Pranab Kumar Biswas Vs Ajit Kumar Sen Letters

Court: Calcutta High Court

Date of Decision: Feb. 14, 1975

Acts Referred: Transfer of Property Act, 1882 â€" Section 114A

Citation: (1976) 1 ILR (Cal) 380

Hon'ble Judges: Bankim C. Ray, J; Anil K. Sen, J

Bench: Division Bench

Advocate: Hari Prasanna Mukherji and Paritosh Mukherji, for the Appellant;Manindra Nath Ghosh and C.D. Roychoudhury, for the Respondent

Final Decision: Dismissed

Judgement

Anil K. Sen and Bankim C. Ray, JJ.
This appeal under Clause 15 of the Letters Patent is at the instance of the lessee Defendant and it

arises out of a suit for ejectment on the ground of forfeiture of the lease on breach of a covenant not to sub-let and part with possession of the

premises entailing in case of default forfeiture of the lease.

2. It is not in dispute that the lessee Appellant was holding, a suite being suite No. 3 of premises No. 29 Syed Amir Ali Avenue on a lease for

twenty one years under the Plaintiff No. 1 Respondent at a monthly rent of Rs. 105. The relevant covenant not to sublet or part with possession is

in para. 11(d) which reads as follows:

The lessee undertakes to use the demised premises for his own residential purposes without causing any damage or nuisance and shall not sub-let,

assign or transfer the tenancy without consent in writing from the lessor.

Clause A, para. 4 further provides that in case of breach of any of the covenants the lessor shall have the option of re entering the leased premises.

3. By a notice dated May 13, 1963, the lessor-Respondent determined the lease and intimated his intention to re-enter the premises on the ground

that the lessee-Appellant had committed breach of the aforesaid covenant by sub-letting a part of the demised premises to one Raj Mohan Ghosh

since February 1963 and as such the lease was forfeited. On the said allegation the lessor-Respondent instituted the suit out of which the present

appeal arises.

4. The Appellant contested the suit by denying the allegation of subletting and further pleading the notice to be illegal and invalid.

5. Both the learned Munsif in the trial Court and the learned Additional District Judge in the Court of Appeal below concurrently found that the

Appellant had sub-let a part of the demised premises in breach of the covenant not to sub-let or part with possession set out in para. II, Clause (d)

aforesaid. The said Courts, therefore, came to the conclusion that there was a forfeiture of the lease and the lessor-Respondent is entitled to re

enter. Both the Courts also concurrently found the notice to be legal and valid. The suit was, accordingly, decreed by both the two Courts below.

The lessee-Appellant preferred a second appeal to this Court and a learned Single Judge having affirmed the decree of the Courts below, the

lessee Appellant has now preferred the present Letters Patent Appeal against the decision of the learned Single Judge of this Court after obtaining

a certificate under Clause 15 of the Letters Patent from him.

6. That the lessee-Appellant had sub-let a part of the demised premises is a finding which has been concurrently found by the Courts below and

Mr. Mukherji, the learned Counsel for the Appellant, therefore, has not challenged the said finding before us as it was not challenged before our

learned brother hearing the second appeal. Two points, however, have been strongly urged by Mr. Mukherji in support of this appeal and they are

(i) that subletting of a part of the demised premises would not entail forfeiture of the lease and (ii) that no decree for eviction on the ground of

forfeiture could have been passed without first giving the Appellant an opportunity to remedy the breach on an appropriate notice u/s 114A of the

Transfer of Property Act. Both the points so raised have been contested by Mr. Ghosh, the learned Counsel, for the Respondents.

7. To support the first of the two'' aforesaid points, Mr. Mukherji has strongly relied on a Bench decision of this Court in the case of Indraloke

Studio Ltd. Vs. Sm. Santi Debi and Others, and the English decision referred to and relied on in that decision. The principle which now seems to

be well-settled and accepted by the Bench decision, as aforesaid, is that the terms of a covenant against alienation are to be construed strictly

against the lessor, so that a covenant not to sub-let or assign the premises is not infringed by sub-lease or assignment of part of the premises

because undertaking not to sub-let or assign is in respect of the entire premises and not a part thereof. Such a principle is followed because

normally the lessee acquires the right to sub-let and the Court always favours upholding such a right unless the agreement between the parties

expressly or by necessary implication takes away that right. This principle, therefore, is a principle for construction of a lease, but it should be

remembered that every lease is to be considered on the facts of each individual case and reading the lease as a whole, so that if on construction of

a particular lease it is found that there is a covenant not to sub-let or assign even a part of the premises either expressly or by necessary implication

with a resulting forfeiture in the event of such subletting or assignment the above principle would not stand in the way of the lessor getting the

benefit resulting from the forfeiture, namely enforcing his right of re-entry.

8. Therefore, the real issue involved in the present appeal, as it was in the case throughout, is to find out on a proper construction of the lease as to

whether there was any covenant not to sublet or assign a part of the premises as admittedly there was no subletting or assignment of the whole. On

this issue the Courts below have again concurred in their construction of para. II, Clause (d) as aforesaid. It has been held by them that construing

the lease as a whole and particularly the clause itself there is clearly a covenant not to sub-let or part with possession not only in respect of the

whole but also in respect of any part of the premises. In our considered opinion, the construction so put forward by the Courts below is correct.

We have set out the clause in its entirety hereinbefore. It has two parts. In the first part there is an undertaking by the lessee to use the demised

premises for his own residential purposes and in the later part there is further undertaking not to sub-let, assign or transfer the tenancy without

consent in writing from the lessor. If the term had been simply as it was in the later part, on the principle relied on by Mr. Mukherji, it could have

been held that a covenant not to sub-let or assign the tenancy would mean the tenancy as a whole so that sub-letting of a part thereof would not

come within the prohibition incorporated in such terms. But in the present case the later part must be read in the context of the earlier part wherein

the lessee gives an undertaking to use the demised premises for his own residential purposes. The demised premises here again must mean the

entire premises so that he could not have parted with the possession even of a part of the demised premises. That being so, when the later part of

the clause follows such an undertaking the term "tenancy" in the later part must be construed to mean not only the whole but also the part of the

tenancy. That apart, it also follows from this clause that the breach even of the earlier part incorporating an undertaking to use the demised

premises for his own residential purposes would by itself entail forfeiture in favour of the lessor Respondent. Mr. Mukherji has sought to contend

that there is no undertaking in the earlier part of the aforesaid clause that the entire demised premises must be used by the lessee himself for his

residential purposes. According to him, such a result would have followed only if the term incorporated a specific provision that the demised

premises is to be used exclusively for the residential purposes of the lessee himself. According to Mr. Mukherji, in the absence of any use of the

term ''exclusively'' it would not be proper for us to read in this part of the covenant any undertaking that the lessee would use the entire demised

premises for his own residential purposes. We are, however, unable to accept the contention of Mr. Mukherji. The parties have expressed

themselves in their own language and we are only to find out their intent as it is reflected by the language used. In our opinion, when this clause

provides that the demised premises shall be used by the lessee for his own residential purposes the use of the term ''own'' necessarily implied

exclusively by the lessee for his residential purposes. Therefore, there is no escape from the proposition that in the first part of this clause there was

specific undertaking not to part with the possession of any part of the demised premises but to keep the same entirely to the use for the lessee''s

own residence. Such being the effect of the first part of this clause the prohibition incorporated in the later part to be consistent with the first part

must be read as prohibiting subletting, assignment or transfer either of the whole or part of the tenancy. This leads to the conclusion that on sub-

letting of a part there has been a forfeiture of the lease which could still justify a decree in favour of the lessor Respondent.

9. So far as the second point raised by Mr. Mukherji is concerned, we are afraid no relief u/s 114A, of the Transfer of Property Act is available to

the lessee-Appellant in the present case on the terms of the provision itself. The last paragraph of the aforesaid section provides that nothing in this

section shall apply to an express condition against the assigning, under-letting, parting with the possession, or disposing of the property leased.

Here on our findings made hereinbefore there having been a covenant not to assign, sub-let or transfer, either the whole or a part of the demised

premises, forfeiture resulting from the breach of such a covenant does not entitle the lessee to claim any relief u/s 114A of the Transfer of Property

Act. The provision itself being quite clear no further discussion on the issue is called for.

10. For reasons aforesaid as all the points raised by Mr. Mukherji in support of this appeal fail, the appeal fails and is dismissed.

11. There will be no order as to costs.