

(1957) 08 CAL CK 0001
In the Calcutta High Court

Case No : Appellate Decrees No. 979 of 1953 and S.A. No. 1129 of 1952

Badri Prosad Gupta

APPELLANT

Vs

Abaninath Das
 Dr. J.N. Pal Vs Badri Prosad Gupta

RESPONDENT

Date of Decision : 19-08-1957

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 — Section 12(1)

Citation : (1959) 1 ILR (Cal) 20

Hon'ble Judges : Benwpada Mukherjee, J

Bench : Single Bench

Advocate : B.B. Das Gupta, N.C. Taluqdar and Soudhendra Kumar Basu, in S.A. No. 979 of 1953 and and B.C. Dutt and Bratin Banerjee, in S.A. No. 1129 of 1952, for the Appellant; B.B. Das Gupta, N.C. Taluqdar, Soudhendra Kumar Basu, in S.A. No. 1129 of 1952, Naresh Sen Gupta and Shanti Prosad Banerjee for Respondent in S.A. No. 979 of 1953, for the Respondent

Final Decision : Dismissed

Judgement

Renupada Mukherjee, J.—These two appeals were heard one after another and they are governed by the same judgment. The tenants are the Appellants in both the appeals.

2. Second Appeal No. 979 of 1953 arises out of a decree for ejectment passed in Ejectment Suit No. 1196 of 1951 by the Judge, Sixth Bench, of the Court of Small Causes, Calcutta, which was confirmed in appeal by the Special Bench of that court. Second Appeal No. 1129 of 1952 arises out of a decree passed in Ejectment Suit No. S64 of 1950 by the Judge of the Second Bench of the Court of Small Causes, Calcutta, which was also confirmed in appeal by the Special Bench of that court. In both cases the grounds urged by the landlords was one of reasonable requirement of the disputed premises of each suit for their own occupation. The tenants challenged the reasonableness of the demand but their pleas were negatived by the courts below. So the tenants have preferred these two second appeals.

3. I first take up Second Appeal No. 979 of 1953 in which tenant Badri Prosad Gupta is the Appellant: I may just mention here that he is the landlord-Respondent in the other appeal. The subject-matter of the tenancy in S.A. No. 979 of 1953 is a shop room located in a portion of the outer verandah of a large house at premises No. 20 Surendra Nath Banerjee Road, Respondent Abaninath Das of this appeal is the owner of a partitioned half portion of this house. According to the report of a commissioner who held a local inspection, the Appellant's shop room measures 13' 9" in the front portion and the breadth varies from 4' 1" to 2' 7 1/2" The Appellant carries on business in piece-goods in this shop. It is north-facing and to its contiguous south is a covered verandah of the Respondent and further south is his record room. The case of the Plaintiff-Respondent in this appeal was that there is a connecting window between the shop-room of the Appellant the covered verandah which cannot be opened on account of the existence of shop-room and unless the shop is removed, the covered verandah and the record room will not be fit for use. Relying on the report of the commissioner both of the courts below have held that this case of the Respondent is true and the courts below have passed a decree in favour of the Respondent. In passing the decree the courts below have further relied on the facts that the Appellant has himself got a decree for ejectment against his tenant in respect of a shop room which is the subject-matter of the connected appeal.

4. The only point which Mr. Das Gupta urged on behalf of the tenant-Appellant was that the relevant portion of Clause (h) of Sub-section (1) of Section 12 of the West Bengal Premises Rent Control Act, 1950, by which the suit would be governed lays down that a tenant is liable to ejectment if the landlord reasonably requires the premises for his own occupation and not for keeping it vacant so that other portion of his own premises which are not in the possession of the tenant can be more beneficially enjoyed. In other words. Mr. Das Gupta contended, that the word "occupation" occurring in the above section means actual and physical occupation. To this Dr. Sen Gupta replied by contending that the words ""occupation by the landlord" occurring in the above section simply mean taking into the possession of the landlord, physical or otherwise, by evicting the tenant and it does not mean that the landlord must actually and physically use the premises from which eviction is asked for either by living or keeping his goods and chattels therein, I accept this contention of Dr. Sen Gupta and hold that the word "occupation" occurring in Clause (h) of Section 12(1) of the Rent Control Act, 1950, is practically synonymous with eviction of the tenant. In this case both the courts below have held that unless the tenant is evicted, the closed verandah and the record room beyond it would remain unfit for the use of the Respondent. The tenant's disadvantage will not be much because, as I shall find in the other appeal-, he will get possession of his own shop room which is on the same road. In these circumstances I uphold the findings of the courts below that the shop room in question on the outer ledge of Respondent's house is reasonably required by the landlord. Second Appeal No. 979 of 1953

will, therefore, fail.

5. I now come to Second Appeal No. 1129 of 1952. In this appeal the Appellant is one Dr. J.N. Paul and the Respondent is Badri Prosad Gupta, the Appellant of the 6th appeal. The subject-matter of ejectment is a room in the ground floor of a house in premises No 121/2/20 Surendra Nath Banerjee Road, which has been being used by the Appellant as his dispensary for the last 25 years or more. The Plaintiff urged two-fold grounds for showing that his requirement for this room is reasonable. First, it was contended on his behalf that he had a godown in his rented house at No. 3 Ramhari Mistri Lane, Calcutta, where he stocks his goods and held his office and as the landlord of that house has ejected him, he badly requires the dispensary room for the above purpose. The second ground of requirement was that the landlord would have to shift his shop from the verandah of premises No. 20 Surendra Nath Banerjee Road from which he has been ejected. Both the courts below have held that the requirement of the landlord is reasonable.

6. Mr. Dutt appearing on behalf of the Appellant of this appeal has urged two contentions in this Court. In the first place, he contended that in passing a decree for ejectment the Special Bench failed to take note of the comparative disadvantage of the tenant as required by the Explanation to Clause (h) of Section 12(1) of the Rent Control Act, 1950, because in the opinion of that court "the "landlord"s requirement must prevail over any possible hardship "or loss to the tenant". This observation of the Special Bench is no doubt not very happy or accurate, because the true meaning of the above-mentioned explanation, in so far as it deals with the question of reasonable requirement, is that a court should, in a matter of this description, weigh the comparative advantage and disadvantage of both parties in a scale, as it were, along with the other facts and circumstances of the case and then give its verdict for that party in whose favour the scale turns. In the present case, although the Special Bench has made the above inaccurate observation, I cannot say that it has made any mistake in practically, applying the law. The Respondent-landlord has been evicted from his godown and office at No. 3 Ram Hari Mistri Lane and also from his verandah shop at premises No. 20 Surendra Nath Banerjee Road. His necessity for shifting them to some other place is supreme and so it is meet and proper that he should get possession of his own shop room.

7. The second contention urged by Mr. Dutt on behalf of the Appellant of this appeal was that a partial eviction would have satisfied the requirement of both parties in this case. No such case was made out on behalf of the Appellant in any of the courts below and I do not think that any space would be left after the satisfaction of Respondent"s requirement, in which the Appellant can be suitably accommodated. The second contention put forth on behalf of the Appellant must also fail.

8. In the result I hold that there is no substance in these two appeals. They are accordingly dismissed with costs to the Respondent of each appeal.

9. Time is allowed in each case to the Appellant to vacate the disputed premises within December, 1957, failing which the Respondents of these two appeals will be entitled to take delivery of possession of the disputed premises by executing the decrees.

10. As both the appeals have been dismissed, it is not necessary to pass any separate order on the alternative applications u/s 115 of the Code of Civil Procedure.