

Bhairab Chandra Nandan

Vs

Ranadhir Chandra Dutta

Civil Appeal No. 916 of 1987

(S. Natarajan, M. N. Vankatachaliah JJ)

16.12.1987

JUDGMENT

NATARAJAN, J. –

1. This appeal by special leave is directed against the judgment of the High Court of Calcutta in Second Appeal No. 25 of 1986 whereunder the concurrent findings of the trial court and the appellate court have been reversed and the suit for eviction filed by the appellant (landlord) dismissed.
2. The appellant sought the eviction of the respondent on four grounds but the two grounds which found favour with the trial court and the appellate court are that the respondent had sub-let the premises to his brother without the consent of the appellant and, secondly, the appellant bona fide required the leased portion of the house for the use and occupation of the members of his family. These concurrent findings, though pertaining to facts have been interfered with and reversed by the High Court and, if we may say so even at the outset by a process of reasoning which is at once inapposite and unconvincing.
3. Now for some of the facts. The appellant is the owner of the premises No. 30, Sambhu Nath Pandit Street, Calcutta. It is common ground that the appellant is living in the said house with his wife, his four sons, one of them being married and the other three unmarried though aged 34, 29 and 27 years respectively and a daughter. The appellant had leased out a portion of the premises to the respondent and subsequently gave him on lease another room also. The appellant's case was that the respondent had unauthorisedly sub-let the premises to his brother and shifted his residence to another place and he had ceased to live in the portion leased out to him. His further case was that there was only one bedroom, one storeroom, one kitchen and another small room (Thakur Ghar) in his occupation, and on account of want of adequate accommodation in the house, he is not able to get his sons married. Since the respondent contended that the house consists of more rooms and that appellant had sufficient accommodation, the trial court appointed an Advocate-Commissioner to inspect the premises and submit a report regarding the nature and extent of accommodation available in the house. The Commissioner, after inspecting the house, submitted a report stating that the appellant was in possession of three rooms, one kitchen, two Thakur Ghars, one junk-room and verandahs. The trial court accepted the Commissioner's report but held that even if three rooms were available, the accommodation was not adequate for the appellant because one room was being occupied by him and his wife, another room by the married son and his wife and as such there was only one room left for all the three grown-up sons and the appellant to occupy and therefore additional accommodation was bona fide required especially if the sons were to get married. The trial court further held that there was no reason to disbelieve the appellant's statement that for want

of accommodation in the house, he was not able to arrange for the marriages of his unmarried sons. Insofar as the charge of sub-letting is concerned, the trial court found that on his own admission the respondent had ceased occupying the rooms given to him and he had given the rooms to his brother Manadhir and had shifted his residence elsewhere viz. first in a house at Indra Roy Road, then in a house in Chandi Ghosh Road and lastly in the house of his wife at Banerjee Para Road. The trial court therefore found no difficulty in holding that the evidence decisively proved that the appellant had permanently surrendered possession of the leased rooms to his brother and he had no intention of re-occupying the portion leased out to him. Consequently, the trial court sustained the appellant's case for eviction on both the grounds viz., unauthorised sub-letting and bona fide requirement of additional accommodation by the appellant and decreed the suit for eviction. The appellate court after independently assessing the evidence concurred with the findings of the trial court and dismissed the appeal filed by the respondent.

4. In the second appeal filed by the respondent, the High Court was fully alive to its limitations to interfere with concurrent findings of fact but nevertheless set aside the findings of the courts below on the ground they were perverse in character. We must frankly state that the reasons given by the High Court for allowing the appeal are of a curious nature. The High Court has held that the appellant's requirement of additional accommodation cannot be held a bona fide requirement because the appellant had failed to disclose fully in the plaint the number of rooms that were in his occupation. The view taken by the High Court suffers from two patent errors. In the first place, the High Court failed to see that the trial court had appointed a Commissioner and obtained a report and it is only after taking into consideration the full extent of accommodation available in the house, the trial court sustained the appellant's claim for additional accommodation. It is not, therefore, as if the trial court and the appellate court had in any way misdirected themselves in rendering their findings on the question of bona fide requirement of additional accommodation by the appellant's failure to state correctly the exact number of rooms in his occupation. Secondly, the High Court failed to see that in spite of the house consisting of more rooms than what the appellant had set out in the plaint, the rooms were all of very small size. The size of the rooms in the occupation of the appellant have been set out by the Commissioner as under :

two bedrooms in the first floor measuring 13 ft. (sic) inches x 12 ft. 2 1/2 inches and 13 ft. 4 inches x 9 ft. 10 inches, one room in the second floor measuring 10 ft. 4 inches x 7 ft. 1 inch and a small room besides that measuring 7 ft. 4 inches x 2 ft. 4 inches and one room in the ground floor measuring 12 ft. 10 inches x 8 ft. 11 inches and a small room measuring 5 ft. 10 inches and 4 ft. 8 inches.

The High Court has held that four rooms in the possession of the appellant can be used as bedrooms and that the room in the second floor can be used as Thakur Ghar. The High Court has further held that so long as the three major sons of the appellant remain unmarried, they can all occupy one room as they have been doing hitherto. It is indeed strange that the High Court should think that three grown-up sons aged 34, 29 and 27 years could be asked to huddle themselves in a small room and live there without reference to factors of privacy and convenience. The High Court has also observed that the evidence on record did not show that there was any prospect of the three sons getting married in the foreseeable future. When the members of the family are not having adequate living space for themselves, it is futile for the High Court to expect the appellant to adduce tangible evidence to show that there were imminent prospects of the celebration of the marriages of the three sons. Moreover, the High Court has nowhere taken into consideration the case of the appellant that, besides his married son and unmarried sons, he has also a grown-up daughter living in the house. Having regard to the evidence in the case and the concurrent findings rendered by the trial court and

the appellate court, we are clearly of the opinion that the High Court was not justified in attributing perversity to the findings of the courts below and setting them aside.

5. Now coming to the question of sub-letting, once again we find that the courts below had adequate material to conclude that the respondent had sub-let the premises, albeit to his own brother and quit the place and the sub-letting was without the consent of the appellant. Admittedly, the respondent was living elsewhere and it is his brother Manadhir who was in occupation of the rooms taken on lease by the respondent. The High Court has taken the view that because Manadhir is the brother of the respondent, he will only be a licensee and not a sub-tenant. There is absolutely no warrant for this reasoning. It is not as if the respondent is still occupying the rooms and he has permitted his brother also to reside with him in the rooms. On the contrary, the respondent has permanently shifted his residence to another place and left the rooms completely to his brother for his occupation without obtaining the consent of the appellant. There is therefore no question of the respondent's brother being only a licensee and not a sub-tenant. Hence it follows that the High Court was not justified in setting aside the concurrent findings of the courts below on the ground of sub-letting also.

6. Learned counsel for the respondent submitted that the appellant has another house situate in Ismail Madan Lane and, therefore, the appellant was not left without alternate accommodation and, as such, the appellant has not satisfied the requirements of Section 13(ff) for seeking possession of the leased portion for his own occupation. The house situate in Ismail Madan Lane is said to be more than three miles away from the suit house as per statement of counsel made at the bar. Moreover, the house is not lying vacant. The appellant's witness Mukhtar Ahmed examined as PW 2 has deposed that he is a tenant in the house in Ismail Madan Lane and that the entire house is in the occupation of tenants and no portion is lying vacant. Apart from this, it has also to be pointed out that this is a case where the appellant's (sic family) is occupying a portion of the house and wants possession of the leased portion only by way of additional accommodation. To such a case the condition imposed by Section 13 that "a landlord should not be in possession of any reasonably suitable accommodation" may not be strictly attracted. Otherwise, it would lead to a landlord being asked to disrupt the family and providing accommodation for the members of his family at different places. The respondent's counsel submitted that since no issue has been raised on the question of alternative accommodation being available, the appeal may be remanded to the appellate court for evidence being taken and a finding rendered on the question whether the house in Ismail Madan Lane would meet the requirement of the appellant. We do not find any merit in this submission. Though formally no issue was framed, the parties went to trial and adduced evidence with this issue in mind and have drawn the attention of the court to the existence of another house belonging to the appellant in Ismail Madan Lane and the said house being not vacant. There is, therefore no need for the appeal being remanded for a finding on the question whether alternate suitable accommodation is available for the appellant.

7. In the result, the appeal succeeds and will stand allowed. The judgment and decree of the trial court and the appellate court will stand restored. However, taking into consideration the time factor that will be required by the respondent to find alternate accommodation for his brother, he is given time till June 30, 1988 to vacate the premises and hand over vacant possession subject to the condition the respondent files the usual undertaking before this Court on or before January 31, 1988 agreeing to pay the rent, past as well as future and to vacate the premises and deliver vacant possession within the time given and also not to induct anyone else into possession in the leased portion. There will be no order as to costs.

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