

Anandilal Bhanwarlal and Another

Vs

Smt. Kasturi Devi Ganeriwala and Another

Civil Appeal No. 1552 of 1973

(M. P. Thakkar, R. S. Pathak JJ)

04.12.1984

JUDGMENT

THAKKAR, J. -

1. A decree for eviction was passed against the appellants, original defendants 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 defendant 1 had sublet the premises to defendant 2 after the coming into force of the Act.

Requirement for own occupation :

3. Insofar 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 inasmuch 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(3-A) 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(3-A) 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 *B. Banerjee v. Anita Pan* ((1975) 2 SCR 774 : (1975) 1 SCC 166 : AIR 1975 SC 1146) this Court has upheld the constitutionality of the said provision even insofar 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 claiming 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 and 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 adduce at the trial in case the landlord files a fresh suit for eviction on this ground as per the liberty being granted.

Subletting 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 subletting passed by the trial court and confirmed by the High Court.

6. 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 sublets in whole or in part the premises held by him;

7. Section 16 provides :

Section 16. Creation and Termination of Subtenancies to be notified. -

(1) Where after the commencement of this Act, any premises are sublet either in whole or in part by the tenant with the previous consent in writing of the landlord, the tenant and every subtenant to whom the premises are sublet shall give notice to the landlord in the prescribed manner of the creation of the subtenancy within one month from the date of such subletting and shall in the prescribed manner notify the termination of such subtenancy 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 sublet any premises either in whole or in part, the tenant and every subtenant to whom the premises have been sublet shall give notice to the landlord of such subletting in the prescribed manner within six months of the commencement of this Act and shall in the prescribed manner notify the termination of such subtenancy 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 subtenant within two months of the date of the receipt of the notice of subletting by the landlord or the issue of the notice by the subtenant, as the case may be, by order declare that the tenant's interest in so much of the premises as has been sublet shall cease and that the subtenant 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 subtenant to the landlord from the date of the order. Rents so fixed shall be deemed to be fair rent for purposes of this Act.

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

#Created 'before' March 30, 1956 Created 'after' March 30, 1956(1) Both the tenant as also the sub-tenant shall give notice of provided the landlord has such subletting within six months of the enforcement of the before the sub-tenancy Act (i.e. March 30, 1956) - is created. If he does so in the prescribed manner. so without such permission he is liable to be evicted.(2) Where such subtenancy 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 subtenancy is terminated and new subtenancy is created without the prior written permission of the landlord.(3) Where existing subtenancy 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 sublet portion shall cease and that the subtenant shall become a direct tenant of the landlord in respect of the said portion.##

9. The resultant situation is this : Subletting 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 landlord had not given his consent to such subletting. So far as subletting 'before' the coming into force of the Act is concerned, there is no question of the tenant or subtenant becoming liable to be evicted if there is consent of the landlord. 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 landlord denied to have given such oral consent, the tenant could become a direct tenant of the landlord by making recourse to Section 16(3) of the Act. In this backdrop the events leading to the present proceedings must be approached.

10. 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 1 (original defendant 1) had sublet a portion of the rented property to appellant 2 (original defendant 2) a few years before she purchased it but "after the enforcement of the Act on March 30, 1956".

11. 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 1 had given written or oral consent for subletting the same to defendant 2.
- (v) Defendant 2 had instituted Case No. 1239-B 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 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 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 1) had sublet the premises to the subtenant (defendant 2) with the written consent of the original landlord (Hrishikesh Saha).

12. 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. 1239-B of 1956 by the judgment and order dated May 7, 1957, 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 subtenancy 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 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 May 7, 1957 in Case No. 1239-B 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 sublet the premises when the premises was rented from him. Ex. A is the letter written by Hrishikesh Babu to O.P. No. 2 in which he says that he had no objection to sublet. This letter is dated August 13, 1954. 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 sublet. Learned lawyer for the petitioners challenges the genuineness of the document Ex. A.

Unfortunately there is no evidence on record to substantiate this allegation. O.P. W. 2 who is the Karmachari of Hrishikesh Saha has also proved this document. I, therefore, hold that the tenant has the consent of the landlord to sublet 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.

13. 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 subletting 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 subletting. Her allegation that the subletting took place 'after' the coming into force of the Act was therefore baseless.

14. 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 subletting. 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 of 1964. I do not know whether defendant 1 had right to sublet. Official Receiver did not tell me that defendant 1 had right to sublet (volunteers)....

15. The High Court seems to have misread the evidence or have assumed that defendant 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 1 under cross-examination that the subletting 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 subletting 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 subletting is not shown to have taken place 'after the coming into force of the Act and very foundation of the decree for eviction has disappeared. And the decree for eviction cannot therefore be sustained.

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

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