

(1960) 08 CAL CK 0025

Calcutta High Court

Case No: Appeal from Appellate Decree No. 204 of 1958

Moniranaj Ghosh

APPELLANT

Vs

Nityananda De

RESPONDENT

Date of Decision: Aug. 3, 1960

Acts Referred:

- West Bengal Premises Rent Control (Temporary Provisions) Act, 1948 - Section 11, 11(3), 12, 13, 13(2)

Citation: (1961) 2 ILR (Cal) 350

Hon'ble Judges: Chatterjee, J

Bench: Single Bench

Advocate: Amarendra Mohan Mitra and Artmenilra Nath Basu, for the Appellant; Asoke Chandra Sen and Hemesh Chandra Sen, for the Respondent

Final Decision: Dismissed

Judgement

Chatterjee, J.

This is a Plaintiff's second appeal in a suit for declaration of the right of sub-tenancy of the Plaintiff under the Defendant at a rent of Rs. 20 per month according to English Calendar month and for a permanent injunction restraining the Respondent No. 1 from evicting the Plaintiff Appellant.

2. According to the Plaintiff, in or about March, 1942, he was inducted as a sub-tenant by the tenant. Thereafter, the landlord instituted a Title Suit No. 66 of 1951 for ejectment of the tenant. The suit itself was instituted on August 14, 1948, and then it was dismissed on October 31, 1948. In appeal the matter was sent back on remand to the Trial Court on December 18, 1950 and it is thereafter that it was re-numbered as Title Suit No. 66/ 51 and then the ejectment suit was decreed on July 4, 1952. On May 20, 1953, the appeal against the ejectment decree was dismissed. As the suit was instituted under the Ordinance of 1946, the sub-tenants were no parties to the proceedings for ejectment. The suit was filed on the ground of bona

fide requirement and the decree for ejectment was passed upholding the "bona fide" requirement of the landlord.

3. The present suit was thereafter instituted for declaration of the sub-tenant's right. According to Mr. Mitra, who appears in support of the Plaintiff sub-tenant, the suit was pending while the West Bengal Premises Rent Control Act, 1948, was in force; but whether the suit was pending or not, is, according to Mr. Mitra, not material. What is material, according to him, is that under the said West Bengal Act of 1948 he acquired a right as a sub-tenant and though that Act was subsequently repealed his right under the Act has continued and, therefore, the Plaintiff has no right to eject him. Mr. Mitra next submits that the 1950 Act recognised the status of a sub-tenant. If the Defendant wanted to deprive him of the right of a sub-tenant while the Act of 1950 had been in force the Defendant should have taken steps to add him as a party to the proceedings after the 1950 Act came into force. Not being made a party, he is not bound by the decree in the earlier suit for ejection. Hence, according to Mr. Mitra, the Plaintiff is protected from eviction as he was a sub-tenant and, therefore, the decree for ejectment cannot be executed against Mm as he was not a party to the aforesaid proceedings.

4. Mr. Sen on behalf of the Plaintiff Respondent has stated that at the date when the suit was instituted, the Calcutta Rent Ordinance of 1946 was in force and that Act did not give the sub-tenant any right. Therefore, the sub-tenant had no more rights than he had under the Transfer of Property Act and that sub-tenancy would be dissolved as soon as the head lease is determined. Regarding the provisions of the Act of 1948, Mr. Sen refers to Section 11(3) and also to Sub-section 13 of the Act. According to Mr. Sen, Section 11(3) is a part of Section 11 and that section deals with the circumstances under which "ejectment can be made after rent is paid at allowable rate.". Mr. Sen says that the entire Chapter III is with respect to suit and proceedings for eviction. In considering the various Questions that arise in suits and proceedings for eviction, the Act provided in Chapter III by Section 11 that no order for ejectment, ordinarily, is to be made. Section 12 deals with the conditions when a tenant can get the benefit of protection against eviction. Section 13 is a special provision regarding sub tenancies for not less than 7 years. Section 14 gives certain definitions. Section 15 and the rest of the sections relate to restitution and other procedural matters relating to suits and proceedings for eviction. The other chapters relate to deposit of rent and other matters not relating to rights and liability of the landlord as against the tenants or sub-tenants. Mr. Mitter says according to the Supreme Court in *C.I.T., Bombay v. Ahmed Bhai Umar Bhai AIR [1950] S.C. 134* the title of a chapter cannot be used to restrict the plain terms of an enactment, but in my opinion, the plain meaning of the section must be plain. The chapter certainly says what the Legislature intended to say and the marginal notes to which all the sections furnish some clue as to the meaning and purpose of the same sections. That was decided by the Supreme Court in [The Bengal Immunity Company Limited Vs. The State of Bihar and Others](#). It is indeed true that the

marginal note cannot control the meaning, just as the chapter also cannot control the meaning, but they furnish some clue to the meaning and purpose of the section of the chapter to which it relates.

5. Keeping this in view, we do not find anything in any section which would provide that new rights, without reference to ejectment of tenants, were created in favour of the sub-tenant by Chapter III of the Act of 1948. What the chapter deals with is about the effect of ejectment decree on a sub-tenant. As the Act is not to have retrospective effect, the rights, which were granted to the sub-tenant, would not apply retrospectively but would apply prospectively. That means that with respect to suit instituted after the Act of 1948 came into force the rights of the tenants and sub-tenants would be governed by the provisions of that Act. I would, therefore, hold that the Act of 1948 did not confer any new right nor did it purport to confer any new right with regard to the sub-tenants until the tenancy stood determined by the Act of 1948. Ordinarily, when the notice to quit was given to the tenant, the sub-tenancy would be automatically cancelled. The sub-tenant would have no further rights either celled. The sub-tenant would have no further rights either against his lessor or head lessor. The Ordinance of 1946 protected the head lease but did not protect the sub-lease. But, if the head lease was protected, the sub-lease would automatically be protected to the extent the head lease was protected, but no more. As soon as the head lease ceased to be protected there was nothing which would keep the sub-lease valid or, in other words, the protection against the tenants being gone,, no further protection to the subtenant was available, for the reason that it was not provided in the Ordinance and that there was no privacy of contract between, the head lessor and the sub-leasee. There is no provision in the 1948 Act or in the 1950 Act for protection of sub-tenants against whom the head lease was not determined and in favour of whom no rights were created by the said statutes.

6. I would now consider Section 11(3) and Section 13 of the Act of 1948, even though, in the view that I have taken, it is not necessary. Section 11(3) clearly relates to what happens after a decree or an. order for ejectment is passed and as the suit was not instituted under the Act of 1948, this section does not operate at all. With regard to the Section 13, Mr. Mitra has laid very great stress. Section 13 again deals with the consequence of a decree for ejectment against the tenant. It really says that the tenant shall not be entitled to the benefit of Section 11 in respect of such premises which has been sub-let in the manner stated therein and the sub-tenant would be deemed to be a tenant in the same manner as in Section 11(3). That again, in substance, refers to conditions after the suit for ejectment against the tenant is decreed. If the tenant is found to have sub-let the premises for not-less than 7 years, the tenant will not be entitled to the benefit of Section 11 but the sub-tenant would become a direct tenant, but the sub-tenant cannot become a direct tenant as long as the tenant is not ejected. Therefore, this is also in consequence of ejectment of the tenant. This is not a section which is on the same footing as Section 16 of the Act of 1956, where it has been provided that the sub-tenant would be recognised as a

direct tenant. The Act of 1948 merely refers to the consequence of an ejectment decree against the tenant and as there is no ejectment decree against the tenant under the Act of 1948, there was no occasion for the sub-tenant to "have the advantage of Section 13. If the suit had been instituted under the 1948 Act, this section would have required much more serious consideration. Coming now to the 1950 Act, Mr. Mitra has referred to Section 13(2) of that Act. That section is very clear and says, if a tenancy is determined and a decree is obtained against the tenant, the sub-tenant would be entitled to certain protection. None of the sections in the Act of 1948 or 1960 referred to the same matter as has been referred to in Section 16 of the Act of 1956. The rights of the sub-tenants in all cases before the statute of 1956 were considered only in consequence of a decree for ejectment against the tenant and not otherwise. For the first time by the 1956 Act, a sub-tenant becomes a direct tenant and got rights independent of an ejectment decree. That is the section, which says very clearly and plainly about such rights even though most of the sections in that chapter as well as the chapter itself in that Act of 1956 purport to relate to ejectment. Section 16 is a special provision which goes out of that category and considers the rights of the sub-tenants independent of an ejectment suit. It is in these circumstances that the Supreme Court has held that neither the marginal note nor the title of the chapter will control the plain meaning.

7. This interpretation has recently been accepted in the court of appeal in England in a case between Stephens v. Cuckfield Rural District Council [1960] 2 All. E. R. 716 and where it has been held "the marginal "note to a section cannot control the language used in the section, it is at least permissible to approach a consideration of its general purpose and the mischief aimed with the note in "mind." But the position is different under the Act of 1948, or 1950. Hence the Plaintiff acquired no rights either under the Act of 1948 or 1950 and so I need not discuss other points raised.

The result is that the appeal is dismissed, but in view of the circumstances of this case, I direct the tenant to vacate the premises within. August 31, 1961.

8. During the time the Defendant will continue to be in possession under this decree, he will deposit in the Trial Court a sum of Rs. 20 (Rupees twenty only) within the fifteenth clay of every month beginning from the month of September 1960 till September 1961. On failure of the same, the decree will be executable at once. On such deposits being made, the Respondent No. I will be entitled to withdraw the same without furnishing any security.

9. Each party will bear his costs in this Court.

10. Leave to appeal under Clause 15 of the Letters Patent is asked for and refused.