

Sm. Charu Bala Dey Vs Sm. Sarashi Bala Roy

Court: Calcutta High Court

Date of Decision: March 7, 1986

Acts Referred: Civil Procedure Code, 1908 (CPC) " Section 115
West Bengal Premises Tenancy Act, 1956 " Section 17(2), 17(2)(2A), 2(d)

Citation: 90 CWN 796

Hon'ble Judges: Monoranjan Mullick, J

Bench: Single Bench

Advocate: Tapan Dutt, for the Appellant;

Judgement

Monoranjan Mullick, J.

This revision petition u/s 115 C.P.C. is directed against Order No.46 dated 27.4.83 passed by Smt. B. Roy,

Munsiff, 3rd Court, Howrah in Title Suit No.300 of 1978 in disposing of the O.P. defendant's application u/s 17(2)(2A) of the West Bengal

Premises Tenancy Act along with issue no. 6 in favour of the O.P. defendant holding that there is no relationship, of landlord and tenant between

the petitioner and the opposite party. Being aggrieved, the petitioner, who is plaintiff in the original title suit, has moved this court in revision and

contained the present Rule. It is contended that the finding of the learned Munsif is perverse as she has acted illegally and with mater 1 irregularity

in holding that there is no relationship of landlord and tenant between the present petitioner and the opposite party that the learned Munsif has

acted illegally and erred in not making proper meaning of definition of "landlord" given in the West Bengal Premises Tenancy Act, 1956.

2. None appears on behalf of the opposite party.

3. Mr. Dutt, learned advocate for the petitioner has submitted that the learned Munsif has committed a great illegality in holding that there was no

relationship of landlord and tenant and also by observing that the plaintiff may be the owner but not the landlord.

4. I have carefully perused the impugned order passed by the learned Munsif. The learned Munsif has observed that according to the definition of

section 2(d) of the West Bengal Premises Tenancy Act "landlord" includes any person who, for the time being, is entitled to receive rent or but for

a special contract would be entitled to receive the rent of any premises whether or not on his own account and that the rent receipts show that

Shibdas Dey realised the rent and not the plaintiff and in view of the said evidence, the present petitioner is not entitled to claim rent from the

defendant and consequently, there was no relationship of landlord and tenant between the present plaintiff and the defendant.

5. I am afraid that the learned Munsif has failed to appreciate the true legal implication of the definition of landlord" given in section 2(d) of the

West Bengal Premises Tenancy Act. The definition of landlord in the Act is on inclusive definition. It not only includes the owner of the property

who is entitled to receive the rent but also any other person who collects the rent on behalf of the owner either as rent collector or as the agent.

The expression ""any person who is entitled to receive rent"" u/s 2(d) of the Act, clearly includes the owner of the property, because the owner of

the property is entitled to realise rent from the tenant of the premises being the owner. In the present case there is also clear averment of the

petitioner that she is not only the owner of the premises in suit, but also induced the defendant in the suit premises. Only on the basis of some rent

receipts which showed that Shibdas Dey, who is admittedly the son of the present petitioner, granted receipt to the defendant by signing at the

back of those receipts, the learned Munsif appears to hold that the petitioner is not entitled to receive rent. In my view, she has committed illegality

in jumping to that conclusion. It was necessary for her to come to a clear finding as to whether the plaintiff was the owner of the suit premises or

not. It is also submitted by the learned advocate for the petitioner that her son Shibdas Dey had been realizing rent not only from the present

opposite party, but also, from the other tenants of the petitioner as her agent and on the basis of a power of attorney and the said power of

attorney was produced in Court.

6. I find from the record that a petition was filed on behalf of the petitioner before the learned Munsif sometime in April 19 83 and before passing

of the impugned order for calling for the records of the Title Suit No.99 of 1978 in which all the documents in respect of the premises in suit were

filed and they were necessary for proper determination of the question which was pending for decision before the learned Munsif, but I find that the

plaintiff's documents of title and other documents have not been taken on evidence before deciding the vital issue no. 6 regarding relationship and

also the O.P." s petition disputing relationship u/s 17(2) and (2A) of the West Bengal Premises Tenancy Act. There is no clear finding of the

learned Munsif as to whether the plaintiff is the owner of the property or not. If the plaintiff be found to be the owner of the property, then she

squarely comes within the definition of the landlord as given in section 2(d) of the West Bengal Premises Tenancy Act. Sultan Singh, J of Delhi

High Court in Miss Jit Kaur v- Sri Mooched 1982 12) All India Rent Control Journal page 12 observes that when the definition of the landlord

given in the Delhi Rent Control Act of 1958 (the definition is in perimeter with the definition under the West Bengal Act) includes a person who is

entitled to receive rent the owner being entitled to receive rent is also landlord. It has, further, been observed that any person receiving rent on

behalf of the owner would also come within the extended definition, but that would not exclude the real owner of the property to be the landlord of

the premises in which somebody is admittedly occupying as tenant. I am in full agreement with the view expressed in the above. Therefore, I am

convinced that the impugned order is clearly illegal and perverse and is liable to be set aside.

7. I, therefore, make the Rule absolute and direct the learned Munsif to dispose of the defendant's application u/s 17(2) and (2A) of the West

Bengal Premises Tenancy Act and the Issue No. 6 again in the light of the observations made in this judgment hereinbefore and by taking any

further evidence as may be adduced by the parties before him. The learned Judge shall dispose of the application as expeditiously as possible and

before taking up any other matter. Let the records be sent below as early as possible by the Special Messenger at the cost of the petitioner.

There will be no order as to costs in this Rule.