

(1990) 06 CAL CK 0020

Calcutta High Court

Case No: Appeal from Appellate Decree No. 599 of 1984

Deokinandan Poddar

APPELLANT

Vs

Rakmanandan Garodia

RESPONDENT

Date of Decision: June 22, 1990**Acts Referred:**

- West Bengal Premises Tenancy Act, 1956 - Section 13(1), 17, 17(2A), 17(3), 17(4)

Citation: (1995) 1 ILR (Cal) 345**Hon'ble Judges:** Ajit K. Nayak, J**Bench:** Single Bench**Advocate:** Rameswar Sana, for the Appellant; Tarun Chatterjee and Isa Nath Jana, for the Respondent**Final Decision:** Allowed

Judgement

Ajit K. Nayak, J.

The short question, we are called upon to answer in this second appeal is whether a suit for eviction of tenant is maintainable at the instance of a co-owner-landlord alone without impleading the other co-owners and a notice served upon the tenant to that effect terminating his tenancy and asking the tenant to quit" is valid and sufficient.

2. Plaintiff instituted this suit for eviction of the Defendant-tenant holding the suit premises as a monthly tenant, on the ground of default and reasonable requirement.

3. On an application being filed by the Plaintiff-landlord u/s 17(3) of the West Bengal Premises Tenancy Act (for short Act), the Defendant-tenant was Found to be a defaulter and his defence against delivery of possession was struck out. The Defendant-tenant moved the Hon"ble. Court against that order, but the same was confirmed by this Court giving opportunity to the Defendant-tenant to contest the suit only on the ground of notice. The trial Court, however, decreed the suit on both

the grounds, viz. that of default and reasonable requirement.

4. On an appeal-being preferred against the judgment and decree of the trial Court by the tenant-Defendant, the appellate Court held that the notice served upon the tenant-Defendant u/s 13(6) of the Act, was invalid and insufficient, as because the said notice was not served by or on behalf of all the co-owner-landlords jointly. On such finding the appellate Court dismissed the Plaintiff's suit.

5. The Plaintiff-landlord has, therefore, preferred this second appeal.

6. Undisputedly, the premises in question belonged to one Sewbus Poddar who inducted the Defendant as a tenant in the suit premises., On the death of this Sewbus, the Plaintiff, Deoki Nandan Poddar. his mother, sister and two father's sisters became the joint owners of such property. It is also an undisputed fact that the Plaintiff alone had been realising rent from the Defendant-tenant and the Defendant also raised no objection on that score about the authority of the plaintiff-Appellant to realise rent. Admittedly, the Defendant tendered rent to the Plaintiff alone and deposited rent in his name alone before the Rent Controller. It is also an undisputed fact that the Plaintiff filed an application u/s 17(3) of the Act for striking out the defence of the Defendant against the delivery of possession for allegedly defaulting in payment of rent for a period of two years and two months. On a full and complete hearing of such petition in which evidence led by both parties was recorded by the trial Court, it was decided that the Defendant was a defaulter for which such petition was allowed. Undisputedly, also, the Defendant-tenant moved against that order before this: Court which affirmed the order of the trial Court leaving only this question of notice to be agitated by the Defendant-tenant before-the trial Court.

7. In view of the finding of the appellate Court on the point of invalidity of notice served by the Plaintiff-landlord, it had been urged by Mr. Rameswar Saha, learned Advocate on behalf of the Plaintiff-Appellant, that such finding of the appellate Court is completely erroneous and is not supported by the decisions of the highest Court on the land.

8. We have already seen that the appellate Court in coming to his finding regarding the invalidity of notice on the ground that it was not served by or on behalf of all the co-owner-landlords, relied upon a Bench decision of this Court in the case of [Santilal Dulichand Shah Vs. Ramesh Chandra Guzrati](#). It is held therein that where the original lessor has left several heirs and the Plaintiff is only representing one section of the body of co-sharers, the mere fact of payment of rent to the Plaintiff, by itself, is not sufficient to entitle the Plaintiff to get a decree for eviction on the ground that he is not representing the entire body of owners. Their Lordships' decision were of further opinion that the position would be different if the original demise was by the Plaintiff alone although he was one of the co-owners of the demised property. In other words, it was held that where the person receiving

the payment of rent was not the only person who let the payer into possession, but is one among many, claiming title by succession, the mere act of payment to such person, without more, is not conclusive and does not stop the payer afterwards from repudiating the payee's title explaining away such payment due to mistake, ignorance or otherwise. The appellate Court obviously drew his inspiration in coming to his finding from the aforesaid decision of this Court and further found that, even if the Defendant-tenant had made payment to the Plaintiff-Appellant, it can be explained away by the Defendant-tenant and that as a matter of fact he had explained the same. In other words, it is finding of the appellate Court that such payment was made due to the misrepresentation held out by the Plaintiff-landlord for which the Defendant-tenant was misguided to make such payment.

9. The view so expressed by the appellate Court in coming to his finding in this case is, however, not the correct position of law as shown by the decision of the Supreme Court, we may refer and rely in this connection upon the decisions in [Sri Ram Pasricha Vs. Jagannath and Others](#), and [Kanta Goel Vs. B.P. Pathak and Others](#), Unfortunately, the appellate Court did not take notice of such decisions of the Supreme Court, though one of such decisions was referred to and relied upon by the trial Court. It has been held in those decisions that the co-owner is as much an owner of the entire property as the sole owner. It cannot be said that the co-owner is not its owner. It has also been observed that it is not necessary in a case like this for the Plaintiff to establish that he is the only owner of the property for the purpose of bringing a suit for eviction u/s 13(1) (ff). It was also held in the realer decision in Sri Ram Pasnicha v. Jagannath the Plaintiff being the acknowledged and accepted landlord having realized rent from the Defendant-tenant, the Defendant-tenant is estopped from challenging his title. As already stated, the Defendant-tenant in this case raised no such objection regarding non-existence of relationship of landlord and tenant between the parties but on the contrary had deposited rent for a long period to the credit of the Plaintiff-Appellant. The decision reported in the case of Kanta Goel v. B.P. Pathak is put on the point, where the original landlord who inducted the tenant died and his heirs succeeded to his estate, and one co-heir or co-owner to whom the rent was being paid by the tenant-was held to be the landlord for all practical purposes and was therefore entitled to institute a suit for eviction. So relying upon these decisions, it can be said that the Plaintiff as a co-owner-landlord had full authority to bring the suit for eviction against the Defendant-tenant being at the same time an acknowledge, landlord by the tenant-Defendant. The frame of the suit and the same being instituted at the instance of the Plaintiff-landlord having, therefore, been found to be perfectly in order, the logical consequence following there from is that a notice served at the instance of such Plaintiff-landlord upon the Defendant-tenant to quit and vacate u/s 13(6) of the Act cannot be otherwise than valid and sufficient. There can be no infirmity on the score that it was not served by all the co-owner-landlords jointly.

10. It has been neatly urged by Mr. Tarun Chatterjee, learned Advocate for the Defendant-tenant, that even though the defence against the delivery of possession has been struck out pursuant to an order passed u/s 17(3) of the Act, the Defendant should be given opportunity to cross-examine the witnesses of the Plaintiff to prove that the tenant was not a defaulter and further that the Plaintiff-landlord had no reasonable requirement to have the suit premises. Reference has been made in this connection to a decision in the case of [Modula India Vs. Kamakshya Singh Deo](#), . It is true that in such a decision it has been held that even though a defence against the delivery of possession has been struck out, still the Defendant-tenant should be given opportunity to cross-examine the witnesses tendered by the Plaintiff, though the Defendant cannot and should not be allowed to make out a case as stated in his written statement. On a perusal of the records and the elaborate evidence recorded" by the trial Court u/s 17(3) proceeding as well as during the hearing of the case itself, it appears that the Defendant left no stone unturned to demolish the case of the Plaintiff in this regard. The contention of Mr. Chatterjee is that the Defendant should be given opportunity to prove that he was not a defaulter and further that, even if he was so, he should be given another opportunity to make such deposit by filing another petition u/s 17(2A) of the Act. Such contentions are not acceptable at all as the same are against the letter and spirit of the Act itself. Facts of the instant case are distinct and different from that of the case referred to and relied upon by Mr. Chatterjee in the case of [B.P. Khemka Pvt. Ltd. Vs. Birendra Kumar Bhowmick and Another](#), In that case (unlike the instant case) rent for the admitted period of default was deposited pursuant to an order passed by the Court u/s 17(2A)(b) of the Act. The delayed deposits in respect of two months were condoned in terms of the provisions of Section 17(4) of the Act. In the instant case, no deposits were made whatsoever for the period of default ranging from March 1971 to November 1972. Even rents for December, January and February were lumped together for deposit on April 12, 1973, before the Rent Controller which were found to be invalid deposits. No petition whatsoever u/s 17 of the Act was made to make amends, that is to make deposits for the period of default. This was the finding of the trial Court which was earlier affirmed by this Court, and the Defendant-tenant was found to be a defaulter. As such, there cannot be any question of any further opportunity being given to the Defendant-tenant to prove that he is not a defaulter. The other contention of Mr. Chatterjee regarding reasonable requirement has also been clearly and categorically found to be an ex parte and one-sided affair by the trial Court.

In other words, the Plaintiff led evidence that he was residing in a rented premises with 16 members in his family and that the rented accommodation being not sufficient, he wanted the suit premises for his own use and occupation. He further stated that he had no other premises and as such no other reasonably suitable accommodation elsewhere. This evidence of the Plaintiff-landlord remains unchallenged in cross-examination. There cannot be any question therefore of

giving any further opportunity to the Defendant-tenant to show it otherwise. In short, there is nothing to show on record that, in view of any other subsequent event, this reasonable requirement of the Plaintiff-landlord does not exist at present. So in any view of the matter the contentions of Mr. Chatterjee appear to be altogether untenable. So it is neither necessary nor desirable to send the case back on remand as it has been urged by Mr. Chatterjee on behalf of the Defendant-tenant.

11. The result is the appeal is allowed. The judgment and decree of the appellate Court are set aside. The suit brought by the Plaintiff is decreed. No order is made as to costs. The Plaintiff do get recovery of possession of suit premises. But in view of the submission made by the learned Advocate for the Defendant-Appellant, the Defendant-tenant is given two months time from this date to vacate the suit premises, subject however to payment of Rx. 50 per month as occupation charges in the trial Court to be withdrawn by the Plaintiff-Appellant.

12. Let the records be sent down to the Court below as early as possible.

Appeal allowed.