

(1997) 02 CAL CK 0024

Calcutta High Court

Case No: Suit No. 180 of 1992

Smt. Tara Devi Jalan

APPELLANT

Vs

Radhesyan Ruia Ors.

RESPONDENT

Date of Decision: Feb. 2, 1997**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 13(ff), 2(12)
- West Bengal Premises Tenancy Act, 1956 - Section 3(2), 31, 36

Hon'ble Judges: Ronojit Kumar Mitra, J**Bench:** Single Bench**Advocate:** Ranjan Dev and S. Sarkar, for the Appellant; Hirak Mitra, S.P. Sarkar, I.P. Mukherjee and J.K. Gupta, for the Respondent

Judgement

Ronojit Kumar Mitra, J.

This is a suit for eviction, on the ground of reasonable requirement for the plaintiff's own use and occupation, as also for the use and occupation of some of the family members of the plaintiff, in particular the plaintiffs youngest son, his wife and their infant daughter. The plaintiff is a widow aged 54 years. She is the owner of the five storied building situate No. 68-A/1-B, Nimtala Ghat Street, in Calcutta to which, I shall hereinafter refer as, the building. She is occupying and residing in the second floor flat and also a kutchra room on the terrace of the building together with her three sons and their respective families. In all there were twelve members of the family, including the plaintiff, residing in and occupying the second floor flat, which is approximately 1600 square feet.

2. Plaintiff instituted this suit on March 4, 1992 against Mahabir Prasad Ruia who was the then tenant in the fourth floor of the building which shall hereinafter be referred by me as the "suit premises". The defendant filed his Written-Statement and thereafter, on December 21, 1993, he died. The present defendants are the legal heirs and representatives and have been substituted and brought on record.

The substituted defedants, to whom I shall refer, as the defendants, have also filed their Written-Statement.

3. In the plaint it has been pleaded, that the lease had come to an end by efflux of time and the plaintiff was entitled to eviction of the defendants and possession of the suit premises, according to the provisions of the Transfer of Property Act. It has also been pleaded, that in the event the defendants should contend and the Court should hold that the provisions of the West Bengal Premises Tenancy Act were applicable in the circumstances, then the plaintiff was entitled to the same reliefs on the ground of reasonable requirement of the suit premises by the plaintiff and her family members. In their Written-Statement, the defendants have contended that they were "monthly tenants under the plaintiff and that their tenancy was covered and protected by the provisions of West Bengal Premises Tenancy Act, 1956.

4. Issues were suggested on behalf of the defendants and settled by the Court, except for the suggested issue No. 6 which had already been decided by this Court in the affirmative, in an application made by the defendants.

5. The provisions of the West Bengal Premises Tenancy Act were not applicable in the present circumstances, it was submitted on behalf of the plaintiff, and that clauses 12, 13 and 14 of the registered Deed of Lease did not contain an option within the meaning of the provisions of the Act. It was a choice, argued counsel for the plaintiff, which could be exercised only upon the occurrence of an event but an option was exercisable at the Will of the parties. He continued, that even if there was an option, within the meaning of the Act, then that option was bad because the option had only been reserved to the tenant and not the landlord. He relied on the proviso to Section 3(2) of the Act, and argued that the lease had been clearly taken out of the ambit of the provisions of the West Bengal Premises Tenancy Act. The decision reported in 54 C. W.N. 102 was cited and relied on by him in support of his submissions.

6. It was contended on behalf of the defendants, that the provisions of the Transfer of Property Act are not applicable in the present circumstances, since the lease was admittedly for a period exceeding 20 years and in clauses 12, 13 and 14 of the registered Deed of Lease an option had been reserved to the tenants to terminate the lease at any time prior to the completion, of the whole of the lease period. It was argued, that by reason of the proviso to Section 3(2) of the West Bengal Premises Tenancy, Act, the provisions of the Act, applied and expiry of the term limited by the lease would not be a ground for ejectment of the lessee from the suit premises even though the period of lease had ended. In support of his submissions counsel for the defendants cited and relied on decisions reported in 1982 (1) CHN 1 and 96 CWN 1205.

7. The proviso to Section 3(2) of the West Bengal Premises Act would read:

(2) Notwithstanding anything to the contrary contained in sub-section (1), this Act shall apply to all premises held under a lease which has been entered into after the commencement of the West Bengal Premises Tenancy (Amendment Ordinance 1965:

Provided that if any such lease is for a period of not less than 20 years and the period limited by such lease is not expressed to be terminated before its expiration at the option either of the landlord or of the tenant, nothing in this Act, other than the provisions relating to rent and the provisions of Sections 31 and 36, shall apply to any premises held under such lease.

The registered Deed or Lease dated December 30, 1969 provides that the lease shall be, for the term of 21 (Twenty-one) years, commencing with and inclusive of the 1st January, 1970..... Clauses 12, 13 and 14 of the lease would appear to be:

12. To give dear two months notice if the lessee is not willing to remain in the demised premises.

13. To keep in security deposit a sum of Rs. 722/- being two months rent which will be adjusted at the time of termination or sooner determination of this Lease.

14. To surrender and to deliver up the demised premises to the Lessor at the expiration of the Lease or sooner determination thereof.

The option, in the decision cited on behalf of the plaintiff, was exercisable only on the occurrence of certain events in the Deed of Lease before me is clear, unequivocal and not coupled with any contingency-I am therefore, not inclined, as plaintiff would have me, to distinguish between choice and option. I would put it down to tyranny of words, signifying one and the same thing. For those reasons I hold that the Transfer of Property Act has no application in the present circumstances. The lease has expired by efflux of time and for the purpose of eviction of the lessee the provisions of The West Bengal Premises Tenancy Act would be applicable.

8. The issue No. I (Are the provisions of West Bengal Premises Tenancy Act, 1956, applicable to the suit premises?) therefore, I find in the affirmative.

9. The plaintiff causes her Advocate to serve a Notice dated September 8, 1990 to the defendants for the delivery of possession of the fifth floor flat, the suit premises, as the lease had expired by efflux of time on December 31, 1990 and the defendants continued to be in occupation A further notice dated March 5, 1991 was also served on the defendants by Advocate on record for the plaintiff demanding the defendants to quit, vacate and deliver peaceful and vacant possession of the demised premises on or before May 1, 1991 as the plaintiff required the "demised premises for her own Use and occupation as also for the use and occupation by the members of her family The defendants received the notices but did not comply with the terms and this suit was instituted By the plaintiff

10. Issue No. 2 is of course the pivot on which revolves the whole of the case. The actual bone of contention among the parties. Some of the pertinent questions that arose for consideration of this Court were, whether the plaintiff required the suit Premises for herself only, or for her family members, in particular the youngest son and his family; whether the law permitted eviction on the ground of reasonable requirement of family members of the plaintiff, who were not dependent on the plaintiff either financially or otherwise nor the plaintiff dependent on the family members.

11. The youngest son, his wife and a valuer by profession, gave evidence in Court on behalf of the plaintiff, and the defendant No. 1B on behalf of the defendants. That the plaintiff did not give evidence in Court, was indeed mentioned by counsel for the defendant, but was not pursued with any force. In fact, there was no cross-examination on the medical certificates that had been disclosed by plaintiff. The defendant No. 1 in his evidence did however, state that he had seen the plaintiff "going up the stairs" of the building, some 7 to 10 days before and that she was in good health. It was also mentioned initially, on behalf of the defendants, that the plaintiff was not the owner of the building or the suit premises. The matter was put to rest, when in her re-examination in chief, the youngest daughter-in-law of the plaintiff identified a document put to her, by counsel for the plaintiff, as being the Original Deed of Conveyance dated August 12, 1964 which was the document title of ownership of the plaintiff in respect to the building. There was no cross-examination on that matter nor any submissions were made. However the two decisions cited and relied on by counsel for the plaintiff which are reported in 1960 (85) CLJ 74, and 1977 (2) CLJ 600 : (AIR 1978 NOC 109) make it abundantly dear that "any one who is competent to dispose to the facts of the case is a competent witness". A husband, a brother and sons of the plaintiff for whose use and occupation the suit premises were required had been held to be competent witness on behalf of the plaintiff. The requirement of the suit premises as has been pleaded in the plaint was for the plaintiff and also for the use and occupation by the youngest son and his family It has been decided by this Court in AIR 1981 Cal 185, that non-examination of the landlord would not be fatal to a suit for eviction. The youngest daughter-in-law therefore. I find, is a competent witness to give evidence in this suit on behalf of the plaintiff.

12. Counsel for the defendants argued with considerable force, that the plaintiff, had sufficient space for herself to live quite comfortably and that requirement if at all, really was that of the youngest son and his family and that was no ground which the plaintiff could avail in a suit for eviction under the West Bengal Premises Tenancy Act. According to him, the daughter-in-law in her evidence in Court had admitted that neither the plaintiff nor her family, nor any of the other sons were dependent on each other or on the plaintiff financially or otherwise, and that the plaintiff as also the three sons were not in joint mess and had their own separate kitchens. She also admitted, he argued, that the suit premises, had been allotted by

the plaintiff in her favour and that if possession was obtained, then the youngest son with his family would occupy the fourth floor flat and that made it abundantly clear, that the plaintiff was seeking to evict the defendants not for her own reasonable requirement but for the requirement and the use and occupation of the family of her youngest son, who was neither dependent on her nor she dependent on him. He submitted that the room on the terrace at all material times had been used as a bed-room until these proceedings, when it was converted into a kitchen. He submitted that the room occupied by the plaintiff was not a store-room converted into a bed-room, as all the residential flats in that building had one store-room only and the second floor flat admittedly had one store-room. He submitted, that the plaintiff had in fact obtained a decree for eviction in respect to the third floor flat of the building but had not pursued to obtain possession. He asserted that in a suit for eviction, in these present circumstances the plaintiff would be entitled to possession only if the plaintiff succeeded in satisfying the Court that the family members were dependent on the plaintiff financially and that the plaintiff and those family members were in joint mess. According to him the plaintiff had failed to prove damages as pleaded in the plaint and the youngest daughter-in-law was an untruthful witness and her evidence should not be relied on by this Court. Finally He submitted that if the Court was of the view that the plaintiff did have a case of reasonable requirement but the entire suit premises was not required to grant the necessary relief to the plaintiff then it was the duty of the Court to consider partial eviction and make appropriate decree. In support of his submissions he cited and relied on the decisions reported in AIR 1974 SC 1596; (1989) 1 CHN 1 : (AIR 1989 NOC 200); AIR 1955 Pat 4%; AIR 1974 Guj 84; 1996 CWN 1205; AIR 1991 NQC 94; AIR 1981 Cal 185; AIR 1990 SC 1155; (1963)2 All ER 335.

13. The plaintiff owns the building argued counsel for the plaintiff, and there was no reason why her children, who were not well off and without a place to live, should have to live in rented accommodation, when the plaintiff their mother, had tentatively allotted the suit-premises to her sons and wanted the sons to continue to live with her. According to him the plaintiff was now quite ill, as has been shown from the medical certificates disclosed by her in these proceedings and would, very much require the assistance and looking after by the members of the family and in particular the youngest son and his family. It was obvious according to him that it the family of the youngest son and the plaintiff were to move into the fourth floor, other two sons and their families would consequently have a little more space to themselves, which they very much reasonably required.. As far as the requirement of the plaintiff was concerned, he argued, nothing had been, shown by the defendants to disprove the fact that due to shortage of accommodation the plaintiff was living " in a Worn which had been constructed and used earlier as a store-room, which had no windows and no natural light or freshman. He submitted that none of the authorities cited and relied on by counsel for the defendants concerned the West Bengal Premises Tenancy Act and that interpretation given by other Courts to

the words, "his own" has a narrow interpretation, where as the interpretation preferred by this Court was a wider interpretation. In support of his submissions he cited and relied on decisions reported in 1950(85) CLJ 74 SC 1062; AIR 1988 Cal 259.

14. The plaintiff is occupying and residing in the second floor flat of the building with her twelve family members and four permanent helping hands. In all, therefore, there were sixteen people living in an area of more or less 1600 square feet. Of course bath-rooms, toilets, balconies and kitchens were all included in those 1600 square feet. Defendants, also comprising of similar number of family members were occupying similar accommodation on the fourth floor. The plaintiff, an elderly widow, was indeed of ill health and lived in a room, without any windows and any natural light or air. She had as recently as August 10, 1996, suffered an ischemic stroke which caused aphesis, that is loss of the ability to understand or express speech owing to brain damage. A certificate dated September 14, 1996 from the neurologist who had been treating the plaintiff has been disclosed together with another certificate dated November 26, 1996 from a physician confirming the first certificate. The discharge-certificate from the nursing home, where the plaintiff had been admitted and treated has also been disclosed. The plaintiff did not come to give evidence in Court on the ground that her mobility had been impaired and that she had been advised by her doctors, complete bed-rest. Except for the evidence of the defendant No. 1 that he had seen the plaintiff 7 or 10 days before, going up the stairs but had not exchanged any words, which I am not inclined to accept, not even an attempt was made on behalf of the defendants to dispute or deny the recent illness of the plaintiff. To live comfortably in one's own house, one would reasonably require, and there was no reason why the plaintiff should not require, at least one bed-room of course with windows, one sitting room, one guest room and at least one toilet and one bath room. By reason of the illness of "the plaintiff, it was possible that the plaintiff might even require a room for a nurse. From the plaintiff, however, it would appear that in addition to a room for herself she required for the use of her youngest son and his family, two more bed-rooms, nursery-cum-bedroom and also a guest room, an office-cum-study a drawing-room, a kitchen, a Store room two bath rooms and one servant which it would appear to me would be enjoyed in common by the mother with the son.

15. The decisions cited and relied on by counsel on behalf of the defendants to further substantiate the contention of the defendants that reasonable requirement of the members of the plaintiff's family was not a ground for eviction of the tenants, since the members were, not dependent on the plaintiff financially nor were in joint mess, were cases concerning Rent Acts and Acts similar in nature of other States but where the Courts did ascribe their interpretation of the words, "his own". It would, therefore, be pertinent to consider at least those portions of the decisions, relevant for this purpose in order to enlighten myself as to how the Courts of this country have deliberated as to the purport of the words "his own".

16. In the decision reported in AIR 1955 Pat 496 the Court in deciding the matter which involved Section 11(3) of the Bihar Buildings Lease, Rent and Eviction) Control Act (3 of 1947), considered the meaning of the words "his own" to include, "Persons who though not members of the joint family of the landlord, are living with him and dependent upon him". A distinction was clearly made by the Court between family-members, and those who were not family-members but were economically dependent on the landlord. In the decision reported in AIR 1974 Guj 84 the Court considered Section 13(1) (g) of the Bombay Rents Hotel and Lodging House Rates Control Act (57 of 1947) and held that the requirement of a member in a joint family living together, when considering bona fide and reasonable requirement of the landlord would be the requirement of all the members of the family, unless there has been a division of estate and the joint family status has come to an end the Delhi High Court in its decision in a suit for eviction reported in AIR 1991 NOC 94 (Delhi) held that, sons living in joint mess with the parents were dependent for residence on their parents. That a son would be coming to stay and look after the mother was held by the Supreme Court in its decision reported in AIR 1990 SC 1155 to satisfy the requirement of the mother for eviction of her tenant, though in the affidavit affirmed by the son there was no mention of his looking after the mother. In the English Rent Act the words the expression "himself" has been used for the words "his own" and the requirement of a son or daughter over the age of eighteen has been provided as a ground for eviction. In dismissing the suit for eviction reported in (1963) All ER 335. Lord Justice Willmer was of the view that the next door couple who would occupy the suit premises if possession was obtained were not the normal emanation of the landlord and they would be paying rent to the landlord.

17. I am afraid the decision do not even remotely support the contention advocated on behalf of the defendants, of course, the decisions do not pertain to the provisions of the West Bengal Premises Tenancy Act. It is significant that no decision was cited on behalf of the defendants where the Court deliberated on the contentions of the defendants, while considering the provisions of the West Bengal Premises Tenancy Act. Be that as it may, from the cases cited on their behalf it would appear that the Courts have drawn a clear and definite distinction between family members of the landlord, who were living with the landlord, and those who may or may not be members of his family, but were living with him and were dependent on him financially or otherwise. Therefore, the submission on behalf of the defendants, that the family members of a landlord would have to be financially dependent on the landlord for their reasonable requirement to be the same for the purpose of eviction, under the West Bengal Premises Tenancy Act, would appear to be quite erroneous, and contrary to judicial pronouncements.

18. In the decision cited on behalf of the plaintiff, this Court has dealt with the provisions of the West Bengal Premises Tenancy Act, and had attached a connotation of the words "his own" appearing in Section. 13(ff) of the Code of Civil Procedure, favourably for the landlord. Plaintiff, an aged widow suffering with such

ailment which may seriously impair her mobility, at present does and in future may, for the rest of her life, require to be looked after - and by who better, than her own son and his family. In the circumstances, it would not be incorrect to assume, in my view, that this was a case of, an affectionate mother, owning a building consisting of several flats, residing with her sons and their families in the second-floor-flat desiring to spend the rest of her days with her sons and their families and requiring both for herself as also for her sons and their families, the possession of the fourth-floor-flat. She has of course, preferred to live with her youngest son in the suit premises which would in effect afford more accommodation to the other two sons, in the second-floor-flat. Sons are the off springs of the mother, and the mother would reside and occupy the suit premises through her sorts. Reasonable requirement of the son and his family would therefore naturally be that of the mother. Evidence has also been adduced before me that the family has always been living as one unit and under one roof.

19. In the light of the deliberations of the Courts it is manifest that there is a consensus of judicial opinion that the expression "his own" should be given a realistic connotation to include the off springs, the normal emanations of the landlord, who were resident with him, until there was a division of estate, and of course those who were not his family members but were living with him and were dependent on him. Dependence on the plaintiff, financial or otherwise, would be a requirement in those cases only where the requirement of the owner was for persons who were not members of his family. This Court as would appear from the decisions cited by counsel on behalf of the plaintiff has been explicit. His Lordship the Hon^{ble} Mr. Justice P.B. Mukherji, as His Lordship then was, in his decision reported in 1950 (85) CLJ 1155 held that, The expression His own.....must be interpreted to include the individuals family and dependents.....". A clear distinction was drawn between the members of the family and dependents of the owner. To assume that the family members were required to be dependents of the plaintiff to satisfy that their requirement was the requirement of the Plaintiff would be misinterpreting the judicial consensus. In a Bench decision of this Court, reported in 94 CWN 977 it has been held that, "If a landlord due to his old age, sickness.....or even otherwise does require another to reside with him for necessary help, support whether physical, psychological, financial or otherwise, requirement for the occupation, of that other would amount to requirement by the landlord....." A room required by the parents of a married daughter for her stay during her visits to her parents was held to be the requirement for the parents for the purpose of eviction was a Bench decision of this court reported in 1991 (1) CLJ 392.

20. Another proposition sought to be established in the argument on behalf of the defendants was, that separate kitchens indicated separate families. The formula of one kitchen, one family was based on protecting the estate. Till the estate had been separated there would be one kitchen. This concept, possibly for economic reasons,

today has no significance, in spite of the family members having separate kitchens the household continued to be one. In the family structures today, it is not uncommon where families continue to live as one household, one family unit, though separate in kitchens. In other words the families live under one roof and except for separate bed-rooms and separate kitchens all other accommodation such as drawing room, television room, guest room servants room, toilets and bath rooms are shared in common. There was indeed a separation of the kitchen, but clearly there was no division of estate and that is why the household remained a single unit though the unit consisted of several families.

21. For those reasons I hold that the plaintiff and her sons, without any division of estate though separated in kitchens, were living as one family and one household under one roof sharing the residence in common, and therefore, the requirement of the youngest son and his family as also the other sons did amount to the requirement of the plaintiff. I am satisfied, that the requirement for the use and occupation of the plaintiff and the youngest son and the other sons would not in my view be met by partial eviction of the suit premises.

22. There was evidence before me that the suit premises had been promised or allotted by the plaintiff to the youngest son. If that be so, the youngest son and his family would in terms of Section 13(ff) of the Code of Civil Procedure, be "..... persons for whose benefit the premises are held", by the owner, and therefore their requirement would also be good requirement in law for the plaintiff to obtain a decree for recovery of possession of the suit premises.

23. Issue No. 2 (Is the suit-premises required by the plaintiff for her own occupation, as well as for the occupation of the members of her family as alleged) therefore, I find in the affirmative.

24. No submission was made on the issue No. 3 nor any evidence adduced in that respect on behalf of the defendants. In the notice dated March 5, 1991 the Advocate on record for the plaintiff has stated in no uncertain terms the requirement of the plaintiff and terminated the tenancy and made it quite clear that upon the expiry of.....May, 1991 if the suit premises were not vacated the plaintiff would institute a suit against the defendants for recovery of possession of the premises and claimed mesne profits and damages. In their written-statement the defendants have not denied the receipt of the two notices dated September 5, 1990 and March 5, 1991. It is therefore conclusive that the plaintiff did terminate the tenancy by the notice dated March 5, 1991, upon the expiry of the specified date for vacating the suit premises, the defendants continued to be in wrongful possession.

25. In those circumstances I find the issue No. 3 in the affirmative.

26. The plaintiff would be entitled in law to receive mesne profits from the tenants for wrongful possession of the suit premises during the period commencing from the date of the termination of the tenancy till the date the tenants make over

possession to the landlord. Mesne profit, would of course be computed on the basis of the value of the user of tenement to the defendant after termination of his tenancy. That is profits which the defendants in wrongful possession actually received or might with ordinary diligence have received, together with interest on such profits. Those are in substance the provisions of Section 2 (12) of the Code of Civil Procedure. Evidence has been adduced as to fair rent, on behalf of the plaintiff, through a chartered surveyor and valuer, and according to him in 1992 the fair rent in respect to the suit premises would be Rs. 4.50p. per square feet per month. There was no serious cross examination of the witness, nor any evidence to the contrary was adduced on behalf of the defendants. The witness had Said in cross examination that he had come to Court at the instance of the youngest son of the plaintiff. A chartered surveyor and valuer with experience of 37 years in his profession I have no reason to disbelieve, his evidence. In the circumstances however, Rs. 3.00 per square feet per month would be "fair-rent" for a fourth floor flat in a building which is probably in a state of disrepair, as would appear from the evidence before me.

27. Therefore, I am inclined to hold the issue No. 4 (Is the plaintiff entitled to mesne profits and damages as alleged?) to be in the affirmative.

28. As to whether the defendants were guilty of acts of waste and/or negligence and/or default resulting in material deterioration in the condition of the suit premises, which was the issue No. 5 the plaintiff has not been able to produce any satisfactory evidence which would implicate the defendants. Even for the sake of argument if it was to be assumed that the defendant had carried out the wrongful acts of waste, there was nothing on record that the plaintiff had objected or sought to take any punitive measure in that respect. Therefore, I find the issue No. 5 in the negative. For those reasons, there shall be a decree for the plaintiff for recovery of possession of the fourth floor flat in the premises 68A/1B, Nimtala Ghat Street, Calcutta-700006 in terms of prayer of the plaint. The plaintiff shall be entitled to mesne profit to be calculated at the rate of Rs. 3.00 per square feet per month from March 4, 1992 till possession is obtained. The plaintiff shall be entitled to a sum of Rs 5000 00 as and by way of costs.