
(1985) 01 CAL CK 0016

Calcutta High Court

Case No: Appellate Decree No. 727 of 1981

Nandalal Chowdhury

APPELLANT

Vs

Monika Banerjee

RESPONDENT

Date of Decision: Jan. 16, 1985

Acts Referred:

- West Bengal Premises Tenancy Act, 1956 - Section 13(1)(a), 13(1)(f), 13(1)(r), 13(6)

Citation: 89 CWN 447

Hon'ble Judges: Amitabha Dutta, J

Bench: Single Bench

Advocate: Manindra Nath Ghosh, for the Appellant; Sudish Desgupta, for the Respondent

Final Decision: Dismissed

Judgement

Amitabha Dutta, J.

This is an appeal by the defendant from an appellate decree and it arises out of a suit for ejectment. The defendant is a monthly tenant in a ground floor flat comprising two bed rooms, dining room and other facilities in the northern portion of the rear block of Municipal Premises No. 24/C Jyotish Roy Road, P. S. Behala in the district of 24-Parganas, under the plaintiff at a rent of Rs. 90/- per month payable according to English Calender. Both the courts below have found that the plaintiff has been the owner of the building in which the suit premises are situated: on the basis of a registered deed of gift from her husband during all material period. The plaintiff's husband is the owner of the front block of the said municipal premises abutting on the public road. The plaintiff and her brother have been carrying on a partnership business named Continental Scientific Stores for supply of scientific materials in a mezzanine floor room of the plaintiff's husbands building occupying the same with the permission of the plaintiff's husband.

2. The plaintiff has brought the suit for eviction of the defendant after service of a valid notice u/s 13 (6) of the West Bengal Premise's Tenancy Act (hereinafter called

the Act) on several grounds some of which have been introduced by amendment of the plaint. Those grounds are, (i) that the plaintiff reasonably requires the suit premises for her own use and occupation for expansion of her business to employ her unemployed sons and manufacture scientific articles, (ii) that she reasonably requires the suit premises for building and re-building, (iii) that the defendant has done acts contrary to clauses (m), (o) and (p) of the Transfer of Property Act, (iv) that the defendant has been causing nuisance and annoyance, and (v) that the defendant left the suit presses with members of his family on 2.11.1977 after inducting one Sambhu Nath Banerji, an outsider as a sub-tenant and had sublet the suit premises and or transferred or assigned the same without the consent of the plaintiff.

3. The court of first instance has dismissed the suit holding that the plaintiff has failed to establish in evidence any of the grounds of eviction pleaded in the plaint as amended. The court of appeal below has reversed the decision of the trial court. It has found that the plaintiff has succeeded in proving that she reasonably requires the suit premises for her own use and occupation to expand her business and that the defendant has sublet or transferred the suit premises to Sambhu Nath Banerji who is not a member of the defendant's family without the consent of the plaintiff. The learned Judge has concurred in the findings of the learned Munsif that the other grounds of eviction have not been substantiated.

4. The defendant has preferred this appeal and the plaintiff has filed the cross-examination challenging the findings of the first appellate court.

5. It has been submitted by Mr. Ghosh appearing for the appellant that the court of appeal below has arrived at the finding on the alleged ground of the plaintiff's reasonable requirement of the suit premises for expansion of her partnership business without taking into account the facts and circumstances considered by the learned Munsif and so the finding cannot be sustained, It is pointed out that according to the evidence of P. W. 1 son of the plaintiff, one Nishit Ranjan Datta was a tenant in a first floor of the suit building and that he vacated that flat in 1977 after the plaintiff had instituted a s u i t for eviction on the same ground of her reasonable requirement thereof for running her business. But in my view the learned Judge relying on the evidence that the plaintiff wants to install a lathe machine for which order was placed, for expanding her business has come to a reasonable finding that the upper floor will not be suitable for the purpose. It is contended on behalf of the appellant that as according to the evidence one Salil Sanyal who was a tenant in a ground floor flat of the plaintiff's husband's building vacated the same sometime in June 1978, the plaintiff who lives in joint mess with her husband and sons can very Well use the said Hat nor expansion or nor said business. But the learned judge has found that there is no obligation on the part of the plaintiffs husband who is a service holder to spare the ground floor hat or his house for expansion of the business of which he is not a partner. This finding of the

learned Judge cannot, in my view, be cached improper. But the real difficulty in holding that the plaintiff can evict the defendant on the ground mentioned in Section 13(1) (r) of the Act is that the plaintiff: has not pleaded and there is also no evidence or finding that the plaintiff is not in possession of any reasonably suitable accommodation elsewhere for her own use and occupation to expand her partnership business. In view of the Bench decision in the case of [Provash Chandra Chatterjee Vs. Chand Mohan Basak,](#), no decree for eviction can be passed in the present Suit on the ground mentioned in section 13(1) (f) of the Act. The next question is whether the learned Judge has rightly held that the defendant has sublet or transferred the suit premises without the consent of the plaintiff or in other words whether the decree for eviction on the ground mentioned in Section 13(1) (a) of the Act can be sustained. In my view, the finding of fact arrived at by the learned Judge after proper appreciation of the evidence that Sambhu Nath Banerji is not a member of the defendant's family and he was inducted into the suit premises by the defendant in 1975 after the defendant had shifted to his own house constructed in August 1975, cannot be successfully challenged. As this incident took place during the pendency of the suit, the plaintiff introduced the ground of eviction for subletting or transferring of the suit premises without her consent by amendment, of the plaint which was allowed on 17.7.78 in which it was specifically stated that the defendant inducted Sambhu Nath Banerji a third person and outsider in the suit premises on 2.11.75 and sublet or transferred the same to him illegally without the consent of the plaintiff. But in the additional written statement filed by the defendant on 24.8.78 he merely; denied the plaintiff's averment without any positive assertion to the effect that Sambhu Nath Banerji is the defendant's wife's sister's son and has been a member of the defendant's family since Sambhu was aged 10 years. In fact Sambhu is married, employed and is economically not dependent on the defendant. The ration card of Sambhu showing the address of the suit premises produced in evidence is of 1976. Sambhu has not been examined as a witness in the suit. The fact that he has been living with his family in the suit premises from the latter part of 1975 is not disputed. He has been in exclusive possession of the suit premises since then according to the evidence accepted by the court, below. It has been argued on behalf of the appellant that in the absence of any; evidence of payment of rent by Sambhu to the defendant the finding that the defendant has sublet the suit to Sambhu is incorrect and that as there is no registered document of transfer of the defendant's interest in suit premises to Sambhu it cannot be said that the defendant has transferred the premises in whole or in part to him. On the other hand Mr. Dasgupta appearing for the plaintiff-respondent has relied on the following decisions viz. Central Calcutta Investment (P) Ltd. vs. Hosang Sapoorji 1976 (1) CLJ 500, Anath Bandhu vs. Ashim 1977 (2) CLJ 153 and Prabhabati vs. R. R. Joneja 82 CWN 684, in support of his contention that where direct evidence of subletting is not forthcoming the court has to depend on circumstantial evidence to decide whether there was subletting or not and that where the defendant has transferred the exclusive possession of whole or

part of the suit premises to a third person the onus to shifts to him to explain the arrangement by which it was done and if he fails to explain the same satisfactorily an adverse inference can be drawn against him. Considering the submissions made on behalf of the parties and the aforesaid decisions I find that ordinarily it is not possible for the plaintiff-landlord to prove by direct evidence the passing of consideration between the tenant and the third person for granting exclusive possession of the suit premises to the latter. In the absence of direct cogent evidence from either party for deciding the question of subletting, the court has to consider the surrounding circumstances to draw proper inference. Where a tenant defendant transferred "exclusive possession of the whole or a part of the suit premises to a person who is not a member of the defendant's family for a considerable period and the reason of such transfer has not been satisfactorily explained as in the present case, the only proper inference that can be drawn is that the defendant sublet the suit premises to the third person who is Sambhu Nath Banerji in the instant case without the consent in writing of the plaintiff-landlord. I therefore hold that the decree of eviction can be sustained on the ground mentioned in Section 13(1) (a) of the Act. Both the courts below have concurrently found that the plaintiff has failed to prove the other ground of eviction taken in the plaint. The learned advocate for the respondent has referred to the report of the Commissioner who held local inspection "of the suit premises and contended that the said report has not been considered. But the Commissioner was not examined and his report is not a part of the record. In my view there is no substance in the cross objection of the respondent which is without any merit. In the result, both the appeal and the cross-examination are dismissed. The decree of the court of appeal below is affirmed. There will be no order as to costs.