

(1948) 03 CAL CK 0002

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 2012 of 1947

Abani Bhusan Mukherjee

APPELLANT

Vs

Prodyut Kumar Singha and Others

RESPONDENT

Date of Decision : 01-03-1948

Acts Referred:

Citation : (1948) 03 CAL CK 0002

Judgement

Chakravartti, J.—This is an appeal on behalf of the Defendant and raises a somewhat intriguing question under the Calcutta House Rent Control Order. The appeal arises out of a suit for ejectment and was brought by three Plaintiffs, two of whom are sons of the third who is the mother. The subject-matter of the suit is a house occupied by the Appellant as a tenant. The Plaintiffs being, according to them, under the necessity of acquiring the house for their own residence and being minded to eject the Defendant sought the necessary permission from the Rent Controller, but the application was made only by the two sons. The mother was not an applicant and the application did not even purport to be one made on her behalf as well. The Rent Controller rejected the application on the merits and held that it had not been proved to His satisfaction that the applicants before him really required the house for use by themselves. There was thereafter an appeal to the District Judge of 24-Parganas who, I am informed, visited the locality and ultimately allowed the appeal, according the necessary permission. The permission was thus applied for by and granted to, the two sons only.

2. Thereafter the suit was filed on the 8th August, 1945, when the Calcutta House Rent Control Order was in force. As already stated, the suit was by the mother as well as by the sons, various defences were raised on behalf of the Defendant, but of them only one is material to this appeal. That defence was that permission of the Rent Controller being a condition precedent to the entertainment of any suit for ejectment, the suit, as laid, could not be entertained, inasmuch as it was a suit by three Plaintiffs, whereas permission had been obtained from the Rent Controller only by two.

3. The trial Court upheld this objection and dismissed the suit on the preliminary ground raised. On appeal, the learned Subordinate Judge has reversed the decision and has held that having regard to the relevant provisions of law and the facts of the case, the permission obtained by the two sons was quite sufficient to validate the suit. In that view, he remanded the case to the Court below for trial on the merits. Thereupon the Defendant preferred the present second appeal.

4. In support of the appeal, it was contended by Dr. Sen Gupta that the view taken by the learned Subordinate Judge of the provisions of the Calcutta House Rent Control Order was wholly erroneous.

5. It may be observed here that the learned Judge, in referring to the relevant provisions of law has referred to those of the Calcutta Rent Ordinance, 1946, and not to those of the Calcutta House Rent Control Order, 1943. It is true that sec. 26 of the Ordinance provides inter alia, that any proceedings commenced under any provision of the Calcutta House Rent Control Order, 1943 shall be continued and be, as far as may be, deemed to have been commenced under the corresponding provision of the Ordinance. But it will be observed that this provision for the substitution of the clauses of the Ordinance for those of the order is qualified by the important phrase "as far as may be." It need hardly be emphasised that when the question at issue is whether the necessary permission from a certain authority was obtained in the manner required or whether certain statutory forms of procedure were complied with such question must be judged by reference to the law as it was in force at the relevant date. Provisions of a subsequently enacted law cannot possibly be super-imposed on past events with regard to such a matter. The distinction, however, is not of much importance in the present case, because the relevant provisions of the Order and those of the Ordinance are practically the same.

6. The learned Judge bases his decision on four grounds. He says in the first place, relying on a decision reported in the case of Karamat Ali v. Hanuman 34 I. C. 56 (1915) that a notice to quit given by some only of several co-owners, would be a perfectly valid notice under the Transfer of Property Act and that the same principle would apply to the permission required to be obtained from the Rent Controller. The learned Judge says in the next place that the definition of "landlord" given in the House Rent Control Order, or as he puts it, in the Ordinance, includes persons who receive rent on behalf of another person and consequently he thinks that since the two sons in the present case admittedly received the rent on behalf of their mother as well, they by themselves could well be regarded as "the landlord" as contemplated by the House Rent Control Order. The learned Judge says in the third place that where a house is required by the landlord for his Own occupation, it may not always be for the occupation of everyone of the so-sharer landlords, when there are several of them, but it may well be for the occupation of only the or a few. From these premises, the learned Judge argues that if of several co-sharer landlords, only one required the

house for his own occupation, that one person only may apply before the Rent Controller and a permission given to him will effectively remove the bar created by the order and validate a suit brought thereafter by all the co-sharers. It is said in the last place that, in any event, the learned District Judge, in granting permission, had considered the necessity of the mother as well, so that assuming there was a technical defect, there was yet in substance a full compliance with the provisions of the House Rent Control Order.

7. The same arguments have been repeated before me by the learned Advocate for the Plaintiffs Respondents. I am, however, unable to accept them as correct.

8. As I have stated already, this case, so far as the particular point is concerned, must be judged by reference to the terms of the Calcutta House Rent Control Order, 1943, and not the Calcutta Rent Ordinance, 1946. Taking the grounds of the learned Judge one by one, I am of opinion that the basis, of his first ground, though it may be supported to a certain extent by the solitary authority he has cited, is by no means supported by the preponderance of judicial opinion. Even the case cited requires proof to be given of the consent of the other co-sharers. In any event, it appears to me that the analogy is of no consequence, inasmuch as the particular question which has arisen in this case must be determined by the actual terms of the House Rent Control Order and not by the requirements as to notice prescribed by some other Act or the general law.

9. As regards the second ground given by the learned Judge I am of opinion that he misdirected himself by referring to the definition of "landlord." It may be that a "landlord," as contemplated by the House Rent Control Order, need not necessarily be the owner of the house himself and may include agents or trustees or actual rent receivers, but the fact that the term "landlord" includes such persons other than the owner himself does not involve that one person may obtain permission from the Rent Controller and another person may bring the suit for ejectment or that the suit for ejectment may be brought by the person who obtained the permission, together with certain other persons. It may be that the sons in the present case, although they were two of three co-sharer landlords, could be treated as agents for the mother or even, as the learned Judge puts it, agents for themselves. It may be that from that point of view they were quite competent to make an application before the Rent Controller on their own account as "landlords." If, equipped with such a permission, they alone brought a suit before the Civil Court, that suit might fail under the general law as one not brought by the total body of landlords, but want of a valid sanction of the Rent Controller would not be one of its defects. Again, they might be competent to apply for permission on behalf of themselves and also of their mother and a permission granted on such an application might validate a suit brought by all the three. But the implications of the definition of "landlord," that persons other than the actual owner are included in its terms, cannot be pushed to the extent of nullifying the provisions of sec. 9A of the House Rent Control Order. Sub-sec. (1) of that section, to quote only the material part, reads as

follows:--

No suit or proceeding by a landlord against a tenant in possession of a house for eviction of such tenant therefrom in which any of the grounds specified in clause (c) of the proviso to sub-paragraph (1) of paragraph 9 has been taken as a ground for such eviction shall be entertained by any Court.....unless the landlord has been permitted by the Controller by an order in writing under sub-paragraph (3) to institute such suit or proceeding.

10. The substance of this provision is that re suit or proceeding by "a landlord" shall be entertained unless "the landlord," that is to say, the particular landlord bringing the suit, has been granted the necessary permission by the Controller. The matter is made even clearer by sub-sec. (3). That section, to quote again only the material part, reads as follows: A landlord wishing to obtain from the Controller,

(a) any order referred to in sub-paragraph (1) permitting him to institute a suit or proceeding against a tenant in possession of a house fog evicting such tenant therefrom.....shall apply in writing to the Controller in that behalf,

and the Controller, if he is satisfied that a good case has been made out, "shall for reasons to be recorded in writing make the order applied for." Again, it is clear to my mind that what this sub-section contemplates is that a particular landlord, wishing to obtain from the Controller permission to institute a suit, shall apply to the Controller and if the Controller is satisfied that such permission should be granted to the applicant, he shall make such an order. The order must be permitting "him," that is to say, the applicant, to bring a suit or proceeding. In other words, whatever persons may be included in the definition of the term "landlord" in the House Rent Control Order, the applicant before the Controller must be the person who wishes to bring the suit and the permission of the Controller, if given, must be given to such person only. When this provision is read with the main provision contained in sub-sec. (1) which has already been quoted, it is perfectly clear that there must be an identity between the person who wishes to institute a suit for ejectment, the person who applies to the Controller for permission, the person to whom the Controller gives permission and the person who ultimately brings the suit. The language of the relevant provisions, to my mind, does, not leave it open to the Court to adopt any other interpretation.

11. I may observe here that the definition of "landlord" is qualified by the usual proviso, "unless there is anything repugnant in the subject or context." But taking it as it is, the definition, in my opinion, in so far as it covers persons other than the actual owner, really contemplates third parties such as agents or representatives who are authorised to act and do act on behalf of the owner. The object is to provide that the landlord need not always act personally, but may act through agents or representatives. But let it be conceded that the definition covers the case of some of several co-sharer landlords who, in fact, act for the

whole body. Yet, in neither case can the definition have the effect of making a permission obtained by one body of persons from the Rent Controller sufficient for a suit by a different body of persons in the Civil Court. If an agent obtains the permission, as such, and he brings the suit, it will be a good suit. If the owner brings the suit, that too perhaps will be a good suit, because the permission was in effect given to him. If some of the co-sharers obtain the permission on behalf of themselves, a suit brought by them will be a good suit, so far as the Rent Control Order is concerned, but a permission obtained by some of the co-sharers for themselves alone cannot serve as sufficient authority for a suit by all the co-sharers. Such a suit would require a permission granted to all the Plaintiffs or to some of them as representing all.

12. If the Calcutta House Rent Control Order had been an enactment Of the English law, it might have been easy to hold that where the Order required or authorised something to be done by the "landlord" towards the ejectment of the tenant, the act could be validly done by one or some of several co-sharers. For the English rule as to joint lessors is that the lessee, holds the whole so long as he and all the lessors shall please so that the withdrawal of the consent of even one of several co-sharer landlords terminates the tenancy. In India, on the other land, a tenancy created by several landlords lasts till all of them combine to terminate it and this principle, in my opinion, cannot be ignored in construing the Calcutta House Rent Control Order which has nowhere repudiated it.

13. Mr. Das Gupta, appearing for the Plaintiffs Respondents, contended that sec. 9A must be read along with sec. 9 (1) (c) and it ought to be held that in the case of neither provision was the total body of landlords contemplated. His argument, in a may was a mere variant of the argument adopted by the learned Judge and in substance it was that if the two provisions are to be reasonably construed, it ought to be held that the necessity of one of several co-sharer landlords should be a sufficient necessity within the meaning of sec. 9 (1) (c) and similarly, an application by that particular co-sharer landlord who is under the necessity ought to be sufficient under sec. 9A. The argument would seem to be a plausible one, if regarded generally, but I am of opinion that it cannot stand a textual examination of the relevant provisions of the Rent Control Order. Nor can I see that there is any actual inconvenience or hardship in insisting on the total body of landlords making the application before the Rent Controller. Even if some of them be competent to obtain a permission from the Rent Controller and even if a suit brought by them alone may not fail on the ground of non-compliance with the House Rent Control Order, it is bound to fail tinder the general law. If, therefore, all the co-sharer landlords must act together at the stage of the suit, I do not see any hardship in insisting that equally must they act together at the stage of making an application before the Rent Controller.

14. As regards another point relied upon by Mr. Das Gupta that the Legislature could not have contemplated only a necessity felt by everyone of several co-sharer landlords or that, at least, the case of a single co-sharer being in

necessity of the house could not have been left unprovided for, it need only be pointed out that on an application made by the total body of co-sharers, the Rent Controller may well grant permission, if he finds that one of them requires the house for his own occupation. In such a case, the necessity of one may well be taken to be the necessity of all, as a rule, they would be relatives and the problem of the convenient accommodation of one would be a common problem and a matter of common interest. At any rate, the provision contained in sec. 9 (1) (c) is not expressed with the same rigour of language as is to be found in sec. 9A (1) and sec. 9A (3), nor does it seem to me to have any real bearing on the question as to who must obtain permission in order to be able to maintain a suit.

15. On this subject, it may be useful to refer to a recent decision of the Privy Council in the case of *Al. Ar. Vellayan Chettiar v. The Government of the Province of Madras* 52 C. W. N. 27 (1947) relating to the notice under sec. 80 of the Civil Procedure Code. That section lays down that no suit shall be instituted against the Crown. . . .until the expiration of two months next after a notice in writing has been delivered. The section goes on to provide that the notice should show the cause of action, the name, description and place of residence of the Plaintiff as also the relief he claims. Dealing with this section, the Privy Council quoted with approval an observation of the High Court of Madras that there must be an identity of the person who issues the notice with the person who brings the suit and their Lordships held that a suit instituted against the Government by two persons as Plaintiffs upon a notice under sec. 80, C. P. C. issued by one of them atone, was incompetent. In my opinion, the same principle ought to apply in the present case.

16. As regards the last ground given by the learned Judge it is true that the needs of the mother were also considered by the learned District Judge when he granted the permission. At the same time, the fact remains that no permission was granted to her to bring a suit either expressly or otherwise, the learned Judge only holding that comfortable accommodation of their mother was also a reason for which the sons needed the house. It may be said that to regard the permission even in such circumstances as insufficient would be to put too great a value upon a mere technicality. At the same time, I am of opinion that endless confusion would result once the strict language of the law was departed from. After all, if the permission obtained by the two sons is not sufficient, all that is required is a fresh permission and there is no good reason why the clear provisions of the Order should not be enforced simply because some careless co-sharers may proceed in a confused or ill-informed manner as the sons did in the present case.

17. I am accordingly of opinion that the suit in the present case could not be entertained by the Court and it was rightly dismissed by the learned Munsif.

18. It appears that there was an argument before the learned Subordinate Judge that the suit might still be saved by dropping the mother altogether. I am afraid,

it is not possible to permit that course being adopted. The language of sec. 9A of the House Rent Control Order is that no suit shall be "entertained," if it does not comply with the provisions of that section. The plaint in the present case stated in the clearest possible manner that the house had devolved on the mother and the two sons by inheritance from the previous owner. On that statement contained in the plaint, the mother was quite obviously a person claiming to be a co-sharer landlord and a necessary Plaintiff and consequently, in the absence of a permission granted to her as well, the suit was liable to be dismissed at sight as in fact it was. For reasons given above, this appeal is allowed, the judgment and the decree of the lower Appellate Court are set aside and those of the learned Munsif are restored and the Plaintiffs' suit is dismissed. This dismissal, however, will not prevent the Plaintiffs from bringing a fresh suit on complying with the requirements of the law, if they are so advised. Each party will bear its own costs throughout.