Hirak Roy Chowdhury Vs Dulal Chowdhury and Others

S.A. No. 439 of 1995

Court: Calcutta High Court

Date of Decision: Aug. 1, 2001

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Order 1 Rule 10, Order 22 Rule 4A, 103, 107#Hindu Succession Act, 1956 â€" Section 15, 15(1)(d), 15(2), 15(2)(b), 15(d)#West Bengal Premises Tenancy Act, 1956 â€" Section 13, 2(h)

Citation: 107 CWN 561

Hon'ble Judges: Pranab Kumar Chattopadhyay, J

Bench: Single Bench

Advocate: Sambuddha Chakraborty, for the Appellant; S.P. Roy Chowdhury and Indrajit Mondal, for the Respondent

Final Decision: Allowed

Judgement

Pranab Kumar Chattopadhyay, J.
This second appeal is directed against the judgment and decree dated 31st July, 1992 and 10th August,

1992 respectively passed by the learned Assistant District Judge. 3rd Court. Alipore in the Title Appeal No. 222 of 1991 affirming the judgment

and decree dated 30th April, 1991 and 7th June, 1991 respectively by the learned Munsif, 2nd Court, at Alipore in Title Suit No. 348 of 1978.

The appeal is at the instance of the defendant in a suit for eviction and mesne profits. The plaintiffs are the owners of the suit premises at premises

being 20B, Ballygunge Station Road where the original defendant Smt. Sulata Ghosh (since deceased) was a monthly tenant in respect of the

ground floor at a rental of Rs. 110/- payable according to English calendar month. The suit was filed on the ground of default in payment of rent

since February, 1977 and for causing damage to the suit premises. The other grounds mentioned in the plaint by the plaintiffs are subletting of a

portion of the suit premises to one Bireswar Roy Chowdhury without the knowledge and consent of the plaintiffs and the plaintiffs also reasonably

required the suit premises for their own use and occupation. A notice of ejectment was served upon the defendant and in spite of service of the

said notice defendant refused to vacate the tenanted portion of the suit premises and hence, the plaintiffs brought this suit against the original

defendant Smt. Sulata Ghosh (since deceased). The original defendant Smt. Sulata Ghosh (since deceased) contested the suit by filing written

statement.

2. During the pendency of the suit said Sulata Ghosh died in the year 1986 and subsequently Hirak Roy Chowdhury, the appellant herein, was

added as defendant. The said Hirak Roy Chowdhury also contested and resisted the suit by filing a supplementary written statement denying the

allegations and claims of the plaintiffs made in the plaint. Deceased defendant Sulata Ghosh in her written statement categorically stated that her

brother Bireswar Roy Chowdhury also had been residing in the suit premises along with his family members since 1947. The original defendant in

her written statement categorically denied all the grounds of reasonable requirement, subletting, default in payment of rent and also causing damage

to the suit premises as were alleged by the plaintiffs.

3. According to the deceased defendant, the suit premises was originally let out to her late husband Jitendra Nath Ghosh in 1946 by the then

owner and landlord Shri Janaki Nath Sen. From the inception of tenancy Bireswar Roy Chowdhury, brother-in-law of the then tenant Jitendra

Nath Ghosh, had been residing in the said suit premises with his family members. Said Bireswar Roy Chowdhury is the father of the present

appellant Hirak Roy Chowdhury. The then owner transferred the property in favour of the predecessor-in-interest of the present respondent in the

year 1960. Jitendra Nath used to pay rent to the new landlord. Jitendra Nath, the original tenant, died intestate in July, 1976 leaving behind him his

widow Sulata as his sole legal heir and accordingly, Sulata Ghosh became the tenant in respect of the said ground floor. It may be mentioned here

that Jitendra and Sulata were issueless. In the year 1978 ejectment suit was filed against Sulata Ghosh.

4. It is the specific case of the deceased defendant Sulata that said Bireswar Roy Chowdhury was her brother and the defendant never sublet the

suit premises nor caused any damage or mischief to the said premises. It was also denied by the defendant that the plaintiffs required the suit

premises reasonably for themselves and/or for the members of their family. It may be mentioned herein that during the pendency of the suit original

defendant Sulata died and the said death of Sulata was reported to the Trial Court by the learned Advocate-on-Record on 12th November, 1986.

Pursuant to the said death report on 17.11.86 an application for substitution was filed by the plaintiffs seeking to add Hirak Roy Chowdhury, the

appellant herein, as substituted defendant. Pending hearing of the said substitution petition on 11th May, 1988 to the effect that Hirak Roy

Chowdhury is not the heir of the deceased defendant but one Madan and Bankim Ghosh, alleged to be nephew of deceased Jitendra Nath Ghosh

(husband of deceased defendant Sulata), should be substituted as heirs of deceased defendant. The amended substituted petition thereafter was

allowed by the court on 10th August, 1988 and the name of Hirak Roy Chowdhury was, therefore, not substituted in place of deceased defendant

5. Hirak Roy Chowdhury thereafter filed an application under Order 1 Rule 10 of C.P.C, and was added as defendant No. 2. Since the

amendment of the substitution petition was allowed by the learned Trial Court summons of the suit were issued in the names of the substituted

defendant Nos. 1A and IB, i.e.. in the name of Madan Ghosh and Bankim Ghosh of 42, Dev Lane. But, said Bankim Ghosh swore an affidavit on

8th September, 1988 to the effect that he is not the legal heir of the deceased defendant Sulata Ghosh and also has no claim in the tenancy held by

said deceased Sulata Ghosh. In the said affidavit Bankim Ghosh also stated that Bankim and Madan is one and same individual person. Learned

Munsif of the Trial Court decreed the suit ex parte against the substituted defendant and on contest against the added defendant. In the judgment,

learned Munsif held that Hirak Roy Chowdhury was added as defendant and was licensee of the deceased defendant Sulata Ghosh.

6. Being aggrieved by and dissatisfied with the said judgment and decree of the learned Munsif an appeal was preferred by the present appellant

herein before the learned Assistant District Judge, 3rd Court, Alipore. The submissions in the lower Appellate Court restricted mainly on two

grounds, viz., (1) whether the observations of the learned Lower Court as of legal heir of deceased defendant Sulata is bad in law and (2) whether

the observations declaring the appellant Hirak Roy Chowdhury to be a licensee of deceased defendant Sulata is bad in law.

7. On the basis of materials on record and after considering the submissions of the respective parties learned Lower Appellate Court refused to

interfere with the judgment of the Trial Court and dismissed the appeal on contest affirming the judgment and decree passed by the learned Munsif

in the suit.

The instant second appeal thereafter has been filed by the defendant No. 2, Hirak Roy Chowdhury, as the sole appellant. It appears from the

records that at the time of admission no substantial question of law was formulated. Accordingly, considering the grounds mentioned in the

memorandum of appeal following questions are formulated for the purpose of disposal of the instant second appeal and those questions should be

treated as substantial questions of law involved in this appeal.

1. Whether the appellant should be considered as a tenant in respect of the suit premises under the West Bengal Premises Tenancy Act being an

heir of the deceased tenant (original defendant).

2. Whether the suit had abated in view of non-substitution of heir/ heirs of the deceased defendant by the plaintiffs within the stipulated time.

3. Whether any decree for eviction In a suit filed under the West Bengal Premises Tenancy Act can be passed without any ground as mentioned in

Section 13 of the Act being established.

8. Mr. Chakraborty appearing on behalf of the appellant submitted that the original defendant Sulata was the aunt of the appellant herein. Referring

to the evidence on record (both oral and documentary) Mr. Chakraborty submitted that Bireswar Roy Chowdhury, the father of the appellant

herein, had been residing at the suit premises with his family since the inception of the tenancy along with- his brother-in-law, Jitendra Nath Ghosh,

in whose name the tenancy was originally created in the year 1946. It appears from the evidences on record that said Bireswar got married at the

suit premises; his son Hirak was born while he along with his wife use to stay in the suit premises. It further appears that Hirak attended the school,

got a job and attended the place work from the said premises. When the property was transferred in favour of the predecessor-in-interest of the

present respondents, the original tenant Jitendra Nath Ghosh, his wife Sulata (the original defendant in the suit), his brother-in-law Bireswar Roy

Chowdhury (father of the appellant herein) and Hirak were residing in the suit premises. Admittedly, predecessor-in-interest of the present

respondent purchased the suit premises in 1960 when Jitendra Nath Ghosh, his wife Sulata and the father of the appellant Bireswar Roy

Chowdhury all were alive and were living at the suit premises which would also appear from the materials on record, particularly from the written

statement of Sulata as well as of the appellant herein and also from the evidence of Hirak before the Trial Court.

9. From the materials on record, therefore, it transpires that the appellant herein was living in the suit premises with the original defendant Sulata.

Appellant Hirak not only claimed the original defendant Sulata as his aunt but said Sulata also in her written statement specifically recognised

Bireswar Roy Chowdhury as her brother and also stated that said Bireswar Roy Chowdhury along with his family members residing in the suit

premises since 1947. The appellant also in his written statement filed before the Trial Court, as the added defendant, has stated hereinbelow.

...the added defendant named above is the only heir of the deceased defendant being brother''s son entitled to inherit the tenancy right of the

deceased Sulata Ghosh as he is the only heir who has been residing in the suit premises as her family member along with his parents since his birth

till the death of said defendant Sulata Ghosh. At the time of her death this added defendant was present before the deceased and save and except

this added defendant no other heir of the deceased ever resided in the suit premises.

10. Furthermore, an objection was also filed on behalf of the plaintiff to the petition by the appellant herein before the Trial Court under order 1

Rule 10 of CPC wherein the said plaintiff also categorically stated as under :

That in the circumstances set-forth above Hirak Roy Chowdhury is being the brother''s son of the said Sulata Ghosh cannot be substituted in the

place of the said Sulata Ghosh since deceased and as such allegations made in para ''8'' of the said application is baseless.

So from the aforesaid sets of evidences and also considering other materials on record it can be safely concluded that the parties all along accepted

Hirak Roy Chowdhury as the brother''s son of deceased defendant Sulata Ghosh. From the deposition of PW1, viz., Dulal Roy Chowdhury, it

appears that said Dulal Roy Chowdhury deposed before the Trial Court that after the death of Sulata, Hirak Roy Chowdhury became the legal

heir of the defendant In view of the aforesaid materials on record learned Counsel appearing on behalf of the appellant submitted that the parties in

the instant suit all along accepted Hirak Roy Chowdhury as the brother''s son of Sulata. Therefore. Sulata was the aunt (pisima) of the appellant

herein. On the death of the original defendant Sulata her brother''s son Hirak, the appellant herein, claimed himself as the heir of his deceased aunt

Sulata. Referring to Section 15(d) of the Hindu Succession Act it was contended on behalf of the appellant that the appellant is the heir of the

deceased original defendant. Learned Counsel of the appellant also submitted that in view of Section 2(h) of the West Bengal Premises Tenancy

Act appellant should be regarded as a tenant being the heir of the deceased tenant under the Hindu Succession Act as he used to reside with his

deceased aunt, namely, original defendant herein at the time of her death.

11. Mr. Shyama Prasanna Roy Chowdhury, learned Senior Counsel, appearing for the respondent/plaintiff submitted that it has not been

established before the courts below that the original defendant Sulata was the aunt (pisima) of the appellant herein. Referring to the specific finding

of the courts below in this regard Mr. Roy Chowdhury submitted that the appellant failed to produce any cogent document wherefrom it can be

said that original defendant Sulata was the aunt (pisima) of the appellant herein. Mr. Roy Chowdhury also referred to Section 15(2) of the Hindu

Succession Act and submitted that since the tenancy was inherited by the original defendant Sulata from her husband present appellant was not the

heir of her husband. In view of Section 15(2)(b) of the Hindu Succession Act tenancy right inherited by the original defendant Sulata from her

husband must devolve upon the heirs of the husband and not upon the other heirs referred to in sub-Section (1) of Section 15.

12. It was further submitted on behalf of the respondents/plaintiffs that since the appellant herein cannot be regarded as the heir of the deceased

tenant ""Sulata"" he also cannot be treated as the tenant under the West Bengal Premises Tenancy Act. Considering the evidence on record (both

oral and documentary) I am of the opinion that the courts below should have come to a definite finding in respect of the relationship of the appellant

herein with the deceased original defendant upon accepting the claim of the appellant in this regard. From the evidence on record I also find that

the relationship between the appellant and the deceased original defendant Sulata has been specifically established. Hirak Roy Chowdhury, the

appellant herein, is the brothers son of the deceased original defendant Sulata has been proved before the courts below beyond any reasonable

doubt and I am constrained to hold that both the learned courts below committed an error by expressing doubt in respect of the relationship

between the appellant and the deceased original defendant as according to the learned Lower Appellant Court that the appellant herein failed to

produce any cogent document in order to establish the relationship with the deceased original defendant.

13. It is a settled law that the fact admitted need not be proved in the present case. From the oral and documentary evidences produced before the

courts below it appears that the plaintiff admitted Hirak Roy Chowdhury as the brother''s son of said Sulata and as such in view of the admission of

the plaintiff as recorded in the affidavits before the Trial Court regarding relationship between Hirak Roy Chowdhury and deceased defendant

Sulata no further proof was necessary

14. Now admittedly the appellant herein is not the heir in the line of the husband of the original defendant Sulata and in terms of Section 15(2)(b) of

the Hindu Succession Act no property inherited by Sulata from her deceased husband shall devolve upon the appellant herein as the appellant is

admittedly not the heir of her deceased husband.

15. In this context I would like to examine the true effect and purport of Section 15(2)(b) of Hindu Succession Act. I can do no better than refer to

observation of Mulla on Hindu Law (Fifteenth Edition, Page 1012) which is quoted hereunder:

...It follows from the context that the heirs of the husband mentioned in this clause are not the heirs of the husband she might have remarried after

the death of her first husband but heirs of "the husband" whose property she had inherited as his widow; and in case of property inherited from her

father-in-law which could only be as widow of a predeceased son, the heirs contemplated are heirs of "the husband" from whose father she

inherited the property. The other heirs referred to in sub-Section (1) are the father and mother of the intestate and the heirs of the father and the

heirs of the mother. It would perhaps seem that clause (b) is redundant in this Section because the order of priority in entries (a) and (b) of sub-

Section (i) would bring about the same result even in the absence of the clause. Entry (b) read with entry (a) in effect declares that in case the

intestate dies without leaving any issue and the husband, the property will devolve upon the heirs of the husband. Nonetheless the clause has a

place in this Section because it is conceivable that the intestate may have remarried after the death of her husband from whom she may inherited

property or after the death of the father-in-law from whom she may have inherited property and may die without issue but leaving her second

husband. In such a case, in the absence of the present clause the property so inherited would pass to the second husband....

16. In view of the aforesaid, I also hold that Section 15(2)(b) of Hindu Succession Act is redundant in the facts of this case.

17. As per Section 15(1)(d) of the Hindu Succession Act, the appellant herein should be regarded as the heir of Sulata particularly in the absence

of anyone else. In view of Section 2(h) of West Bengal Premises Tenancy Act as the appellant herein being an heir of the deceased tenant used to

reside with her at the time of her death shall be regarded as a tenant. The definition of tenant as mentioned in Section 2(h) of the West Bengal

Premises Tenancy Act is quoted hereunder:

(h) ""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 of order for eviction has been

made by Court of competent jurisdiction.''

18. The appellant herein, therefore, being an heir in terms of the Hindu Succession Act since had been residing with the deceased tenant at the time

of her death must be regarded as tenant in the suit premises. The courts below committed an error of law by not treating the appellant herein as

tenant in respect of the suit premises after the death of the deceased original tenant and thus arrived at a finding not based on evidence on record.

19. The other important point urged on behalf of the appellant is about the abatement of the suit. Learned Counsel of the appellant submitted that

original defendant Sulata died on 17th August, 1986. Substitution application was filed on behalf of the plaintiffs seeking to substitute Hirak. the

appellant herein, on 17th November, 1986 and amendment application to the said substitution application was verified on 11th May, 1988 and

obviously was filed on or after the said date. The amendment of the said substitution application was filed on behalf of the plaintiffs seeking to

substitute Madan Ghosh and Bankim Ghosh who were described as nephew of deceased husband of Sulata, the original defendant herein.

However, said Bankim Ghosh affirmed an affidavit before the learned Munsif and submitted as hereunder-

1. That I know the defendant deceased Sulata Ghosh of the instant suit. But there never existed any relationship between myself and deceased

Sulata Ghosh.

2. That during my life-time, I never stayed in the premises No. 20B, Ballygunge Station Road, where the said deceased Sulata Ghosh had been a

premises tenant along with her brother and nephew (brother''s son) since a long back.

3. That I am not in any case a legal heir of the deceased Sulata Ghosh and as such I have no claim over the tenancy held by said deceased Sulata

Ghosh.

4. That Sri Bankim Ghosh and Madan Ghosh is the one and same individual person i.e. myself and I am known as both Bankim and Madan

Ghosh.

20. Inspite of the aforesaid stand taken by Madan Ghosh alias Bankim Ghosh, learned Munsif allowed the prayer of the plaintiffs to amend the

substitution petition by substituting the names of Madan Ghosh and Bankim Ghosh in place of Sulata Ghosh, the deceased defendant, as her heirs

and the name of the appellant, who was initially sought to be substituted by the plaintiffs in the original substitution petition, was allowed to be

expunged. It may also be noted that while the amendment application was filed in order to amend the original substitution petition no prayer was

made on behalf of the plaintiff for setting aside the abatement upon condonation of the delay.

21. Accordingly, learned Counsel of the appellant submitted that by allowing the prayer for amendment of the substitution petition without any

prayer for setting aside the abatement (upon condonation of the delay the suit had abated as a whole as Hirak''s name was sought to be expunged

and allowed to be expunged while substituting Madan Ghosh alias Bankim Ghosh as the substituted heirs of the deceased defendant. Mr. Roy

Chowdhury, learned senior Counsel of the respondent, however, submitted that original application for substitution since had been filed within time

subsequent amendment application to the said substitution petition filed afterwards upon being allowed by the learned Munsif will go back to the

original date of filing of the substitution application and'' therefore, question of setting aside the abatement was not necessary. Mr. Roy Chowdhury

referred to the death report submitted by the learned Advocate of the original defendant in the court of the learned Munsif and submitted that the

learned lawyer filed the said death report on 12th November, 1986 and application of substitution was filed on 17th November, 1986.

Accordingly, the substitution application was filed within time and the amendment application after being allowed according to Mr. Roy

Chowdhury, will go back to the original date of filing of the substitution petition and therefore, Mr. Roy Chowdhury submitted that question of

setting aside the abatement was not necessary as the suit could not be abated under such circumstances. Mr. Roy Chowdhury cited a decision of

this court reported in Kanailal Das and Another Vs. Jiban Kanai Das and Another,

22. Dr. Chakraborty, the learned Counsel of the appellant, however, contended that the aforesaid decision of this court is not at all applicable in

the facts and circumstances of the present case as in the aforesaid judgment Division Bench categorically held that the amendment sought to be

made by the plaintiff was not a substitution of a new case in place of the original one nor a change in respect of the real nature of controversy on

the subject matter of the suit. But according to Dr. Chkraborty, present case is different one. Dr. Chakraborty further submitted that Hirak''s name

was not substituted in place of the deceased defendant in spite of filing of the substitution application within the time and in view of the prayer of the

plaintiffs and Hirak''s name was allowed to be expunged. Therefore, according to the appellant, suit had abated as the heirs substituted on the basis

of the amendment application to the substitution petition could be added only on the date of the order of allowing the aforesaid amendment

application. Dr. Chakraborty, however, submitted that by the time plaintiffs wanted to substitute Bankim Ghosh alias Madan Ghosh as heirs in

place of Hirak it was time barred and as no prayer for setting aside the abatement upon condonation of delay was made on behalf of the plaintiffs

and no order was also passed to that effect by the learned Munsif suit was bound to be abated as a whole particularly, when the name of Hirak

was expunged pursuant to the prayer of the plaintiffs. Referring to various decisions of the Supreme Court Dr. Chakraborty submitted that any

prayer or relief sought to be introduced by amendment, if time barred is to be rejected. The decisions referred to and relied upon by Dr.

Chakraborty in this regard are mentioned hereunder:

1 K. Raheja Constructions Ltd. Vs. Alliance Ministries and others,

2. Muni Lal Vs. The Oriental Fire and General Insurance Company Ltd. and another,

3 Radhika Devi Vs. Bajrangi Singh and others,

4. Smt. Ganga Bai Vs. Vijay Kumar and Others,

23. Referring to aforesaid decisions Dr. Chakraborty submitted that if a claim is time barred then by way of amendment ii cannot rotate back to

any previous date nor save the limitation. Dr. Chakraborty submitted that by expunging Hirak''s name and seeking to introduce some other persons

allowing the prescribed period of limitation as substituted heirs of the deceased defendant without obtaining any specific order from the court in

respect of setting aside of the abatement upon condonation of delay the suit had abated on account of the act of the plaintiffs. Dr. Chakraborty also

referred to a decision of Allahabad High Court reported in Lala Gur Prasad Vs. Smt. Laxmi Devi, .

24. Considering the rival contentions of the respective parties on this issue I am of the opinion that the suit had abated after expunging Hirak''s

name on the basis of the prayer of the plaintiffs made in the amendment of the substitution application as the learned Munsif while substituting

Madan Ghosh alias Bankim Ghosh did not pass any order setting aside the abatement after condoning the delay and suit was abated as a whole

and the learned Counsel; of the appellant was absolutely right in contending that in the present case no relief could be granted in the suit as the said

suit had abated on account of the act of the plaintiff.

25. The only other point which is to be decided is whether any decree for eviction in a suit filed under the West Bengal Premises Tenancy Act

could be passed without establishing any ground as mentioned in Section 13 of the Act. Strictly speaking, the aforesaid question is no longer

necessary to be determined in view of the aforesaid determining that the suit had abated as a whole but as I have already heard the parties

extensively on this question I propose to decide this issue also.

26. Learned Counsel of the appellant submitted that a decree for eviction without any ground as mentioned in Section 13 of the West Bengal

Premises Tenancy Act being satisfied is a nullity. In the present case according to the appellant none of the grounds mentioned in Section 13 of the

said West Bengal Premises Tenancy Act have been established and/or proved. Dr. Chakraborty referring to the judgment and decree passed by

both the courts below submitted that on what ground decree for eviction has been passed by both the courts below will not appear from the

judgment itself. Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Others, and Kaushalya Devi and Others Vs. Shri K.L. Bansal, in this

regard. Mr. Roy Chowdhury learned senior Counsel appearing on behalf of the plaintiff however submitted that from the evidence on record it

appears that the grounds mentioned in Section 13 have been duly satisfied and proved. According to Mr. Roy Chowdhury plaintiffs have

established the grounds of default and subletting before the courts below upon adducing adequate evidence. Mr. Roy Chowdhury therefore

referring to Sections 103 and 107 of CPC and submitted that in the second appeal High Court may determine an issue necessary for the disposal

of appeal on the basis of the evidence on record and this court being Appellate Court is also empowered to determine a case finally if evidence on

record is sufficient in this regard. However, from the evidence on record it appears that ground of default was admittedly not established before the

Trial Court as the learned Munsif specifically held that the defendant was not a defaulter.

27. On the point of subletting learned courts below never came to a finding that the original defendant had sublet the portion of the tenancy to

Bireswar Roy Chowdhury at any point of time. Dr. Chakraborty submitted that no evidence of subletting far less to speak of any cogent evidence

would appear from the evidence on record. Dr. Chakraborty also contended the original tenant Jitendra was inducted in the year 1946. Plaintiffs

purchased the property in the year 1960 when Jitendra was alive and became the tenant under the predecessors-in-interest of the present plaintiffs.

Jitendra died in 1976 and his wife Sulata became the tenant. The suit was filed ''in the year 1978. Even if it is assumed that the allegation of

subletting is correct then the question would arise that how Sulata could be held responsible for subletting as it is nobody''s case that Sulata as the

defendant had sublet and/or assigned a portion of the tenancy to Bireswar Roy Chowdhury.

28. However, if it is assumed that the appellant herein occupied the portion of the tenancy on account of subletting of the same by the defendant

then at best it could be said that the original tenant Jitendra was responsible for such subletting and in that event Sulata cannot punished. So

subletting cannot be a ground under any circumstances against Sulata for the purpose of eviction. It should be a paramount consideration for the

court to detect who is responsible for flouting the provisions of law. In the present case, if at all anybody had flouted the provision of the West

Bengal Premises Tenancy Act by subletting any portion of the tenancy then it is Jitendra, the original tenant and not his wife Sulata. Admittedly.

Hirak, the appellant herein, came into possession of the suit premises when Jitendra was the tenant. According to Dr. Chakraborty, Sulata can

under no circumstances be held responsible for rent law offence.

29. For the foregoing reasons I hold that both the courts below passed the decree for eviction though no ground as mentioned in Section 13 of the

West Bengal Premises Tenancy Act had been established and accordingly, the decree for eviction is liable to be set aside on this ground.

30. Lastly, Dr. Chakraborty submitted that issue relating to the aspects of inheritance of tenancy was kept open by the learned Trial Court while

deciding Order 1 Rule 10 application. Relevant portion of the order of the learned Munsif dated 13th July, 1989 is quoted hereinbelow.

... the issue as to who has inherited the tenancy of the suit premises after the death of defendant Sulata Ghosh is kept for determination along with

other issues during the final hearing ""of the Suit....

31. In view of the aforesaid order of the learned Munsif entire issue of inheritance kept open but no step was taken by the courts below in terms of

the Order 22 Rule 4A of the CPC and tenancy remained unrepresented before the Trial Court.- In my opinion, the aforesaid submission of the

learned Counsel of the appellant sounds reasonable and must be upheld.

32. For the aforementioned reasons, the judgment and decree passed by both the courts below are liable to be set aside as no decree of eviction

against the appellant could be passed in the present case. Accordingly. the instant second appeal is allowed and the judgment and decree passed

by both the courts below stand set aside. Suit filed by the plaintiffs, therefore, also stands dismissed. In the facts and circumstances of this case,

there will be, however, no order as to costs.