
(1957) 07 CAL CK 0033
In the Calcutta High Court
Case No : Appellate Decree No. 837 of 1954

Basumati Devi	Vs	APPELLANT
Sannulal Shaw		RESPONDENT

Date of Decision : 27-07-1957

Acts Referred:

West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 — Section 11(3), 12(1), 14(3)

Citation : 61 CWN 909 : (1958) 2 ILR (Cal) 683

Hon'ble Judges : Renupada Mukherjee, J

Bench : Single Bench

Advocate : Prafulla Kumar Chatterjee, Haripada Saha and Biswanath Bajpai, for the Appellant; Amiya Kumar Mukherjee and Tathagata Mukherjee, for the Respondent

Final Decision : Allowed

Judgement

Renupada Mukherjee J.

1. This appeal arises out of a suit for ejectment from a shop room in premises No. 1, Bipradas Street, Beliaghata, Calcutta. Admittedly, this shop room was previously held by Appellant Sm. Basumati Debi under one Radha Mudi who was a tenant of the bigger premises within which the shop room is situate under the Plaintiff-Respondent. The Appellant was therefore a sub-tenant of the Respondent. It is not disputed that the intermediate tenancy of Radha Mudi has been determined by a decree for eviction and the Respondent has taken possession of the disputed premises as against Radha Mudi. The suit for eviction was founded on the ground that the Appellant-tenant had committed defaults in payment of rent on three occasions of two months each within a period of 18 months immediately preceding the suit and so under the proviso to Sub-section (3) of Section 11 of the West Bengal Premises Rent Control Act, 1950, read with Clause (i) of the proviso to Sub-section (1) of Section 12 of the same Act, the tenant was not entitle³ to protection against eviction. The Appellant denied in

the trial court that she was a defaulter within the meaning of the proviso to Sub-section (3) of Section 14 of the Rent Control Act, 1950. This defence was negated not only by the trial court but also by the lower appellate court in appeal and so the tenant has preferred this Second Appeal.

2. Mr. Chatterjee appearing on behalf of the Defendant-Appellant submitted that the courts below have committed an error of law in finding that was the date on which the intermediate tenancy of Radha Mudi was lawfully determined. The courts below have held that the tenancy of Radha Mudi was determined on the date when the notice to quit which was served on him by the Respondent expired, that is, on the last date of September, 1950. The present suit was instituted on April 3, 1952. The courts below have held that the Appellant became a direct tenant of the Respondent by operation of law on the ground of the determination of the intermediate tenancy and there were three defaults of the kind contemplated in proviso to Sub-section (3) of Section 14 of the Rent Control Act, 1950, within 18 months of the date of institution of the suit. The date of institution of the suit was, April 3, 1952.

3. Mr. Chatterjee contended on behalf of the Appellant that the intermediate tenancy of Radha Mudi was not legally determined on the last date of September, 1950, when the period of notice expired, but it was determined on the date when an ejectment decree was passed against Radha Mudi, namely, August 11, 1951. It is an admitted fact that between the last-mentioned date and the date of institution of the suit, the tenant-Appellant did not commit three defaults which would have disentitled her claiming protection against eviction. Mr. Mukherjee appearing on behalf of the Plaintiff-Respondent conceded that the legal position with regard to the determination of the tenancy of Radha Mudi has been correctly stated by the learned advocate for the Appellant and that the tenancy of Radha Mudi was determined on the date of the passing of the decree in the ejectment suit which was brought against him by the superior landlord, namely, the Respondent. He conceded that the Appellant became the direct tenant of his client on the date of the passing of the decree, that is, on August 11, 1951 and not earlier. He, however, argued that in claiming the benefit of the proviso to Sub-section (3) of Section 14 of the Rent Control Act 1950, his client, the landlord, is entitled to avail himself of the defaults which had been committed by the tenant during the regime of the intermediate tenant, namely, Radha Mudi. In support of his contention Mr. Mukherjee relied on a case reported in Charu Bala Das Vs. Madhu Sudhan Kundu and Others, wherein it has been held by P. N. Mukerjee, J. that a transferee landlord can avail himself of the default to the transferor landlord. Mr. Mukherjee contended that the principles of this decision are applicable to the facts of the present case, because the extinction of the intermediate tenancy of Radha Mudi should be regarded as a transfer of his interest in favour of the Respondent. Mr. Chatterjee on behalf of the Appellant submitted that the present case should be distinguished from the case reported in 60 O.W.N. 121 inasmuch as that was a case of transfer of interest of the previous landlord whereas the present case is one in which the interest of the

sub-tenant has merged in the interest of the intermediate tenant by operation of statute. After hearing both the learned advocates I am not in a position to give effect to Mr. Chatterjee's contention. On principle no distinction should be made between the case decided by P.N. Mookerjee, J. and the case which I am dealing. If a transferee landlord can avail himself of the defaults committed by the tenant during the regime of his transferor, there is no reason why a superior landlord, who has become the direct landlord of the sub-tenant by operation of law should not be allowed to avail himself of the defaults committed by the sub-tenant when the intermediate tenancy was valid and effective. In my opinion, no distinction should be made between these two classes of cases. Admittedly, the Appellant-tenant was a defaulter within the meaning of the proviso to Sub-section (3) of Section 14 of the Rent Control Act, 1960, if the defaults committed by her during the regime of intermediate tenant Radha Mudi be taken into account. In that view of the matter the decree passed by the lower appellate court must be supported although I do not agree with the reasons given by that court in support of the decree passed by it.

4. On grounds set forth above, I dismiss this appeal with costs to the Respondent.
5. Three months' time is allowed to the Appellant to vacate the disputed premises, failing which the Respondent will be entitled to take delivery of possession of the same by executing the decree.
6. Leave is asked for on behalf of the Appellant to file an appeal under Clause 15 of the Letters Patent and is refused.