
(1947) 07 CAL CK 0023

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 1471 of 1946

Manasha Charan Guha

APPELLANT

Vs

Bejoy Sankar Ghose and Another

RESPONDENT

Date of Decision : 08-07-1947

Acts Referred:

Citation : (1947) 07 CAL CK 0023

Final Decision : Allowed

Judgement

Harries, C.J.—This is a Defendant's second appeal from a decree of a lower Appellate Court passed in favour of the Plaintiffs in a suit for ejectment, reversing the decree passed by the Court of first instance. The Defendant took a large number of points which appear to me to be baseless. It was suggested in the first place that the notice to quit was not sufficiently precise. It must be remembered that the notice to quit was written in English by a person who was writing in a strange language and one would not expect that precision that would be expected from a person writing in his own language. But even so, it appears to me that the notice to quit was a concise enough notice that possession was required at the end of the current month.

2. Some point was taken in the Court below that the term had been extended by a notice given by the Defendant under the Rent Control Order. But it is conceded that the notice required was not of sufficient length and did not extend the term. It was, however, suggested that, because the Plaintiffs had asked to amend their pleadings and pleaded this void notice, they in some way or other extended the term. This argument is quite beyond my understanding and quite obviously nothing was done to extend the term.

3. It is common ground that whilst the suit was pending the Rent Control Ordinance The reference is obviously to Para. 10-A of the Bengal House Rent Control Order, 1942, as introduced by the amendments published on 6th July, 1944,--Reporter was passed and it became necessary to obtain the consent of the Rent Controller before the suit could be proceeded with. Application was

made to the Rent Controller of the District and after some delay he heard the evidence and then appears to have reserved his judgment. He was moved to deliver judgment and he, ordered that the matter be put up on a certain date. Being aggrieved with this delay, the Plaintiffs moved the District Judge who is entitled, under the Ordinance, to hear appeals from decisions of the Rent Controller. The learned District Judge in his judgment pointed out that the Rent Controller has been guilty of considerable delay in delivering judgment and the learned District Judge then proceeded to decide the case in order to prevent further delay. In other words, the District Judge constituted himself a Court of first instance and gave permission for the suit to proceed.

4. What is necessary is that the permission of the Rent Controller and admittedly that was never granted in this case. Where a decision of a Rent Controller is reversed by the District Judge then the ultimate decision would be regarded as the correct decision. Had the Rent Controller decided this matter, then the view of the learned District Judge would prevail and it could be said that there was a consent of the Rent Controller before the Court. But here the Rent Controller had not decided the matter at all, but the District Judge had decided it for him, not as a Court of Appeal but as a Court of first instance.

5. It was urged that the District Judge could decide it because the Ordinance provides that any party aggrieved by an order of a Rent Controller may appeal to the District Judge. It is said that the Plaintiffs were aggrieved by the order directing the case to be put up on a certain date. They may have been aggrieved by that order and if the learned District Judge thought it was wrong the most he could have done was to direct the Rent Controller to decide the case forthwith. When a complaint of delay is made to an Appellate Court it does not entitle the Appellate Court to take the case out of the hands of the Court of first instance and decide it itself. The District Judge could only give or refuse permission on an appeal from a decision of the Rent Controller, but he could not do it as a Court of first instance.

6. It is urged that I cannot question the decision of the District Judge, because under the Ordinance his decision is final and it has been held that it is not revisable in this Court. I am not questioning the decision of the District Judge. All I say is that in this case the Rent Controller has never given a decision at all, and a decision given by the District Judge in place of the Rent Controller is no decision at all. That being so, in this case there was no decision of the Rent Controller which would entitle the Plaintiffs to proceed with this suit. The Court, therefore, should have dismissed the suit. The decree of the lower Appellate Court cannot, therefore, be maintained and the decree of the learned Munsif which is based on somewhat different grounds must be restored. In the result, therefore, this appeal is allowed, the decree of the lower Appellate Court is set aside, and the Plaintiffs' suit is dismissed. I would grant the Defendant costs in this Court, but not in the lower Appellate Court.