

Anandilal Bhanwarlal And Anr. vs Smt. Kasturi Devi Ganeriwala And Anr. on 4 December, 1984

Equivalent citations: AIR1985SC376, 1984(2)SCALE986, (1985)1SCC442, 1985(17)UJ532(SC), AIR 1985 SUPREME COURT 376, 1985 (1) SCC 442, 1985 SCFBRC 62, 1985 MPRCJ 99, 1985 UJ (SC) 321, 1985 UJ (SC) 532 (REPTN), (1985) 1 RENCRC 321, (1985) 1 RENTLR 409

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Bench: M.P. Thakkar, R.S. Pathak

JUDGMENT

M.P. Thakkar, J.

1. A decree for eviction was passed against the appellants, original defendants Nos. 1 and 2, in Ejectment Suit No. 1247 of 1964 by the City Civil Court at Calcutta. A Division Bench of the High Court of Calcutta has confirmed the decree passed by the trial court. A certificate of fitness having been granted by the High Court, under Article 133(1)(a) of the Constitution of India, the appellants are before this Court.

2. The decree for eviction has been passed on two grounds viz :

(i) that the premises were reasonably required by the plaintiff-landlord for his own occupation under Section 13(i)(f) of the West Bengal Premises Tenancy Act of 1956 (hereinafter referred to as 'the Act') as it stood before it was amended by the West Bengal Premises Tenancy (Second Amendment) Act (referred to as 'Amending Act' hereinafter) which came into force on November 14, 1969.

(ii) that the defendant No. 1 had sub-let the premises to defendant No. 2 after the coming into force of the Act.

Requirement for own occupation :

3. In so far as the first ground of eviction is concerned, the order passed by the City Civil Court as confirmed by the High Court cannot be sustained in as much as the suit for eviction on the ground of requirement for personal occupation was instituted by the plaintiff-landlord within three years from the date of the acquisition of the property in question such institution being invalid by reason of the prohibition contained in Section 13(3A) of the Act which reads thus :

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....

4. The building in which the suit premises are situated was purchased by the respondent-landlord on March 13, 1963. The suit for eviction giving rise to the present appeal was instituted on June 23, 1964. Admittedly, the suit was instituted within the period of three years from the date of the purchase. Under the circumstances the suit was incompetent at the point of time when it was instituted. The decree for eviction on the ground of requirement for personal occupation could not therefore have been lawfully passed against the appellants. The appellants should have succeeded on this ground in the High Court itself but for the fact that the High Court was of the opinion that Section 13(3A) introduced by the second amending Act in 1969 to the extent that it was given retrospective effect was ultra vires being violative of Article 19(1)(f) of the Constitution of India. In *Banerjee v Anita Pawar* (1975) 2 S.C.R. 774, this Court has upheld the constitutionality of the said provision even in so far as its retrospective operation is concerned. The appeal must therefore succeed and the decree for eviction on this ground must be set aside. Of course, the respondent-plaintiff could have been permitted to file a fresh plaint churning eviction under Section 13(1)(ff) of the amended Act and the matter could have been remanded to the trial court. But in the facts arid circumstances of the case it would not be appropriate to adopt this course. Twenty years have passed by. The claim will have to be tested in the light of the situation as it exists now in 1984. It is therefore more appropriate to accord liberty to file a fresh suit on the ground that the premises are reasonably required by the landlady for her own occupation and that she is not in possession of any reasonably suitable accommodation as envisioned by Section 13(1)(ff) of the Act. It must be made clear that the question as regards the reasonableness of the requirement and the validity or otherwise of the claim on merits will have to be examined afresh in the light of the evidence that may be adduced at the trial in case the landlord files a fresh suit for eviction on this ground as per the liberty being granted.

Sub-letting after the commencement of the Act :

5. The relevant statutory provisions will have to be comprehended in order to resolve the question as regards the validity or otherwise of the decree for eviction on the ground of sub-letting passed by the trial court and confirmed by the High Court Section 13(1)(a) provides :--

Section 13(1). Notwithstanding anything to the contrary in any other law, no order or decree for the recovery of possession of any premises shall be made by any Court in favour of the landlord against a tenant except on one or more of the following grounds, namely : -

(a) where the tenant or any person residing in the premises let to the tenant without the previous consent in writing of the landlord transfers, assigns or sub-lets in whole or in part the premises held by him;

Section 16 provides :-

Section 16. CREATION AND TERMINATION OF SUB-TENANCIES TO BE NOTIFIED-(1) Where after the commencement of this Act, any premises are sub-let either in whole or in part by the tenant with the previous consent in writing of the landlord, the tenant and every sub-tenant to whom the premises are sub-let shall give notice to the landlord in the prescribed manner of the creation of the sub-tenancy within one month from the date of such sub-letting and shall in the prescribed manner notify the termination of such sub-tenancy within one month of such termination.

2. Where before the commencement of this Act the tenant with or without the consent of the landlord, has sub-let any premises either in whole or in part, the tenant and every sub-tenant to whom the premises have been sub-let shall give notice to the landlord of such sub-letting in the prescribed manner within six months of the commencement of this Act and shall in the prescribed manner notify the termination of such sub-tenancy within one month of such termination.

3. Where in any case mentioned in Sub-section (2) there is no consent in writing of the landlord and the landlord denies that he gave oral consent the Controller shall, on an application made to him in this behalf either by the landlord or the sub-tenant within two months of the date of the receipt of the notice of sub-letting by the landlord or the issue of the notice by the sub-tenant, as the case may be, by order declare that the tenant's interest in so much of the premises as has been sub-let shall cease and that the sub-tenant shall become a tenant directly under the landlord from the date of the order. The Controller shall also fix the rents payable by the tenant and such sub-tenant to the landlord from the date of the order. Rents so fixed shall be deemed to be fair rent for purposes of this Act.

6. On a combined reading, and an analysis, of these provisions the position with regard to sub-tenancies created 'before' and 'after' the enforcement of the Act of 30th March, 1956 which emerges (to the extent material for the present purposes) is this : -

Created 'before' 30th March, 1956 Created 'after' 30th March 1956 1. Both the tenant as also the A tenant can sub-let only pro- sub-tenant shall give notice of vided the landlord has given such sub-letting within six mon-consent in writing before the the of the enforcement of the sub-tenancy is created. If he Act (i.e. March 30, 1956)- does so without such permission in the prescribed manner, soon he is liable to be evicted. 2. Where such sub-tenancy has been created with the consent in writing of the landlord nothing more requires to be done and there is no occasion for seeking eviction on this ground unless the existing sub-tenancy is terminated and new sub-tenancy is created without the prior written permission of the landlord. 3. Where existing sub-tenancy is created without written consent and landlord denies having given oral consent the Controller may after following the prescribed procedure

declare that the tenant's interest in the sub-let portion shall cease and that the sub-tenant shall become a direct tenant of the landlord in respect of the said portion.

7. The resultant situation is thus : Sub-letting is a good ground for eviction provided it is established (1) that it took place 'after' the enforcement of the Act on March 30, 1956; and (2) the land-lord had not given his consent to such sub-letting. So far as subletting 'before' : the coming into force of the Act is concerned, there is no question of the tenant or sub-tenant becoming liable to be evicted if there is consent of the land-lord. The only obligation on them was to give a written notice under Section 16(2) of the Act within six months, that is to say before September 30, 1956. In the case of alleged oral consent, if the land-lord denied to have given such oral consent, the tenant could become a direct tenant of the land-lord by making recourse to Section 16(3) of the Act. In this backdrop the events leading to the present proceedings must be approached.

8. Respondent-landlady (referred to as plaintiff hereafter) purchased the property at an auction sale effected by the official assignee of the High Court of Calcutta appointed as Receiver in respect of the said property in Suit No. 532 of 1954. The plaintiff thereafter claimed eviction on the ground that appellant No. 1 (original defendant No. 1) had sub-let a portion of the rented property to appellant No. 2 (original defendant No. 2) a few years before she purchased it but "after the enforcement of the Act on March 30, 1956".

Now, the following facts are not in dispute :

- (i) The property in question was originally owned by Hrishikesh Saha.
- (ii) The property vested in the Official Receiver in Suit No. 532 of 1954.
- (iii) The plaintiff purchased the property at a Court auction some 9 years thereafter on March 13, 1963.
- (iv) The plaintiff has no personal knowledge as to whether or not the original owner who had created a tenancy in favour of defendant No. 1 had given written or oral consent for sub-letting the same to defendant No. 2.
- (v) Defendant No. 2 had instituted case No. 1239B of 1956 before the Rent Controller, Calcutta under Section 16(3) of the Act of 1956 seeking a declaration that the interest of the tenant (defendant No. 1) in that part of the premises which had been sublet to him had ceased and that he had become a tenant directly under the Official Receiver who was impleaded as Opponent No. 1 in the said case.
- (vi) The said application was dismissed, on contest in view of the finding recorded by the Rent Controller that the tenant (Defendant No. 1) had sub-let the premises to the sub-tenant (defendant No. 2) with the written consent of the original land-lord (Hrishikesh Saha).

9. These proceedings under Section 16(2) read with Section 16(3) of the Act postulates that the subtenancy was created 'before' the enforcement of the Act on March 30, 1956. Neither the trial court nor the High Court took into account the legal effect of these proceedings and the finding recorded by the Rent Controller in Case No, 1239B of 1956 by the judgment and order dated 7-5-1975, a certified copy of which is placed on the record of the present matter as Ex. 'D'. If only the legal effect of these proceedings and of the finding recorded in Ex. 'D' was comprehended, it would have been realized that as between predecessor-in-title of the plaintiff and the defendants it was concluded that the sub-tenancy was created prior to the enforcement of the Act in 1956 with the written consent of the predecessor-in-title of the plaintiff as reflected in letter dated August 13, 1954 and that defendant No. 2 was therefore not entitled to become his direct tenant. For the sake of record, the relevant portion from the order of the Rent Controller dated 7-5-57 in Case No. 1239B of 1956 is extracted hereunder : -

... It is undisputed that Hrishikesh Saha is the owner of the premises. It is now in the hands of Official Receiver O.P. No. 1. O.P.W. 1 who is the tenant says that he has the consent of the landlord-Hrishikesh Saha to sub-let the premises when the premises was rented from him. Ext. A is the letter written by Hrishikesh Babu to O.P. No. 2 in which he says that he had no objection to sub-let. This letter is dated 13-8-54. O.P. No. 1 does not dispute this fact. On the side of the petitioners there is no evidence to show that O.P. No. 2 has not this consent of the landlord to sub-let. Learned lawyer for the petitioners challenges the genuineness of the document Ext. A. Unfortunately there is no evidence on record to substantiate this allegation. O.P.W. 2 who is the Kannachari of Hrishikesh Saha has also proved this document. I therefore, hold that tenant has the consent of the landlord to sub-let and as such these applications are not maintainable. It is accordingly ordered that the applications are dismissed on contest. In the circumstances of the cases I make no order as to costs.

(Emphasis added)

10. Thus, the predecessor-in-title of the plaintiff viz. the Official Receiver in whom the property had vested at the material time was a party in the above proceeding and he had in terms not disputed the factum of the sub-letting with the permission of the original owner pursuant to the letter dated August 13, 1954. The Rent Controller had in terms repelled the contention that the letter dated August 13, 1954 was not genuine. All this had happened more than six years before the property in question was purchased by the plaintiff and the proceedings giving rise to the present appeal were instituted. It was not open to the plaintiff to reargue this issue which had been concluded in the earlier proceeding to which the predecessor-in-title of the plaintiff was a party. Besides, the plaintiff had no personal knowledge at all about the transaction of sub-letting. Her allegation that the sub-letting took place 'after' the coming into force of the Act was therefore baseless.

11. It has also been overlooked by the City Civil Court as also the High Court that the plaintiff herself in her evidence did not say anything about sub-letting. In cross-examination this is what she stated :-

... I do not know for how many years defendant 1 has been occupying the premises in suit which constitute subject matter of Ejectment Suit No. 1247/64. I do not know whether defendant 1 had right to sub-let. Official Receiver did not tell me that defendant 1 had right to sublet (volunteers)....

12. The High Court seems to have misread the evidence or have assumed that defendant No. 1 had admitted in his evidence that the sub-letting took place 'after' the enforcement of the Act though he had not made any such admission. In fact it was not even 'suggested' to defendant No. 1 under cross-examination that the sub-letting took place at any time after the enforcement of the Rent Act. As discussed earlier the Official Receiver who was the predecessor-in-title of the plaintiff had not even disputed the factum of the sub-letting having taken place before the enforcement of the Act on March 30, 1956. These important aspects have not been taken into account by the High Court at all. The finding recorded by the High Court is based on no evidence. Since the sub-letting is not shown to have taken place 'after' the coming into force of the Act the very foundation of the decree for eviction has disappeared. And the decree for eviction cannot therefore be sustained.

13. These are the reasons why we have allowed the appeal by our order dated 18th October, 1984, set aside the decree for eviction passed by the High Court, and dismissed the suit for eviction with no order as to costs.