

(1969) 10 CAL CK 0017

## Calcutta High Court

Case No: Appeal from Original Decree No. 458 of 1961

Kishori Mohan Das

APPELLANT

Vs

Uma Sashi Dasi

RESPONDENT

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**Date of Decision:** Oct. 7, 1969**Acts Referred:**

- West Bengal Premises Tenancy Act, 1956 - Section 13(6)

**Hon'ble Judges:** P.N. Mookerjee, J; M.M. Dutt, J**Bench:** Division Bench**Advocate:** Amarendra Narayan Bagchi, for the Appellant; N.R. Chatterjee and S.C. Mitra, for the Respondent**Final Decision:** Allowed

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**Judgement**

P.N. Mookerjee, J.

This appeal is by the Defendant and it arises out of a suit for ejectment. The suit was instituted on February 13, 1957 and it is obviously governed by the West Bengal Premises Tenancy Act, 1956. The ground taken under the said Act was that the tenant was guilty of unlawful sub-letting and accordingly was disentitled to protection under the protective provisions of the said statute.

2. The learned Trial Judge accepted the Plaintiff's case and made a decree in her favour.

3. Before us two questions have arisen. One is with regard to the legality, sufficiency and validity of the notice of ejectment for purposes of Section 13(6) of the above Act; the other is whether the alleged sub-tenancy has been proved in the instant case and whether it has been proved to have come into existence after the coming into operation of the above statute.

4. In the view, we are taking it will not be necessary to go into the first question, namely the question of notice, as, in our view, on the second question the answer

must be in favour of the Appellant and against the Respondent. For finding the alleged sub-tenancy the learned Trial Judge relied strongly upon the evidence of the alleged sub-tenant and also upon Ex. 5, which was stated to have contained an admission of the Defendant tenant in writing showing that the alleged sub-tenancy came into existence in August 1956, that is after the coming into operation of the above statute. It is not disputed that in order to be an offending sub-tenancy under the above statute, it must be a post-Act sub-tenancy.

5. In our view, however, on the evidence as it stands and in the circumstances of this case the deposition of the alleged subtenant does not inspire confidence nor are we satisfied that Ex. 5, upon which reliance was placed by the learned Trial Judge for purposes of corroboration and in fact, for establishing the Plaintiff's case that the alleged sub-tenancy came into existence after the coming into force of the above statute, was properly admitted into evidence or was admissible into evidence. It does not appear from the records that this document, which was produced at the time of deposition by the alleged sub-tenant as a witness on behalf of the Plaintiff landlady, was ever called for from him or that he was ever asked to produce this document. In the circumstances as a matter of law, this document should not have been allowed to be put into evidence.

6. Mr. Chatterjee, who argued the case with some amount of thoroughness in favour of his client the Respondent placed before us a decision of this Court, reported in *Baikuntha Nath Chakravarti and Ors. v. Umanath Chakravarti* 88 I.C. 498 in support of his contention that so far as documents to be produced by witnesses they need not been called for from them and there can be no objection in law if such documents are produced by the witnesses at the time of their deposition without being called for from them.

7. It is true that the headnote lends some support to the above contention, but as we read the judgment the said headnote appears to be misleading. As a matter of fact, it is recorded in the judgment of Cuming J. that the documents in question there were actually called for from the witnesses. The point, therefore, which arises before us did not arise in the said case. It is true that there are some observations in the judgment of Greaves J. which may tend to support Mr. Chatterjee's above contention, but those observations if they were meant to be so read would in our opinion and we say so with respect go beyond the law and would not be in consonance with the settled practice on the point. They were also as we have already sufficiently indicated in the nature of obiter dictum in that particular case as the point which arose for consideration there was whether where documents have been called for from witnesses, they could be produced by the witnesses at the time of their deposition or had to be filed in Court beforehand. To that question, obviously the correct answer was given by the learned Judges, namely, that so far as documents of witnesses are concerned law does not require them to be filed in Court beforehand but they could be produced by the witnesses at the time of their

deposition. But the case is certainly not an authority for the view that in the case of such documents they need not be called for from the witnesses. As a matter of fact, as we have already said the documents in question were actually called for from the particular witnesses in the said case. We would accordingly hold that the said decision cited by Mr. Chatterjee is distinguishable and does not support his extreme contention and we overrule the same.

8. Once that position is accepted the learned Trial Judge's judgment cannot stand, as, in our view, the said judgment is primarily based upon the said Ex. 5. We would accordingly hold that in the instant case it has not been proved that the alleged offending sub-tenancy was really one which would contravene the statute as its creation after the coming into force of the above statute or in other words that it was a post-Act sub-tenancy has not been proved. The ground, therefore, on which protection was sought to be refused to the Defendant under the above Act, would not stand. That being so the Defendant would be protected under the law and the decree for ejectment passed against him would have to be set aside. In this view, we do not deem it necessary to consider the other question, namely, the question of notice or to express any opinion on the scope, effect and consequence or implication of the Full Bench decision of this Court reported in [Abdul Gani Vs. Md. Israil and Others](#).

9. In the premises, we allow this appeal, set aside the decree, passed by the learned Trial Judge and dismiss the Plaintiff's suit.

10. There will be no order for costs either in this Court or in the Court below.

M.M. Dutt, J.

11. I agree.