

(1984) 08 CAL CK 0004

Calcutta High Court

Case No: A.O.D. No. 350 of 1979

Ganesh Chandra Das

APPELLANT

Vs

Bijoy Coomer Goyee and
AnotherRESPONDENT

Date of Decision: Aug. 7, 1984**Acts Referred:**

- West Bengal Premises Tenancy Act, 1956 - Section 13(1)(a), 13(6)

Citation: 88 CWN 1014**Hon'ble Judges:** Chittatosh Mookerjee, J; Bhagabati Prasad Banerjee, J**Bench:** Division Bench**Advocate:** S.P. Roy Chowdhury and Mahabir Prasad Choudhury, for the Appellant; Ranjit Kumar Banerjee and Pashupati Nath Chunder, for the Respondent**Final Decision:** Dismissed

Judgement

Bhagabati Prasad Banerjee, J.

This first appeal is at the instance of the tenant defendant in a suit for eviction from shoproom No. 11 on the ground floor of Premises No. 109, Netaji Subhas Road, Calcutta, on the ground of subletting, assignment and or transfer of the suit room without the consent of the plaintiff landlord. On 22nd May, 1979 the learned Judge, 4th Bench, City Civil Court, Calcutta had decreed the Ejectment Suit No. 908 of 1977 in favour of the plaintiff. The defendant appellant had been a monthly tenant of the suit premises at a rent of Rs. 90/- per month according to English calendar. The appellant no longer disputes that the plaintiff landlord had duly served upon him a notice of suit u/s 13 (6) of the West Bengal Premises Tenancy Act. In his plaint the plaintiff did not mention the name, of the person to whom the premises had been allegedly transferred and or sublet. The defendant in his written statement also made a general denial of the said allegation.

2. At the trial, it was proved that in the year 1976 one Jagadish Chandra Das had started his business, J.C. Das & Co., at the suit premises being No. 109, Netaji Subhas Road. Only after filing of the aforesaid ejectment suit, Jagadish Chandra Das had shifted his said business to 66, Pathuria Ghat Street. Jagadish Chandra Das was a brother's son of the defendant. The moot point for decision was whether the defendant had sublet, assigned or transferred the suit rooms to Jagadish or Jagadish was a mere licensee.

3. The plaintiff landlord, in support of the case of subletting, assignment and transfer of the suit premises in favour of Sri Jagadish Chandra Das examined several witnesses and also produced a number of documents. It was proved that Jagadish had obtained a Corporation trade licence showing the shoproom as his address (vide P.W.1 and Ext.1). P.W.2, Samir Banerjee, who was an Inspector of the Office of the Commissioner of Taxes, Government of West Bengal produced before the trial court the records regarding registration under the Sales Tax Laws. Ext. 4 was the application filed by the said Sri Jagadish Chandra Das before the Commissioner of Commercial Taxes for voluntary registration u/s 7/8 of the Bengal Finance (Sales) Act, 1941. In the said application for registration the said Sri Jagadish Chandra Das described himself as the proprietor of M.s. J.C. Das & Co. situated at Room No. 11 of 109, Netaji Subhas Road, Calcutta, which was the disputed premises. The plaintiff also proved a cash memo (Ext 7) issued by Jagadish Chandra Das and Co. 109, Netaji Subhas Road, (Room No. 11), Calcutta-1, in respect of sale of certain articles. We are unable to believe the defendant Gun-shy Chandra (D.W.1) that he was still carrying on business in the shop room, because in cross-examination it was admitted by him that he had closed his business in the year 1972. The defendant also stated that he did not know who at present was carrying on the business in the suit premises. D.W.2, Sri Jagadish Chandra Das, who claimed to be the nephew of the defendant, Ganesh Chandra Das, stated in his deposition that he started his business in the year 1976 at Premises No. 109, Netaji Subhas Road, Room No. 11, Calcutta and had shifted the said business after the filing of the suit at 66, Pathuria Ghat Street. When the D.W.1 himself admitted that in the year 1972 he had closed down his business, we conclude that the defendant No. 2, Jagadish Chandra Das had actually carried on the business in the suit room between 1976-78. It also appears from the said deposition of P.W. 2, Samir Kumar Banerjee, Inspector of Commercial Taxes that Jagadish Chandra Das & Company applied for change of business on the 7th of March, 1978 to No. 66, Pathuria Ghat Street, Shyambazar.

4. On the basis of the evidence, oral and documentary, particularly from the aforesaid admission made by the defendant (D.W.2) during the cross-examination we hold that the defendant had completely closed his business in the suit premises in the year 1972 and that he was not even aware as to who was carrying on the said business in the suit premises at the relevant time; it has been established that in the year 1976 Jagadish Chandra Das had started his own business in the suit premises and had carried on the said business from 1976 to 1978. The suit was filed on the

10th of August, 1977 and that the said shifting was from the suit premises was made admittedly after the ejectment suit was filed.

5. Mr. S.P. Roy Chowdhury, appearing on behalf of the appellant, could not dispute the factum of possession by the said Jagadish Chandra Das in the said premises but submitted that said possession of the shoproom by Jagadish who was the nephew of the defendant, could not be said to be a transfer or sub-letting of the premises in question by the defendant No. 1. In support of his contention Mr. Roy Chowdhury placed reliance upon the decision in the case of Sumiha Singh v. Nahar Singh reported in 1984(1) Calcutta High Court Notes 175. Amitabha Dutta, J. in the said reported case held that in the absence of any evidence that the tenant had allowed his son and grandson in that case to run their separate business in the demised premises for valuable consideration, it could not be held that the tenant had sublet or transferred a portion of the suit premises to his son and grandson and had thereby become liable to, be evicted u/s 13(1) (a) of the West Bengal Premises Tenancy Act, 1956. The point for consideration in that reported case was whether "when a tenant of the premises demised to him for purpose of carrying on business allows his son and grandson living in the same family to carry on separate business of their own in a portion of the demised premises, such transaction is tantamount to transfer on the part of the demised premises within the meaning of section 13(1) (a) of the West Bengal Premises Tenancy Act, 1956.

6. Amitabha Dutta, J. further held that the circumstances of the said case alone were not sufficient for drawing a reasonable inference that there was transfer of a portion of a demised premises to the son and grandson for valuable consideration.

7. The facts of the present case are distinguishable from those of the case reported in 1984(1) Calcutta High Court Notes, 175. In the instant case it was admitted by the defendant Ganesh Chandra Das that he closed his business in the year 1972 and was not aware who was carrying on the business thereafter. It was not the case of the defendant that he along with Jagadish Chandra Das was in joint possession of the suit premises and that the said Jagadish Chandra Das carried on the business from a part of the said premises. D.W.2, Jagadish Chandra Das, was put in exclusive possession of the entire premises held by the defendant and consequently it amounted to a transfer of the said premises held by the defendant in favour of D.W.2, Jagadish Chandra Das and that such possession of D.W.2 was without the consent and or permission of the plaintiff. We conclude that the plaintiff had satisfactorily proved that there was transfer of the premises within the meaning of section 13(1) (a) of the West Bengal Premises Tenancy Act, 1956. Accordingly, we uphold the judgment and decree passed by the learned trial Judge for eviction of the defendant from the suit premises on the ground of transfer of the premises without the previous consent of the landlord in meaning of section 13(1) (a) of the West Bengal Premises Tenancy Act, 1956.

In the result, the appeal is dismissed without any order as to costs. The appellant is granted four months" time to vacate the suit premises subject to his going on depositing the current damages at the rate of Rs. 90[- (Rupees ninety) only per month, within the 15th day of each succeeding month according to English Calendar and in default of deposit for any one month, the decree for ejectment shall become immediately executable. The first of such deposit is to be made within 15th September, 1984. If deposited, the respondents will be entitled to withdraw the same without prejudice and without security.

Mookerjee, J

I agree.