agree.