

(1956) 03 CAL CK 0001

In the Calcutta High Court

Case No : Civil Revision Case No. 2504 of 1955

Amulya Charan Ghosh

APPELLANT

Vs

Banku Behari Mukherjee and Another

RESPONDENT

Date of Decision : 12-03-1956

Acts Referred:

Calcutta Thika Tenancy Act, 1949 — Section 3, 5

Citation : 60 CWN 884

Hon'ble Judges : Guha, J; Das Gupta, J

Bench : Division Bench

Advocate : Nalini Ranjan Bhattacharjya for the Petitioner, for the Appellant; Urukramda Chakravarty for the Opposite Parties, for the Respondent

Judgement

Das Gupta, J.—This Rule is in connection with proceeding for ejectment u/s 5 of the Calcutta Thika Tenancy Act, 1949. The ejectment was sought by the landlord on ground No. (vi) of Section 3 of the Act that the Thika tenant held the land comprised in the holding under a registered lease and the term of the lease had expired. A registered lease was put in evidence. The tenant pleaded that this lease had been executed by him without understanding the contents therefore as a result of misrepresentation, fraud and undue influence. He wanted to adduce evidence to substantiate this case. The learned Controller, however, thought that the tenant could not be permitted to raise this plea in these proceedings u/s 5 of the Calcutta Thika Tenancy Act. The same view has been taken by the Court which heard the appeal.

2. It is now contended before us that the view taken by the Controller and the appellate Court was wrong and that the fact that the proceedings were of a summary nature could not take away the power of the Thika Controller to determine the question raised by the tenant. In our judgment, this contention should prevail. Clearly, before the landlord could obtain a decree for ejectment on the ground mentioned in his application, he had to show two things - first, that the land was held by the tenant under a registered lease and secondly, that

the term of the lease had expired. Prima facie, the production of the registered lease and evidence that the lease covered the lands in question, would be sufficient to establish this fact. If, however, as in the present case, the tenant takes the plea that though the execution of the lease was his physical act, the execution was not his mental act and that the lease had been obtained from him by fraud, misrepresentation and undue influence and he had executed it without understanding the contents thereof, we can see no reason why he should not be allowed to prove that. After all, it is the Court's duty to find if as a matter of fact, the lands are comprised under a registered lease and for that purpose the question whether the lease was executed by the tenant with a proper understanding of the matter and in the absence of anything that would make the lease unenforceable in law, has to be considered. Obviously, the burden of proving, that the document was obtained by fraud, undue influence and misrepresentation and that the executant did not understand the contents of the lease before he executed the same, would be on the tenant. In most cases, it may be difficult for him to discharge that burden, but when he wants an opportunity to adduce evidence to discharge that burden, we think it proper that he should be allowed to discharge that burden. If he fails to discharge that burden, he cannot possibly be allowed to raise the other question, he seems to have raised in the written statement, namely, that the lessor had not the title to the land.

3. We accordingly, make the Rule absolute, set aside the orders passed by the learned Courts below and order that the proceedings be dealt with by the learned Controller in the light of the observations mentioned above.

4. The parties will bear their own costs in this Rule.