

Subhendu Prosad Roy Choudhury and Others

Vs

Kamala Bala Roy Choudhury and Others

Civil Appeal No. 2099 of 1968

(N. L. Untwalia, P. S. Kailasam JJ)

01.02.1978

JUDGMENT

UNTWALIA, J. -

1. This is a landlords' appeal by special leave. They had filed a petition in the year 1958 in the Court of the Munsif at Alipore under Section 5 of the Calcutta Thika Tenancy Act, 1949 as it then stood after serving a notice on the tenant-respondents to quit in accordance with Section 4. The ground for eviction was as provided in Section 3(iv) of the said Act. The application was allowed by the Munsif but was dismissed on appeal by the tenants by the subordinate Judge. He took the view that the notice given on the 8th January, 1958 was not given on behalf of all the co-owner landlords as the name of one of the minor co-owner landlord was not mentioned at the foot of the notice. The landlords challenged the order of the subordinate Judge in the Calcutta High Court but were unsuccessful. Hence this appeal.

2. We have examined the original notice dated January 8, 1958. In the paper-book as printed there is a slight inaccuracy. On examination of the original notice what is clear is that the notice was from and on behalf of all the co-owner landlords including all the minors as mentioned at the top of the notice. At the foot signatures were appended. Sobhandu Prosad Roy Choudhury signed for self and constituted attorney of the other landlords mentioned at the top. On behalf of minor Swapundra Prosad Roy Choudhury his guardian and mother Smt. Lilawati Devi Choudhurani had signed the notice. It was also signed by Raja Prosad Roy Choudhury whose minor son is Kumar Debapriya Prosad Roy Choudhury mentioned at serial 9 at the top of the notice. In our opinion the notice was signed and given by and on behalf of all the Co-owner landlords including all the minors. It was not necessary for Raja Prosad Roy Choudhury to specifically say at the foot of the notice that he was signing it on behalf of his minor son also, specially when the name of the minor had been mentioned at serial 9 at the top. In our judgment, therefore, the view of the appellate authority as also of the High Court that notice on behalf of Kumar Debapriya Roy Choudhury was not given in erroneous. Even assuming that notice was not given on behalf of one of the co-owner landlords, the decision of this Court in *Sri Ram Pasricha v. Jagannath* ((1977) 1 SCR 395 : (1976) 4 SCC 184) would show that yet the notice was good and valid.

3. Even then, we are unable to pass any final order in this appeal because the Calcutta Thika Tenancy (Second Amendment) Act, 1969 (West Bengal Act 29 of 1969) has in the meantime come into force after the impugned decision of the Calcutta High Court. Section 7-A of the amending Act confers power on the controller to set aside the order for ejectment in certain cases and to decide the matter afresh in the light of the amended law including the substantial amendment made in Section 3. Section 13 of the amending Act runs as follows :

"13. Provisions to apply to pending applications and appeals. - The amendments made to the said Act by this Act shall have effect in respect of all applications for ejection of thika tenants, and all appeals from orders made on such applications, under the provisions of the said Act which are pending at the commencement of this Act."

4. In view of the aforesaid provisions it is clear that the case has to be decided afresh in the light of the amended law engrafted in Section 3. We, therefore, allow this appeal, set aside the judgment and order of the High Court as also of the subordinate Judge and send back the case to it namely, the appellate authority for a fresh decision of the appeal in accordance with Section 13 of the amending Act and the amended Section 3. We will make no order as to costs.

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