

(1957) 04 CAL CK 0018

Calcutta High Court

Case No: Suit No. 1389 of 1954

Dhirendra Nath Nrogi

APPELLANT

Vs

Pronab Kumar Nrogi and Others

RESPONDENT

Date of Decision: April 18, 1957**Acts Referred:**

- Transfer of Property Act, 1882 - Section 105
- West Bengal Premises Tenancy Act, 1956 - Section 14, 2(n)

Citation: 61 CWN 887**Hon'ble Judges:** Bachawat, J**Bench:** Single Bench

Advocate: E.R. Meyer and Dipak Sen, for the Appellant; R.L. Sinha for the Respondent
Dhirendra Nath Neogy, S. Sinha for the guardian-ad-litem of the minor Respondent and G.
Chahrawartty for the Official Receiver, for the Respondent

Final Decision: Dismissed

Judgement

Bachawat, J.

Prayer (a) of the petition has not been pressed. The rest of the prayers have been pressed. The only question arising on this application is whether the monthly tenancy of the shop room at No. 33, J Dalhousie Square, East, pertaining to the business of Binode & Co., has been transferred by the Official Receiver at a sale held by him on the 25th January, 1957. The business of Binode & Co. appears to be joint family business. The members of the joint family to whom the business belongs are parties to this suit. On the 22nd December, 1954 an order was made by this Court that the Official Receiver do sell inter alia the business of Binode & Co., and the stocks and other asset's of the said business. On the date when this order was made the West Bengal Premises Rent Control (Temporary Provisions) Act" 1950 was in force. On the 31st March, 1956 the West Bengal Premises Tenancy Act 1956 come into force. By an order dated the 28th May, 1956 it was inter alia ordered that any party purchasing the property at the sale to be held by the Official Receiver would

be entitled to set off the purchase price against his share of the proceeds of the sale of joint family properties and the purchase price would form a charge on that party's share in those properties.

2. All the parties appearing before me formally admitted that the monthly tenancy in respect of the room was terminated by the owners of the premises by a notice to quit expiring at the end of October, 1956. This fact does not appear on the affidavits, but was formally admitted by the learned lawyers appearing on behalf of all the parties.

3. On the 25th January, 1957 the Official Receiver held the sale directed by the previous order and sold the stocks and assets of the business of Binode & Co., to the petitioners Nirmal Kumar Neogi and Sukumar Neogi at and for the price of Rs. 46,500]-. It is common case that at that sale of" stocks and assets of the business of Binode & Co., were sold and this also appears to be borne out by the Sale Notification and by the particulars and conditions of sale

4. The dispute now is as to what was sold and what passed at the sale held by the Official Receiver on the 25th January, 1957. The petitioners contend that the monthly tenancy of Binode & Co., and or their right of occupation in respect of the shop room in premises No. 13 Dalhousie Square, East passed at the sale and on that footing the petitioners ask for an order directing the Official Receiver to deliver possession of the shop room to the petitioners and for further directions with regard to payment of the arrears of rent. The respondents oppose this application and they contend that the rights of Binode & Co., in respect of the shop room at premises No. 13, Dalhousie Square, East did not pass at the sale. I am called upon to resolve this dispute.

5. Had the business and assets of Binode & Co., been sold under the order, dated the 22nd December, 1954 while the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 was in force and before the monthly tenancy of Binode & Co.. had been terminated by a notice to quit. I have no doubt that the sale would have passed the rights of Binode & Co., in respect of the monthly tenancy held by it in respect of the shop room at premises No. 13, Dalhousie Square, East.

6. A monthly tenant is a lessee and as such by section 105 of the Transfer of Property Act is a transferee of the right to enjoy a property for a certain time and by section 108 (j) of the Transfer of Property Act has the right to transfer his interest in the property in the absence of any contract or local usage to the contrary.

7. Before the West Bengal Premises Tenancy Act, 1956 came into operation there was no restriction upon the rights of a tenant to assign his interest in the property. The Official Receiver therefore could lawfully sell the monthly tenancy if the order of this Court authorised him to do so. It is common case that the monthly tenancy appertained to the business of Binode & Co.. The monthly tenancy therefore was, part of the business of Binode & Co. and of its assets. The order dated 22nd

December, 1954 was therefore a sufficient authority- to the Official Receiver to sell the entire assets of the business of Binode & Co.. including its monthly tenancy in respect of the shop room in question. I repeat, therefore, that had he Sold the business and the assets of Binode & Co., before the monthly tenancy was terminated by notice to quit and before the West Bengal Premises Tenancy Act, 1956 came into force, much a sale would have passed to the purchaser the monthly tenancy in question. Circumstances however have materially changed under the order dated the 22nd December. 1954: The monthly tenancy has been terminated by notice to quit and the West Bengal Premises Tenancy Act 1956 has come into force; Binode & Co. continues in premises of the shop room after the termination of its tenancy and in view of section 2 (n) of the West Bengal Premises Tenancy Act 1956, is a tenant within the meaning of that Act. By section 14 of that Act a tenant is enjoined not to transfer or assign his rights in the tenancy without the previous consent in writing of the landlord and contravention of the section is punishable with fine on the complaint of the landlord. Previous consent of the landlord to the sale of rights of Binode & Co., in the tenancy was not obtained. The transfer and assignment of the tenancy rights by the Official Receiver is a transfer and assignment by and on behalf of Binode & Co. Such transfer and assignment being without the previous consent in writing of the landlord is expressly prohibited by the Act and is void and totally inoperative.

8. On behalf of the respondents I have been referred to several decisions under the English Rent Restrictions Act and in particular to the decisions; in *Keeves v. Dean* (1) (1924) 1 K. B. 685; *John Logibond & Sons Ltd. v. Vincent* (2) (1929) 1 K.B. 687. *Sutton v. Dorf* (3) (1932) 2 K.B. 304. *Brown v. Brash. & Amrose*, (4) (1948) 3 K. B. 247; and *R. E. Megarry's Rent Act*, 7th Edition, page 195. The scheme of the English Rent Restrictions Act is in material respect different from the scheme of the West Bengal Premises Tenancy Act, 1956 and I do not propose to base my decision upon the English Cases.

9. Having regard to section 14 of the West Bengal Premises Tenancy Act 1956 it must be held that the sale by the Official Receiver could not and did not pass the rights of Binode & Co., in the tenancy or its right to retain possession of the premises.

10. It was suggested in argument that the sale was irregularly held and that the bidders were under a misapprehension as to whether or not the right of Binode & Co., to occupy the shops room was being put up for sale. There is however no prayer for setting aside the sale. The order which I propose to make on this application is. without prejudice to the right of the parties, if any, to apply to this court for setting aside the sale. The petition must therefore fail and is dismissed. The petitioners must pay to the Official Receiver the costs of this application assessed at Rs, 85/- The petitioners must also pay to the plaintiff and also to the defendant Malina Neogy, who are appearing separately, one set of costs of this

application.