

(2014) 07 CAL CK 0089**Calcutta High Court****Case No:** Second Appeal No. 374 of 2010

Biswajit Basu

APPELLANT

Vs

Narendra Singh Sodhi

RESPONDENT

Date of Decision: July 3, 2014**Acts Referred:**

- Transfer of Property Act, 1882 - Section 5
- West Bengal Premises Tenancy Act, 1956 - Section 13(3A)

Citation: (2014) 4 CALLT 165**Hon'ble Judges:** T.K. Dutt, J**Bench:** Single Bench**Advocate:** Asish Ch. Bagchi and Amal Krishna Sana, Advocate for the Appellant; Gopal Chandra Ghosh and Madhusudan Sur, Advocate for the Respondent

Judgement

Tapan Kumar Dutt, J.

This Court has heard the learned Advocates for the respective parties and has considered the materials on record. Today the hearing has been completed and now this Court proceeds to deliver the following judgment.

2. The facts of the case, very briefly, are as follows:

The plaintiff/appellant filed a suit for eviction against the defendant/respondent under the West Bengal Premises Tenancy Act, 1956, inter alia, on the ground that the defendant/respondent committed nuisance and annoyance, the defendant was a defaulter in payment of rent and the plaintiff reasonably required the suit premises for his own use and occupation. The plaintiff's case was that the suit house being Suit holding No. 13B, Jogesh Mitra Road, P.S. Bhowanipur, Kolkata, belonged to his mother, Smt. Mukul Bose, who had executed the deed of settlement dated 19.05.1978 which provided that as long as the said Mukul Bose should remain alive she will enjoy the said property but after her death her sons, as mentioned in the said Deed, would succeed to the property in accordance with the allotment

made in the said deed. According to the plaintiff, the plaintiff became the absolute owner of the ground floor of the said holding. The plaintiff has stated that the defendant was a tenant in respect of the suit premises which is situated on the ground floor of the said holding but the defendant is liable for eviction on the grounds as indicated above. The plaintiff claimed to be a practicing advocate and he required the premises for his own use and occupation. The plaintiff has served a notice of eviction dated 28.06.1991 upon the defendant but the defendant failed to comply with such notice and hence the said suit.

3. The defendant contested the said suit by filing a written statement denying the material allegations made in the plaint but admitted the fact that he was inducted as a tenant in respect of the suit premises by the mother of the plaintiff. The defendant also took the stand that the said deed of trust was revoked by the said Mukul Bose and such fact has been suppressed by the plaintiff and the defendant denied the plaintiff's alleged absolute title in respect of the ground floor of the suit holding.

4. The learned Trial Court by its judgment and decree dated 25th September, 2008 dismissed the said suit for eviction being Title Suit No. 19/2004 by holding, inter alia, that if the deed of trust is held to be valid and subsisting, then the plaintiff will have to be declared absolute owner of the ground floor of the suit holding but if the said trust deed is deemed to have been revoked then the plaintiff will become co-owner of the entire holding. It further appears from the records that in the subsequent deed of revocation one of the beneficiaries, i.e., one of the sons of the said Mukul Bose, namely, Alok Kumar Bose did not put his signature on the said deed of revocation. It also appears from the judgment of the learned Trial Court itself that the deed of revocation at one point of time was challenged by the said Alok Kumar Bose by way of filing of a suit. The said suit was dismissed and an appeal was preferred and the learned First Appellate Court had set aside the decree of the learned Trial Court with the observation that the deed of revocation was not made in terms of the provisions of the Indian Trust Act and the matter was sent back on remand to the learned Trial Court with certain direction but, however, the said suit filed by Alok Kumar Bose was ultimately dismissed for non-prosecution.

5. However, the learned Trial Court in the instant case found that the suit is not bad for non-joinder of parties as any one of the co-owners can bring a suit for eviction against the defendant-tenant. The learned Trial Court also found that the defendant-tenant has admitted to have received the notice of eviction and there has been proper service of the notice of eviction upon the defendant and all formalities with regard to the notice have been complied with. However, the learned Trial Court came to the conclusion that the notice to quit is bad in law as because the said notice has been issued only by the plaintiff and not on behalf of all the owners of the suit property. The learned Trial Court also found that the plaintiff cannot succeed on the alleged ground that the defendant has committed annoyance and nuisance in the suit premises or that the defendant is a defaulter in payment of rent. The

learned Trial Court, however, found that if it is found that the plaintiff is the absolute and sole owner of the suit premises, then it would be proper to hold that the plaintiff genuinely requires the suit premises for his own use and occupation. It will appear from the records that the plaintiff was living as a licensee under his brother on the first floor of the suit building. The learned Trial Court held that since the plaintiff is one of the co-owners in respect of the entire suit holding as the trust deed was subsequently revoked, the plaintiff cannot prove his reasonable requirement for his own use and occupation.

6. Being aggrieved by and dissatisfied with the impugned judgment and decree passed by the learned Trial Court, the plaintiff filed Title Appeal No. 284 of 2008 and the learned Lower Appellate Court by its judgment and decree dated 24th June, 2010 dismissed the said appeal but on a different ground. The learned Lower Appellate Court came to a finding that the revocation of the trust deed could only be done in terms of the provisions of law as contained in the Indian Trust Act. The said learned Court came to the conclusion after making the necessary discussion that the said deed of revocation which was of the year 1980 is a void document and the deed of trust still subsists and as per the provisions of the said deed of trust the present plaintiff is the absolute owner of the ground floor of the suit building. The learned First Appellate Court, however, held that since the said Mukul Bose died on 29.12.1990 and also in view of the fact that the trust deed stipulated that only after the death of the said Mukul Bose her sons will get title to the property in respect of their respective allotments, the suit was barred under the provisions of section 13(3A) of the West Bengal Premises Tenancy Act, 1956 as the said suit was filed before the expiry of three years from the date of alleged transfer.

7. It may be recorded here that it has been submitted by the learned Advocates for the respective parties that the suit was filed in July, 1992. The learned First Appellate Court found that since the suit is barred under the said provisions of law, the said suit is not maintainable and, therefore, the title appeal was dismissed.

8. The learned Advocate appearing on behalf of the plaintiff/appellant submitted that if it is held that the transfer of ownership in the suit holding took effect along with the execution of the said trust deed, then such transfer must have taken effect in 1978 itself and, therefore, the suit cannot be deemed to have been barred under the provisions of section 13(3A) of the said Act of 1956. The said learned Advocate also argued that if upon reading the contents of the said trust deed, it is found that the devolution of the title was supposed to take effect on the death of the said Mukul Bose, then it cannot be said that there was any transfer of right, title and interest in the property as contemplated under section 13(3A) of the said Act of 1956. The said learned Advocate submitted that the learned Lower Appellate Court came to its finding while considering the section 13(3A) of the said Act by taking into consideration the fact that the alleged transfer took effect upon the death of Mukul Bose. This according to the said learned Advocate, the learned Lower Appellate

Court could not have done. The said learned Advocate also pointed out that the learned Trial Court found in its judgment that if the plaintiff is held to be the absolute owner of the ground floor only then in that event the plaintiff should succeed on the ground of reasonable requirement of the suit premises for his own use and occupation. However, since the learned Trial Court found that the plaintiff was only a co-owner in respect of the suit property, such relief could not be granted to the plaintiff. The said learned Advocate thus submitted that the judgment and decree passed by the learned Courts below should be set aside and the eviction suit should be decreed on the ground of reasonable requirement of the plaintiff for his own use and occupation in respect of the suit premises.

9. The learned Advocate appearing on behalf of the defendant/respondent submitted, by referring to the said deed of trust which is exhibit-1, that the said deed of trust will reveal that it was the clear intention of the said Mukul Bose to stipulate that the right, title and interest in respect of the respective allotments to her different sons would devolve upon her sons only upon her death and not before that. The learned Advocate for the defendant/respondent further submitted that if this be so then in that event the suit is clearly barred under the provisions of section 13(3A) of the said Act of 1956. The learned Advocate for the defendant/respondent submitted that one of the sons of the said Mukul Bose, namely, Alok Kr. Bose (one of the beneficiaries of the trust deed) did not put his signature on the deed of revocation and, therefore, the deed of revocation is invalid and void.

10. The learned Advocate for the plaintiff/appellant supported the finding made by the learned Lower Appellate Court when it found that the deed of revocation is void. Thus, no dispute has been raised before this Court with regard to the finding of the learned Lower Appellate Court that the deed of revocation is a void document.

11. The learned Advocate for the defendant/respondent thus submitted that the learned Lower Appellate Court rightly found that the suit is barred under the provisions of section 13(3A) of the said Act of 1956 as three years did not expire from the date of death of the said Mukul Bose and the suit for eviction was filed before the expiry of such three years. The present appeal was admitted on the following substantial question of law:

"Whether the learned judge in the lower appellate court substantially erred in law in dismissing the suit for eviction holding that it was barred under the provisions of section 13(3A) of the West Bengal Premises Tenancy Act, 1956?"

It is important to have look at the provisions of section 13(3A) of the said Act of 1956.

The said provision of law is quoted below:

"(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."

12. The important part of the said provision is "where a landlord has acquired his interest in the premises by transfer". The question before this Court now is whether it will be proper to say that the plaintiff acquired his interest in the premises by transfer taking into consideration the deed of trust in the year 1978.

13. The learned Advocate for the defendant/respondent was clear in his submission that the sons of the said Mukul Bose who are the beneficiaries was supposed to get right, title and interest in their respective property upon the death of the said Mukul Bose. Thus, it was only after the said Mukul Bose had died, the beneficiaries got their respective right, title and interest in the alleged portion in the suit holding. Now if one has a look at section 5 of the Transfer of Property Act, such transfer contemplates a transfer by a living person to a living person. If the contention of the learned Advocate for the defendant/respondent is accepted, i.e., the devolution of interest took place after the death of Mukul Bose, then it cannot be said that it was a transfer as contemplated under the Transfer of Property Act. The expression "landlord has acquired his interest in the premises by transfer" cannot include devolution of title and/or interest in the property upon the death of a person as it cannot be described as a transfer by a living person to another living person.

14. The learned First Appellate Court, in view of this Court, erred in treating the devolution of interest upon the death of the said Mukul Bose as a case of transfer *inter vivos*. If such transfer was not a transfer *inter vivos*, then in that event the provision of section 13(3A) of the said Act of 1956 cannot be invoked. This Court is of the view that this is a case where the provisions of section 13(3A) of the said Act of 1956 should not have been applied and the suit cannot be treated to have been filed in violation of the said provisions of law. It appears that this was the only ground on which the learned Lower Appellate Court had dismissed the said suit. This Court is unable to accept the reasoning given by the learned Lower Appellate Court. The learned Trial Court has already found, as indicated above, that if the plaintiff-appellant is held to be the absolute owner of the suit premises, then the plaintiff-appellant should have succeeded on the ground of reasonable requirement of the suit premises.

15. In view of the discussions made above, there is no difficulty in finding that the plaintiff-appellant is the absolute owner of the suit property and, as already found by the learned Trial Court, the plaintiff-appellant should get a decree for eviction on the ground of reasonable requirement for his own use and occupation.

16. In view of the discussions made above, the present second appeal is disposed of by setting aside the impugned judgments and decrees passed by the learned Courts below and by granting a decree in favour of the plaintiff-appellant to the effect that the plaintiff-appellant shall get a decree for ejectment against the defendant-respondent and the defendant-respondent is thus directed to deliver up has and vacant possession of the suit premises in favour of the plaintiff-appellant within 90 days from this date. It is also decreed that the plaintiff-appellant will be entitled to bring appropriate proceedings for claiming mesne profits against the defendant/respondent in accordance with law before the appropriate forum.

17. In default of compliance of the decree for eviction within the stipulated time on the part of the defendant-respondent, the plaintiff-appellant will be at liberty to execute the decree in accordance with law. Let a copy of this judgment be sent along with the lower court records to the learned Court concerned immediately.

Urgent certified xerox copy of this judgment, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.