

(1985) 09 CAL CK 0017

Calcutta High Court

Case No: A.O. D. No"s. 1191 and 1192 of 1979

Kiron Lal Banerjee

APPELLANT

Vs

Rajia Begum and Others

RESPONDENT

Date of Decision: Sept. 2, 1985

Citation: 90 CWN 39

Hon'ble Judges: Sudhir Ranjan Ray, J

Bench: Single Bench

Advocate: Hrishikesh Ganguly, for the Appellant;

Final Decision: Allowed

Judgement

S.R. Ray, J.

These two appeals by the plaintiff arise out of the appellate decrees passed in Title Appeal Nos. 590 of 1977 and 591 of 1977 which were tried analogously, affirming the judgment and decrees passed by the learned Munsiff, second Additional Court, Alipore in Title Suit Nos. 92 of 1976 and 6 of 1977 which also were tried analogously and disposed of by the same judgment.

2. The suits were for eviction of the defendants from two different tenancies each comprising one single room; a shop room in one case and a godown in another. The grounds for eviction were sub-letting, default and reasonable requirement. The first two grounds were not ultimately pressed and the only ground that was banked upon was reasonable requirement. According to the plaintiff, he did not get any vacant habitable room in his share on partition of their joint properties and consequently he was in need to construct a new building for his own use and occupation on the site of the two tenancies in question. The plaintiff accordingly, terminated the tenancies by quit notices, which were duly served upon the defendants by registered post, but the defendants having failed and neglected to oblige the plaintiff, he has come forward with the instant suits.

3. The defense inter alia was a denial of the plaintiff's allegation that he required the suit premises for his own use and occupation.

4. The learned Munsif who heard the two suits analogously, dismissed both of them on the ground that the plaintiff had failed to prove by dependable evidence that he had either the means or preparedness to construct a new building, though the learned Munsif was of the view that the plaintiff reasonably required the suit premises for his own use and occupation and did not have any other reasonably suitable accommodation.

5. On appeal by the plaintiff the learned lower appellate court also took the same view and dismissed the appeals, which he disposed of analogously by the same judgment.

6. Appearing on behalf of the appellant it was contended by Mr. Ganguly, the learned Advocate, that the learned courts below having found on evidence that the plaintiff required the suit premises for his own use and occupation, should not have dismissed the suits simply because he had failed to produce the necessary building plan or adequate evidence in support of his financial means to construct a new building.

7. None appeared to contest on behalf of the respondents.

8. Now, as it clearly appears from paragraph 9 of the plaint that the plaintiff requires the suit rooms for his own use and occupation after necessary building and re-building. In other words, the grounds of building and re-building and reasonable requirement were amalgamated. That such amalgamation is permissible under the law is not well-settled in view of the Bench decision of this Court in [Krishna Das Nandy Vs. Bidhan Chandra Roy](#). In that case too the plaintiff required, the suit premises for building and/or re-building for his own occupation. Overruling the contention of the learned Advocate appearing on behalf of the defendant, that the two classes of requirements, one for building and re-building and the other for the landlord's own use and occupation were mutually exclusive and as such could not be amalgamation; it was held that a claim for occupation of the premises for purposes of building and/or re-building in order to make it fit for one's own occupation was permissible in law. This decision was referred to with approval by the Supreme Court in [Ramnikal Pitambardas Mehta Vs. Indradaman Amratlal Sheth](#). In that case on identical provisions in the Bombay Rents, Hotel and Lodging House Rates Control Act, it was held by the Supreme Court that once the landlord establishes that he bonafide requires the premises in suit for occupation, he is entitled to recover possession of it from the tenant irrespective of the fact whether he could occupy the premises without making any alteration to them or after making the necessary alteration. It was further held that the owner could occupy a place by making use of it in any manner and if the plaintiff on getting possession starts the work of demolition, he would have occupied the premises in order to erect

a building fit for his occupation.

9. Relaying upon the Bench decision of this Court in *Krishnadas v. Bidhan Chandra Roy* (Supra), and *R.P. Mehta v. I.A.Sheth* (supra), it was held by the Mysore High Court in *Munniswamiah & Sons v. Gobinda Rai*, AIR 1965 Mys 156 that the mere fact that the landlord intended to repair and re-construct the house either on account of his own volition or on account of the condition of the house, did not affect the question of his requiring the house bona fide and reasonably for his own use and occupation, if he had proved his need for occupying the house.

10. In the instant case, the learned trial court specifically found on evidence that though a bachelor, the plaintiff requires at least one living room, if not more. However, in view of the nature of the two rooms it was held by the learned court that none of the said rooms was fit for habitation unless they were converted into living rooms. Significantly, that is also the case of the plaintiff. The learned court in spite of his aforesaid finding that the plaintiff required the suit rooms for his own use and occupation and that the rooms as they were, could not be used for residential purposes without building and / or re-building, dismissed the suite since the plaintiff was not ready with a sanctioned plan for the proposed building nor could he prove that he had the requisite means for the construction. The learned lower appellate court also took the same view in dismissing the appeals.

11. Mr. Ganguly, in my view, was right in contending that the learned courts below went wrong in taking the two grounds separately, overlooking completely the fact ground on which eviction was sought was reasonable requirement for the use and occupation of the plaintiff after necessary building and/or re-building. He was also right in his submission that the learned courts below should have reminded themselves that the ground for eviction was not reasonable requirement for building or re-building u/s 13(10)(f) of the West Bengal Premises Tenancy Act, but reasonable requirement by the landlord for his own use and occupation and the proposed building and/or re-building was for the same purpose and not for re-induction of the tenants u/s 18A of the Act.

12. That being so, the plaintiff according to the learned courts below having established that he required the suit premises for his own use and occupation, he was entitled to recover possession thereof from the defendants irrespective of the fact whether he would occupy the premises without making any alteration to them or after making necessary alteration in view of the decision of the Supreme Court in *R.P. Mehta v. I.A. Sheth* (supra). In that view of the matter, non-production of the sanctioned plan of the proposed building etc., could not, in my view, be made a ground for the dismissal of the plaintiff's case because, the case being one under sec. 13(1)(ff) of the Premises Tenancy Act, what the plaintiff was required to prove was that he required the premises for his own use and occupation and that he did not have any other reasonably suitable accommodation. According to the learned trial court as already seen, both these facts were proved by the plaintiff and his

findings were affirmed by the learned lower appellate court. Since the plaintiff was not required to prove any other fact to make out a ground u/s 13(1) (ff), his claim for eviction under no circumstances could be dismissed for his having failed to establish any other extraneous fact.

13. In this connection it has been held by the later Bench decision of this court in [Jogesh Chandra Sen Vs. Sm. Kiron Bala Saha](#), relying upon the earlier Bench decision in Krishnadas v. Bidhan Chandra Roy (supra) that there is no bar in law for the plaintiff making a case of own use and occupation of the premises with the further case that he on obtaining such possession will make further additions and alterations or even renovation to make it suitable for his own use and occupation.

14. In the above view of the matter, the learned courts below having found that the plaintiff required the suit premises for his own use and occupation, a decree for eviction should have been passed in his favour under sec. 13(1) (ff) of the west Bengal Premises Tenancy Act without calling upon him to produce the sanctioned plan of the proposed building or evidence to prove that he had the means to construct such a building, because these are matters extraneous to the provisions of sec. 13(1) (ff) of the Act, though they are undoubtedly relevant if eviction is sought for u/s 13(1) (f), i.e., on the ground of building or re-building.

15. The appeals accordingly succeed and are allowed. The impugned judgment and decrees passed by the learned courts below are hereby set aside and the suits being Title Suits Nos. 92 of 1976 and 6 of 1977 of the learned Second Additional Court of the Munsif at Alipore are decreed on contest with costs against the rest. The contesting defendants and ex-parte without costs against the plaintiff do get khas possession of the suit premises in both the cases by evicting the defendants there from. The plaintiffs do also get a decree for damages as prayed for.

16. No order is made for costs in those appeals.

This judgment will govern both the appeals, viz., S.A. Nos. 1191 and 1192 of 1979, hereby ear heard analogously.