(1954) 09 CAL CK 0002

Calcutta High Court

Case No: Second Appeal No. 960 of 1950

Baijnath Prosad Haluai		APPELLANT
	Vs	
Kader Bux Shaikh		RESPONDENT

Date of Decision: Sept. 7, 1954

Acts Referred:

- Rent Control Act, 1948 - Section 12(3)
- Rent Control Act, 1950 - Section 14(3), 18(5)

Citation: (1956) 2 ILR (Cal) 803

Hon'ble Judges: P.N. Mookerjee, J

Bench: Single Bench

Advocate: A.D. Mukherjee, S.S. Mukherjee and Bankim Chandra Roy, for the Appellant; Prasun Chandra Ghosh and Ajit K. Dutt for Respondent No. 1 and Anil K. Sett, for the Respondent

Final Decision: Allowed

Judgement

P.N. Mookerjee, J.

This appeal is by Defendant No. 3 and it arises out of a suit for declaration of the Plaintiff''s tenancy light in the suit premises and for recovery of possession. The suit was instituted on August 23, 1948, when the Calcutta Rent Ordinance of 1946 was in force. The suit was dismissed by the trial court but, on appeal, it has been decreed. Hence this appeal by the main contesting Defendant. The relevant facts shortly may be stated as follows: The suit premises belong to Defendant No. 1 Harendra Nath Saha who is Respondent No. 2 in the present appeal. Under Harendra, the Plaintiff occupied the disputed premises as a monthly tenant according to the English calendar. On August 16, 1946, when communal riots rake out in this city, the Plaintiff left the disputed premises and rent away to his native village in Magrahat. Thereafter it appears that the Plaintiff deposited certain rents with the Rent Controller. These deposits were as follows, namely:-on January 26, 1947, of the rents from August to December; 1946; on March 15, 1947, of the rents for January and

February, 1947; and, on August 12, 1947, of the rents for March and April, 1947.

2. It also appears that the Plaintiff made a further deposit on September 1, 1947, namely, of the rents from May to July, 1947. There is no evidence of any other deposit nor is it the Plaintiff''s allegation in the plaint or his case at any stage that any further deposit of rent after the rent of July, 1947, was made by him.

3. On August 23, 1948, the Plaintiff instituted the present suit on the allegation that his original tenancy was subsisting and he was, accordingly, entitled to a declaration of his rights under the same and also to recovery of possession of the suit premises. The main defence of the Defendant No. 1, the landlord was that the Plaintiff''s original tenancy had been duly terminated by the service of a proper notice to quit in June, 1947, and that the Plaintiff was not entitled to any relief in the present suit.

4. In the suit there were two other Defendants, namely, Defendants Nos. 2 and 3. The Defendant No. 2 was originally impleaded as the person to whom the landlord-Defendant No. 1 had let out the suit premises and delivered possession sometime in August, 1947. Later on, however, Defendant No. 3 intervened and, on his allegation that he, and not his son Defendant No. 2, was the tenant in respect of the suit premises under the landlord Defendant No. 1 from August, 1947, he was impleaded as a party Defendant in the suit. The suit was mainly contested thereafter by this Defendant No. 3 whose case was that the Plaintiff had no subsisting, interest and, further, that he (Defendant No. 3) was a bona fide lessee for valuable consideration without notice of the Plaintiff''s right, if any, The trial court which gave its decision on December 23, 1949, held inter alia that, in the circumstance of this case, there was abandonment of the tenancy by the Plaintiff. It held further that the notice to quit had been duly served and, in any event, therefore, the tenancy has terminated by reason of such service. It further found that, on the admitted facts, there being default in the payment of rer for more than 3 consecutive months after the Rent Control Act of 1948 had come into force there was ipso facto determination of the tenancy u/s 12(3) of that Act and that, on this ground, too the Plaintiff''s suit ought to fail.

5. The learned Subordinate Judge who heard the Plaintiff''s appeal from the learned munsif''s decision was of the opinion that mere service of a notice to quit, however proper it might be, was insufficient to terminate a tenancy unless it was followed by a decree for ejectment. He appears to have accepted the finding of the learned munsif that there was a notice to quit, duly served, but in bis view of the law, as set out above, he felt that the Plaintiff''s tenancy had not terminated under the law and that, accordingly, the Plaintiff was entitled to a decree.

6. I am bound to say that the view so broadly expressed by the learned Subordinate Judge, is wrong. A tenancy undoubtedly determines or terminates by the service of a proper notice to quit. The tenant, however, if he is entitled to protection under the rent control law or to its benefit, may be able to resist the landlord''s claim for

possession and may be entitled to continue in possession so long as that protection or benefit remains available to him.

7. The service of the notice to quit has been accepted by the learned Subordinate Judge and has been amply proved in this case. It was, therefore, the clear duty of the Plaintiff, if he wanted to claim back possession of the suit premises, to prove affirmatively that he was entitled to protection under the relevant rent control law, then in force or that he was entitled to such possession under or by virtue of the said law. The Specific Relief Act would not help the Plaintiff as, admittedly, the present suit was instituted long after the expiry of six months from the relevant dispossession. The rent control law is, therefore, the Plaintiff''s only hope and weapon.

8. Now, it is quite clear from the facts which I have stated above that the Plaintiff could claim no protection either under the Rent Ordinance which was in force at the date of institution of the suit or under the Rent Control Act of 1948 which had come into force during the pendency of the suit and which might be held applicable to the extent that it contains retrospective provisions.

9. There can be no dispute, on the materials placed before the court, that there was no deposit of rent from after July, 1947. The suit was instituted in August, 1948. Clearly, therefore, the tenant could not claim any protection under the relevant paragraph 12 of the Rent Ordinance as he did not comply with the essential condition in that paragraph, namely, that the tenant must have been paying rent to the full extent allowable by the Ordinance. The Rent Control Act of 1948 gave him another opportunity to make deposits within a month of the coming into operation of the Act and save himself from the deprivation of his rights under the tenancy This opportunity also does not appear to have been availed of in this case.

10. Clearly, also, the Plaintiff left the suit premises in August, 1946. He removed all his belongings and left the doors ajar. He left no insignia of possession or of any intention to retain possession. In these circumstances, the learned munsif appears to have been perfectly justified in inferring abandonment of the Plaintiff''s tenancy. In any event, there can be no question that there was sufficient abandonment or discontinuance of possession to disentitle the Plaintiff to claim a statutory tenancy under the rent control law, even if it was, otherwise, available to him.

11. Even apart from what I have said above, the Plaintiff must fail. There can be no question that, during the pendency of the present suit in the trial court, the Plaintiff''s interest, if any, in the suit premises became extinguished u/s 12(3) of the Rent Control Act of 1948 by reason of default in the payment of rent. The original Rent Control Act of 1950 which came into force during the pendency of the Plaintiff''s appeal in the lower appellate court did not improve his position nor can he derive any benefit from its amendment, namely, Act LXII of 1950, made in November, 1950, when his appeal was pending in this Court, in view of his

continued default, subsequent to the said Amending Act, in the payment of rent for more than six consecutive months within the prescribed period of eighteen months (vide, Section 14(3), proviso, which controls inter alia Section 18(5) of the Act). This is fully supported by the two decisions of this Court in the case of Ajit Kumar Roy Vs. Surendra Nath Ghose, and Ajit Kumar Roy Vs. Surendra Nath Ghose, . There is little doubt also that, in the circumstances of this case, the court is clearly entitled to take into consideration all these subsequent events.

12. I hold, therefore, that the Plaintiff''s tenancy was duly determined by the service of a proper notice to quit and that the Plaintiff is not entitled to any benefit or protection under the rent control law. The result is that he has no subsisting right in the suit premises and cannot recover possession thereof. The suit, therefore, must be held to have been rightly dismissed by the learned munsif and the learned Subordinate Judge was not justified in reversing that decision.

13. This appeal is, accordingly, allowed, the judgment and decree of the learned Subordinate Judge are set aside and those of the learned munsif are restored. Having, regard, however, to the circumstances of the case, I direct that the parties will bear their own costs throughout.