courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 28/08/2026

(2013) 04 CAL CK 0004

In the Calcutta High Court

Case No : G.A. No. 1894 of 2012

Kamini Kapoor — APPELLANT

Vs

Punjab National Bank — RESPONDENT

Date of Decision : 23-04-2013

Acts Referred:

Citation : AIR 2013 Cal 206 : (2013) 4 CHN 32

Hon'ble Judges : I.P. Mukerji, J

Bench : Single Bench

Advocate : Jishnu Saha, Ashish Kumar Mukherjee and Ms. Sulagna Mukherjee, for the Appellant; Sankar Singh and Ms. Pinky Kushwahl, for the Respondent

Judgement

I.P. Mukerji, J.—The plaintiff was a lessee under a lessor. She held 1510.40 Sq. ft. on the ground floor of premises No. 9, Ezra Street, Kolkata - 700 001. The defendant bank was a sub-lessee under the plaintiff. There is no dispute that the plaintiff had the power to under-lease the demised property. The defendant paid rent to the plaintiff, last on 13th March, 2008, of the sum of Rs. 21,849/- per month. Now, it so happened that the lessor sold the property to a purchaser. The defendant promptly entered into an arrangement with the purchaser and started occupying the property, supposedly under him. This new arrangement was made on or about 1st August, 2010.

2. The justification of the defendant bank was that the head lease of the plaintiff expired on 13th November, 2002. The bank thought that they were in a good position to de-recognize the plaintiff.

3. The plaintiff on 30th June, 2011 issued a notice u/s 106 of the Transfer of Property Act, 1882 to the defendant, asking them to vacate the property and deliver possession thereof to them, by 15th July, 2011. The defendant continues to occupy the property.

4. A learned Counsel appeared for them. Two or three worthless points were taken. One of them was relating to the pecuniary jurisdiction of this court. When

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/kamini-kapoor-appellant-hash-…

the claim of the plaintiff is based on determination of lease and trespass with effect from 16th July, 2011 and mesne profits are claimed @ Rs. 2 lac per month on and from 16th July, 2011 till recovery of possession in addition to a decree for Rs. 8,73,960/- for arrear rent from 1st April, 2008 till 15th July, 2011, the valuation of the suit, on the basis of it does not appear to be erroneous. Hence, this point of pecuniary jurisdiction does not have any merit.

5. Secondly, a point was raised that the plaintiff does not have any right tide and interest over the property. This will be dealt with in the discussion below.

DISCUSSION

6. Ms. Sulagna Mukherjee, learned Counsel for the plaintiff first drew my attention to a decision of this Court, made by Ajoy Nath Ray, J. in the year 1992. This was in the case of Vithalbhai Pvt. Ltd. Vs. Union Bank of India,

7. That a tenant or lessee or sub-lessee is estopped from denying the tide of his landlord or lessor so long, he actually or ostensively enjoys possession under the landlord or lessor, and must deliver possession back only to him, even when the head lease has expired, was so eloquently put by the learned Judge in his judgment. I read a few paragraphs:

5. The point in this suit is whether a subtenant like the defendant in this suit can resist the claim for possession made by its immediate landlord against it on the basis that this landlord has lost title or right to possession under the lease by way of which the (immediate landlord) was originally holding the property.

6. The point, to my mind, is well settled by authorities and hardened principles of law. A tenant, insofar he claims as a tenant, is not permitted to dispute the tide of the landlord from whom his tenancy and possession have been derived. This is a rule of estoppel expressly enacted in the Evidence Act itself. On that basis, even a trespasser landlord can maintain a suit for eviction as against his tenant and it would not be open to the tenant to challenge the title of the landlord in any manner whatsoever. The reason for this long standing rule is simple to understand. The tenant comes into possession from and by reason of the landlord. As such, he shall hand over possession that person from whom he originally came to acquire it and shall not raise pleas or obstacles in that regard.

9. Mr. Kapoor appearing with Mr. Sinha on behalf of the plaintiff relied, in the above regard, upon two cases being the case of Bhagavatulla Krishna Rao Vs. Mungara Sanyasi and Others, . In my opinion, it was rightly contended on the basis of the aforesaid two authorities that the true proposition of law is that an estoppel against a tenant preventing him from disputing the title of the landlord continues, so long as the tenant continues in factual possession of the demised premises. Such estoppels does not cease with the running out of even the head lease of the immediate landlord in question. Mr. Kapoor submitted that on the basis of the Madras authority it could be demonstrated that a landlord can maintain the action for possession against his tenant even if the landlord himself

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/kamini-kapoor-appellant-hash-…

at that time was already a judgment-debtor in respect of a decree for possession obtained as against the immediate landlord by his superior landlord.

8. The Supreme Court with all its authority elucidated on the subject in the case of Vashu Deo Vs. Bal Kishan, as follows:

6. ..... u/s 108 clause (q) of the Transfer of Property Act, in the absence of contract or local usage to the contrary, it is an obligation of the tenant to put his lessor into possession of the property on the termination of the lease. Section 116 of the Evidence Act, which codified the common law rule of estoppel between landlord and tenant, provides that no tenant of immovable property or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had at the beginning of the tenancy, a title to such immovable property. The rule of estoppel so enacted has three main features: (i) the tenant is estopped from disputing the title of his landlord over the tenancy premises at the beginning of the tenancy; (ii) such estoppel continues to operate so long as the tenancy continues and unless the tenant has surrendered possession to the landlord; and (iii) Section 116 of the Evidence Act is not the whole law of estoppel between the landlord and tenant. The principles emerging from Section 116 can be extended in their application and also suitably adapted to suit the requirement of an individual case. Rule of estoppel which governs an owner of an immovable property and his tenant would also mutatis mutandis govern a tenant and his sub-tenant in their relationship inter se. As held by the Privy Council in AIR 1933 29 (Privy Council) and 19 CWN 1207 (Privy Council)) the estoppel continues to operate so long as the tenant has not openly restored possession by surrender to his landlord.

9. This principle was followed in the case of E. Parashuraman (D) by LRs. Vs. V. Doraiswamy (D) by LRs., Paragraphs 13, 14, 16, 18 & 20 (Paras 14, 15, 17, 19, 21 of AIR) and in the case of Bansraj Laltaprasad Mishra Vs. Stanley Parker Jones, Paragraphs 12 to 15 (Paras 14, 15, 16 & 17 of AIR).

10. The lease came to an end on 15th July, 2011.

11. Therefore, the defendant is entitled to no protection. There is no defence whatsoever to the claim of the plaintiff.

12. This application is allowed by passing an order in terms of (a) of the Master''s Summons.

13. The claim for mesne profits as claimed by the plaintiff is referred to a Special Referee for determination. Mr. Amitabha Ghosh, Advocate, a member of the Bar Library Club is appointed as the Special Referee at a remuneration of 350 GMs., per sitting to determine the mesne profits payable to the plaintiff upto delivery of possession or three years from date whichever is earlier. The report of the Special Referee should be filed in this Court within six months from the date of service of a copy of this order upon him. The suit is part decreed to the above extent. The department is to draw up the decree expeditiously.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/kamini-kapoor-appellant-hash-…

14. The balance claim will stand trial. Urgent certified photocopy of this judgment/order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/kamini-kapoor-appellant-hash-…