Bholanath Jaiswal Vs Amarnath Ghosh

S.A. No''s. 116 and 117 of 2001

Court: Calcutta High Court

Date of Decision: Aug. 8, 2003

Acts Referred:
Specific Relief Act, 1963 â€" Section 2#Stamp Act, 1899 â€" Section 2(10), 2(24)#Transfer of Property Act, 1882 â€" Section 108, 5, 6#West Bengal Premises Tenancy Act, 1956 â€" Section 13(1), 13(3A), 18A

Citation: (2003) 2 ILR (Cal) 330

Hon'ble Judges: Prabir Kumar Samanta, J

Bench: Single Bench

Advocate: Sukumar Bhattacharya, A.J. Sengupta and Anima Das Chakraborty, for the Appellant;Tapan Kumar Dutta and Animesh Das, for the Respondent

Final Decision: Dismissed

Judgement

Prabir Kumar Samanta, J.
These two appeals are by the Defendant/appellant. Plaintiff/respondent filed two suits. Title Suit No. 211 of

1990 was filed for a declaration that the Defendant has got no right to change the nature and character of the suit property and for permanent

injunction restraining him from changing the nature and character thereof. Title Suit No. 68 of 1991 was filed by the Plaintiff/respondent for eviction

of the Defendant/appellant inter alia on the ground of default, reasonable requirement of the suit premises and for building and rebuilding and for

doing acts contrary to the provisions of Section 108(m), (o), (p) of the Transfer of Property Act. Both the suits were tried analogously and by a

common judgment, the same were dismissed by the Trial Court. Plaintiff/landlord preferred two appeals against the said two decrees which were

also heard analogously and by a common judgment the Court of appeal below decreed the same.

2. In view of the decree passed in the eviction suit being Title Suit No. 68 of 1991, the decree so passed in Title Suit No. 211 of 1990 will also be

governed by the decree passed in the above eviction suit.

3 The Court of appeal below decreed the suit on the ground of reasonable requirement of the suit premises by the Plaintiff/landlord for his own use

and occupation and by his family members. The Court of appeal below further held that in view of the decree passed in the suit on the ground of

reasonable requirement of the suit premises by the Plaintiff/landlord it was not necessary decide the issue as to the ground of building rebuilding as

the decision on the issue as to the reasonable requirement will have the determining effect over the same for the purpose of eviction of the

tenant/defendant. The other issues as were decided by the Courts below were not questioned in this appeal.

4. At the time of admission of this appeal for hearing under Order 41 Rule 11 of the Code, this Court formulated the following Substantial

questions of law for decision in this appeal.

(1). Whether the suit is hit by the provisions of a Section 13(3A) of the West Bengal Premises Tenancy Act, 1956.

(2). Whether the judgment and decree of the lower Appellate Court stand vitiated on account of non-compliance with the provisions of Section

18A of the West Bengal Premises Tenancy Act, 1956.

Question No. 1

5. The facts giving rise to the first question of law as formulated at the time of admission of the appeal for hearing are that the Plaintiff became the

absolute owner by virtue of a registered dead of settlement dated April 23, 1988 executed in his favour and his other brothers by their father Netai

Chand Ghosh since deceased. The suit room is a part of the Kha Schedule property which was allotted to the Plaintiff by the aforesaid deed of

settlement. The Plaintiff instituted the above suit for eviction being title suit No. 68 of 1991 on April 1, 1991 on the grounds as stated above. Thus

evidently the above suit for eviction on the ground of reasonable requirement of the suit premises by the Plaintiff/landlord was filed within a period

of three years from the date of the said deed of settlement (Ex. 9) by which the Plaintiff became exclusive owner of the Kha Schedule Property to

which the suit room is a part. Sub-section (3A) of Section 13 of the said Act stipulates as under:

(3A) Where a landlord has acquired his interest in the premises by transfer, no suit for the recovery of possession of the premises on any of the

grounds mentioned in Clause (f) or Clause (ff) of Sub-section (1) shall be instituted by the landlord before the expiration of a period of three years

from the date of his acquisition of such interest:

Provided that a suit for the recovery of the possession of the premises may be instituted on the ground mentioned in Clause (f) of Sub-section (1)

before the expiration of the said period of three years if the Controller, on the application of the landlord and after giving the tenant an opportunity

of being heard, permits by order the institution of the suit on the ground that the building or re-building or the additions or alterations, as the case

may be are necessary to make the premises safe for human habitation.

6. Answer to the above question of law will depend upon the answer to the question whether the said deed of settlement (Ex. 9) is in the nature of

a transfer where by the Plaintiff/landlord had acquired interest in the suit property so as to the attract the provisions of Sub-section (3A) of Section

13 of the said Act. This question gained importance because if it is held that Ex. 9 does not fall in the category of transfer inter vivos whereby the

Plaintiff/landlord had acquired interest in the suit property then the aforesaid provisions will have no application whatsoever.

7. In this connection reference may be made to the definition of settlement as given u/s 2(24) of Indian Stamp Act which reads as under:

8. Section 2(24) "Settlement" : "Settlement" means any non-testamentary disposition, in writing of moveable or immoveable property made -

(a) in consideration of marriage,

(b) For the purpose of distributing property of the settler among his family or those for whom he desires to provide, or for the purpose of providing

for some person dependent on him or,

(c) For any religious or charitable purpose; and includes an agreement in writing to make such a disposition and, where any such disposition has

not been made in writing, any instrument recording, whether by way of declaration of trust or otherwise, the terms of any such disposition.

9. Whereas "Conveyance" has been defined u/s 2(10) of the said Act as under:

Section 2(10) "Conveyance" - "Conveyance" includes a conveyance on sale and every instrument by which property, whether moveable or

immoveable, is transferred inter vivos, and which is not otherwise specifically provided for by Schedule I.

10. In the Schedule-I to the aforesaid Stamp Act, the Stamp duty for a deed of settlement has been provided as that of a Bond for a sum equal to

the amount or value of the property settled as set forth in such settlement whereas a different stamp duty has been prescribed for a conveyance.

11. Again the word "Settlement" has been defined in Section 2(b) of the Specific Relief Act, 1963 as under:

Settlement means an instrument (other than a will or codicil as defined by the India Succession Act XXXIX of 1925) where by the destination or

devoluation of successive interest in moveable or immoveable property is disposed of or is agreed to be disposed of.

12. There cannot be any doubt upon reading of these two definitions that a deed of settlement does not stand at par with a deed of conveyance

where by a property be it moveable or immoveable is transferred. It is further more apparent that settlement of any property must be for some

purpose and to the persons only in furtherance of such purpose or to make sure the destination or devolution of interest in the property. It is

therefore distinct from the deed of conveyance on sale or any other instrument of transfer whereby the transferee acquires interest in the property

not in furtherance of any specified purpose of the transferor nor by way of confirmation of his succeeding to the property but by way of acquiring

interest in the property at his choice and desire and also at his discretion where the transferor may transfer without any specified purpose

whatsoever and to a total outsider.

13. The facts that emerge in this case are that the father of the Plaintiff/landlord admittedly was the owner of the suit holding. By the aforesaid deed

of settlement the suit holding was settled amongst his sons including the Plaintiff/landlord. This deed of settlement is, therefore, an instrument

whereby the destination and devolution of interest of the sons of the settlor were disposed of in a particular manner. Such settlement was therefore,

in nature of a family arrangement in as much as, though, on the date of the said deed of settlement the Plaintiff/landlord was not the absolute owner

of the property so settled in his favour, but, on the death of the settlor a certain and definite share in the suit holding has been destined in his favour

by devolution of interest in the aforesaid property. Such, destination and devolution of interest in the suit holding in favour of the Plaintiff were

acknowledged by the settlor and in recognition of the same a specific portion of the suit holding was allotted to him by the settlor soon before his

death, who was admittedly the exclusive owner of the suit holding and the father of the Plaintiff. The interest of the Plaintiff/landlord in the suit

holding was destined in his favour unless the settler had disposed of the same in favour of any other party during his life time. The settlor during his

life time having settled the suit holding in which he had absolute right title a absolute right title and interest, in favour of his sons who were destined

to succeed to the estate of the settlor, the deed of settlement, in the facts and circumstances of this case did not have the characteristics of a

transfer inter vivos. A transfer inter vivos has the element of intention of the transferor to convey the right title and interest in a property to a party

who also has the intention to acquire the same against some consideration. Whereas in case of a settlement the intention to acquire interest in a

property by the settlee may be lacking but the settlor in his wisdom and may in consideration of his love and affection towards the settlee may settle

the same in favour of the settlee who may be destined to acquire interest in the property on his death, or for any purpose as contained in the Indian

Stamp Act. This particular kind of deed of settlement is more or less a deed in the nature of a family arrangement. The purpose of settlement as

given in Section 2(24)(b) of the Indian Stamp Act also indicates in that direction as it also means for the purpose of distributing property of the

settlor among his family or those for whom he desires to provide, or for the purpose of providing, for some person dependent on him. This

definition of settlement by implication includes a deed for family arrangement for the purpose of distribution of property amongst the family

members who may also not be destined to succeed to the estate. Importantly a deed of settlement as per the Schedule-I to the Indian Stamp Act

has not been categorized as the deed of conveyance so far as the payment of stamp duty on such deed is concerned. Upon close analysis and

interpretation of the aforesaid definitions given in both the Indian Stamp Act, 1899 and the Specific Relief Act, 1963, it is abundantly clear that a

deed of settlement does not stand at par with a deed of transfer of an immoveable property creating right title and interest in the same in favour of

the transferee.

14. A Division Bench of Allahabad High Court in the decision in Pokhar Singh Vs. Mt. Dulari Kunwar though of course in relation to a question

whether a particular document was in the nature of a family arrangement quoted with approval the definition of family arrangement as given by

Lord Halsbery in his Laws of England as under:

''A transaction between members of the same family which is for the benefit of the family general, as for example, one which tends to the

preservation of the family property to the peace or security of the family and the avoidance of family disputes and litigation, or to the saving of the

honor of family''

and held that the transaction that was entered into by way of family arrangement cannot be recorded as a transfer within the meaning of Section 5

of the Transfer of Property Act as the definition of transfer as given in the said Section exclude any such idea of converting an expectancy into

certainty and avoiding a chance of litigation in future by making a family arrangement in respect of immoveable property It is to be noted that such

decision was rendered even upon consideration of the rule of Law prohibiting transfer of a mere contingency, namely a chance of succession as

provided in Section 6(a) of the Transfer of Property Act, by upholding the legality and validity of a deed of a nature of family arrangement. It was

held therein that since the property had already been reduced to possession there was no further question of chance of succession. What was once

a chance had become a matter of certainty. In the case in hand the Plaintiff/landlord and his brothers were respectively in possession of the suit

properties on the date of settlement. They were destined to inherit the suit holding according to their respective shares. The settlor, the father of the

Plaintiff/landlord had died soon after the said deed of settlement Ex. 9 was executed and registered. Therefore, there was no doubt against

succeeding to the estate of their father by his sons as per their respective shares. Again if such succession to the estate of his father by the Plaintiff

according to his share was that of a chance then also it was certain to happen and the deed of settlement recorded that fact of certainty that was to

happen but in a specified and particular manner.

15. Another division Bench of Punjab High Court in the decision reported V.N. Sarin v. Major Ajit Kumar Poplai AIR 1965 Pun. 450 in deciding

whether the partition of coparcenary property among the coparceners amounts to transfer or an acquisition of property by transfer within he

meaning of Section 14(6) of the Delhi Rent Control Act clearly observed that the Rent Control At does not define the word transfer. It also does

not make the definition of the Transfer of Property Act applicable to it. It cannot be disputed that Section 5 of the Transfer of property Act defines

''Transfer of Property'' for the purpose of that Act. There appears to be no justification why that such definition should be taken into account for

the purpose of the Rent Control Act. It was specifically held as under:

Before parting with this judgment, we may mention another additional reason which has commended itself to us for placing a strict construction on

the word ''transfer'' in Section 14(6) of the Act. The provisions of Section 14(1)(e) of the Act entitle the landlord in case of his bona fide

requirement for his residence or for the residence of any member of his family, dependent on him, to recover the possession of the premises from

the tenant. This provision clearly indicates that a transfer has to be to a person other than the family members of the landlord dependent on him.

The statute gives a right to the landlord to get the premises vacated from the tenant for the purpose of the residence of any one of the family

members dependent on him. If instead of himself proceeding in the matter, the landlord transfers those premises to the dependent member can it be

said that such a transfer would be hit by Section 14(6) of the Act? In our view, Section 14(6) will not stand in the way of such a transfer, for only

those transfers are hit by Section 14, which offend against the provisions of the Act. In other words, it is only where the premises are transferred to

a person for whose benefit a landlord could not evict the tenant, the provisions of Section 14(6) will come into play at once. the scheme of the Act

fully supports the view we have taken of the matter, so far as this additional consideration is concerned.

16. The substantial question which fell for decision before the Supreme Court in the case of Ram Charan Das Vs. Girjanandini Devi and Others,

was as to the legal effect of a deed which embodied the terms of the compromise in a suit. The Supreme Court in that context observed in. The

first place that the word ''family'' is not to be understood in a narrow sense of being a group of persons whom the law recognizes as having a right

of succession or having a claim to a share in the disputed property. The Supreme Court further construed the said deed as a family settlement

entered into by the parties bona fide for the purpose of putting an end to the dispute among family members and held that the transaction by way of

family settlement is not an alienation, it cannot amount to the creation of an interest.

17. Mr. Sukumar Bhattacharya, learned advocate appearing on behalf of the Defendant/appellant referred to the Supreme Court decision reported

in A. Sreenivasa Pai and Another Vs. Saraswathi Ammal alias G. Kamala Bai, in support of his contention that the deed of settlement (Ex. 9) was

in the nature of deed of transfer as per the definition of Section 5 of the Transfer of Property Act and as such the suit was barred on the date of its

institution as it was filed within the period of three "years from the said date. The decision of the Supreme Court in the said reported case is in

relation to the construction of the deed of settlement in question. As per title terms of the said deed the mother-in-law of the settlee was entitled to

the life estate created in her favour by the settler. On her death her son was entitled to succeed to the estate in absolute right. The said son died

prior to the mother-in-law of the settlor in whose favour a life interest was created in the estate. The Supreme Court upon construction of the terms

of the deed of settlement held that the sad son had acquired a vested right in the properties on the date of the settlement deed. It could not be

defeated by his death before he obtained possession. His widow being his sole heir was, therefore entitled to the said properties on the termination

of the life estate of the mother-in-law of the sector. This decision does not lay down a proposition that a deed of settlement in the nature of a family

arrangement or by which an expectancy is converted into a certainty to avoid a chance of litigation in future and to bring about a family amity

amongst the members who are destined to inherit the estate would be in the nature of a deed of transfer as defined in Section 5 of the Transfer of

Property Act. The said decision, therefore, does not have any application in the facts and circumstances of this case.

18. For all such reasons it is held that this suit is not hit by Sub-section (3A) of Section 13 of the West Bengal Premises Tenancy Act, 1956.

Question No. 2:

19. Section 18A of the aforesaid Act provides as under:

Section 18A. Restoration to tenancy where decree for recovery of possession is passed under Clause (f) of Sub-section (1) of Section 13(1)

where the court passes a decree for recovery of possession of any premises on the ground mentioned in Clause (f) of Sub-section (1) of Section

13, it shall specify the period within which the building on re-building, or the additions or alterations, on or to such premises shall be completed and

may on the application of the landlord extend such period from time to time for good and sufficient reasons.

(2) On the completion of the building or re-building or the additions or alterations on or to such premises the Controller may on the application of

the tenant who has been ejected from such premises made within three months of the date of such completion and after giving the landlord an

opportunity of being heard by order direct the landlord to put such tenant in possession of such premises or such part thereof as the Controller

specify in his order within fourteen days to the date of the order.

(3) It upon an order being made under Sub-section (2), the landlord fails or neglects to deliver possession of such premises or such part thereof as

is specified in the order to the tenant within the time specified then the Controller shall executed the order and put the tenant in possession of such

premises or such part thereof and in that event the tenant shall be liable to pay fair rent in respect of such premises or such part thereof from the

date of delivery of such possession.

20. In view of the answer as above given to the first questions the suit shall stand decreed on the ground of reasonable requirement of the suit

premises by the Plaintiff/landlord. The Plaintiff/landlord would accordingly be entitled to recover the suit premises by evicting the tenant/defendant

from the suit premises. Therefore, the question of eviction on the ground of building and re-building has lost its importance. The Plaintiff/landlord

would therefore be under no obligation to comply with the provisions of Section 18A of the said Act, as the decree for eviction has not been made

on the ground of building and re-building. In such consideration it is also held that compliance of the provisions of Section 18A of the said Act is

not necessary in this case as the decree of eviction was passed on the ground of reasonable requirement of the suit premises by the

Plaintiff/landlord. The second substantial question as above does not require determination on merits. It is accordingly decided in favour of the

Plaintiff/landlord by holding that since the decree of eviction was passed only on the ground of reasonable requirement, non-compliance of the said

provisions of Section 18A of the Act would not be fatal to the decree.

21. Mr. Bhattacharya lastly made a despairing submission by contending that the Ex. 9 was a collusive document which was brought into existence

only for the purpose of his suit for eviction against the tenant/defendant. This contention cannot be raised at this stage of second appeal for the first

time inasmuch as the tenant/defendant did not raise such plea in his written statement nor such question was raised at any time before both the

Courts below. In the absence of pleading and proof of such allegation it is not open to the tenant/appellant to raise such contention at the second

appeal stage.

22. In all such consideration I am in agreement with the views of the Court of appeal below that the deed of settlement (Ex. 9) in favour of the

Plaintiff/appellant did not fall within the category of deeds of transfer creating an interest in the suit property in favour of the Plaintiff/landlord so as

to attract provisions f Sub-section (3A) of Section 13 of the West Bengal Premises Tenancy Act, 1956 in the facts and circumstances of this case.

23 These two appeals are accordingly dismissed. There will be no order as to costs.