

# SUPREME COURT OF INDIA

Ashok Kumar Mandal

Vs.

Rabindra Nath Banerjee (D) By Lrs.

(B Kumar and A Kumar JJ.)

03.12.2003

## ORDER

1. This appeal is preferred against the order of the Calcutta High Court dismissing the second appeal of the appellant in limine.
2. The brief facts of the case are that the appellant took a lease for a period of 10 years on 11.4.1960. It was a registered lease deed. However, on 25.5.1960 the parties executed another lease deed for a period of 20 years. Yet another lease deed was executed between the parties on 31.5.1963 for a period of 15 years, taking effect from 11.4.1960. It is indicated on behalf of the respondents that the subsequent lease deeds were in supersession of the previous ones. According to the lease deeds dated 31.5.1963, the period of lease came to an end some time in 1975. Hence, a notice for eviction was served upon the appellant which was not complied with. Hence, a suit was filed on 22.8.1975. The suit was dismissed by the Trial Court. The Trial Court held that the subsequent lease deeds have not affected the original thika tenancy of the lessee. Therefore, it was held that thika tenancy could not be terminated by giving a notice. The respondent went up in appeal against the judgment and order passed by the Trial Court. The First Appellate Court by its judgment and order dated 29.4.1983 allowed the appeal. It was held the Trial Court erred in finding that in view of the first lease deed the second lease could not be executed or any further execution of lease could not change the terms of the earlier lease. It has further been held that in case of execution of a fresh lease during the currency of the earlier one, there would be implied surrender of the earlier lease deeds. Hence, the lease deed dated 31.5.1963 for a period of 15 years with effect from 11.4.1960 was a valid lease and this lease deed coming to an end with efflux of time in 1975, a suit was rightly filed by the respondent. Ultimately, the Appellate Court allowed the appeal and decreed the suit. The second appeal preferred by the appellant before the High Court was dismissed in limine.
3. So far the view taken by First Appellate Court is concerned, in our view it needs no interference.
4. The learned counsel for the appellant has, however, raised a question which though it appears was

not raised before the Trial Court and the First Appellate Court, to the effect that the proceedings pending against the appellant had abated by virtue of the provision contained under Section 19 of the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981. To appreciate the provisions we may have to refer to some of the provisions in Thika Tenancy Act, 1949 which deals with the thika tenancy and the rights of such thika tenants. The lease deed which was executed in the year 1963 was during the period when the Calcutta Thika Tenancy Act, 1949 was in operation. This Act, however, was replaced by the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981. It was notified on 18.1.1982. By virtue of Section 5 of the 1981 Act as substituted by an Act of 1993 w.e.f. 18.1.1982, the following provisions was made about the pending proceedings :

"19. Proceedings including appeals and proceedings in execution of orders, etc., to abate.--All proceedings including appeals and all proceedings in execution of orders passed in proceedings including appeals under the Calcutta Thika Tenancy Act, 1949, pending on the 19th day of July, 1978, for the ejection of thika tenants and bharatias shall stand abated with effect from the 19th day of July, 1978, as if such proceedings, appeals or execution proceedings had never been made."

5. The submission made by the learned counsel for the appellant is that the suit was filed in the year 1975 and the appeal was decided on 29.4.1983. By virtue of the provisions contained under Section 19 of the 1981 Act the proceedings in appeal stood abated. It is further submitted that even if that ground is not raised by the appellant the Court should have taken note of the fact that the pending proceeding had abated by operation of law. That being the position, there was no occasion for the First Appellate Court to have interfered with the judgment passed by the Trial Court. It is submitted that this ground was raised in the second appeal but the same has not been considered and the appeal was dismissed in limine without taking note of the legal position.

6. The learned counsel for the respondent submits that the provision contained under Section 19 of the 1981 Act is not applicable to the present case. It is submitted that the parties had executed lease deed lastly in 1963 which is a registered lease deed. It was for a period of 15 years. The lease, therefore, came to an end on the expiry of 15 years w.e.f. 1960. Since the appellant did not comply with the notice to vacate the premises a suit was filed for his eviction under the general law namely, the provisions of the Transfer of Property Act treating the appellant as a trespasser. A perusal of Section 19 of the 1981 Act makes it clear that all proceedings which were pending under Calcutta Thika Tenancy Act, 1949 stood abated. The submission is that the proceedings initiated by the respondent in the year 1975 before the Trial Court were not under the provisions of the Calcutta Thika Tenancy Act, 1949, rather under the general law under the provisions of the Transfer of Property Act. In this background it is not open for the appellant to claim benefit of Section 19 of the 1981 Act.

7. It is submitted that a different position stood under the 1949 Act and the tenancy would be covered under the Thika Tenancy Act in case it was for less than 12 years. The lease deed was executed during the period when the 1949 Act was in operation, that to say in 1963. The lease was for a period of 15 years. That being the position, the provisions of 1949 Act were not attracted to the facts of the case. The amendment which has been made in Section 5 of the 1981 Act, providing that a lease deed for a period of not less than 12 years would be covered under the Act is not applicable since the period of tenancy had already expired in 1975 and the appellant had filed suit in the same year treating the appellant as trespasser. Therefore, the benefit of amended Section 5 of the 1981 Act would not be available to the appellant. Considering the legal position indicated above and provisions contained under Section 19 of the 1981 Act in our view the eviction proceedings would

not be covered by the provisions of the 1949 Act nor under the provisions of 1981 Act even after the amended Section 5 of the said Act. That being the position, the protection of Section 19 of the 1981 Act would not be available to the appellant. We also find no force in the submission made on behalf of the appellant that it was an act of fraud on the part of the respondents to have entered into successive lease deeds by virtue of which terms of the lease kept on changing. We fail to appreciate this argument raised on the ground of fraud allegedly played by the respondents upon the appellant as they are bilateral lease deeds executed by the parties in supersession of the earlier one and duly registered in accordance with law. In the circumstances it is difficult for us to entertain this plea of fraud which is sought to be raised at this stage.

8. In the result, we find no merit in the appeal. It is accordingly, dismissed. There would, however, be no order as to costs.

Brijesh Kumar & Arun Kumar, JJ.