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(1954) 02 CAL CK 0021

Calcutta High Court

Case No: Civil Rules No''s. 698 and 699 of 1953

Durgabala Biswas	APPELLANT
Vs	
Nityananda Roy	RESPONDENT

Date of Decision: Feb. 24, 1954

Citation: 59 CWN 367

Hon'ble Judges: Chunder, J

Bench: Single Bench

Advocate: Amiya Kumar Chatterjee, for the Appellant;Paresh Nath Bhattacharjee, for the Respondent

Final Decision: Allowed

Judgement

Chunder, J.

These two Rules were issued at the instance of a landlord in connection with two rent fixation cases. The landlord holds under another person and he is in reality a tenant of the first degree He holds two premises under his landlord, viz., one shop-room which is the subject matter of Case No 170|52 and he has three rooms in Case No. 169B|52. He let out the entire premises, that is one shop-room in Case No. 170B|52, and let out only a part, that is one shop-room out of three rooms, in Case No. 169B|52, to his tenant, that is the sub-tenant of the landlord. It must be pointed out that as between him and the landlord the rent has not yet been standardised for either of the premises and it is desirable in a case of this nature that the fixation of rent should be in the presence of the superior landlord if possible, so that there may be no multiplicity of proceedings later on and no injustice. Therefore, when the cases go back to the Rent Controller, he will see to making the superior landlord also a party to the proceedings and having the rent of the tenant of the first degree and the sub-tenant fixed in his presence.

2. In the present case, the Rent Controller fixed the rent on wholly inadmissible evidence, namely, the facts mentioned in a judgment not inter parties and what is mentioned in the Assessment Register of the Municipality which is at best hearsay

evidence. It has already been pointed out rightly by this Court that these are not properly admissible evidence. On the basis of these materials he fixed first the rent in Case No. 170B|52, whilst on that basis of that rent again he fixed the rent in Case No 169B|52.

3. The Appellate Court accepted what was done by the Rent Controller as correct and upheld the order in both the cases.

4. As the Rent Controller proceeded upon inadmissible materials the decision in both the cases must be set aside and the cases remanded to him for fixing fresh rent on, if necessary, taking further evidence from parties and making also the superior landlord a party to the proceedings. The result in the present cases had been that the tenant of the first degree had remained liable to pay a higher rent to his landlord than he would get from his sub-tenant for both the premises. Both the Rules are made absolute and cases are sent back to the Rent Controller for further proceedings in the light of this judgment Costs will abide by the result