

(1902) 06 CAL CK 0021

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 212 of 1900

Nobin Chandra Chowdhury and others

APPELLANT

Vs

Surendra Nath Ghosh

RESPONDENT

Date of Decision : 23-06-1902

Acts Referred:

Citation : (1902) 06 CAL CK 0021

Final Decision : Dismissed

Judgement

1. This appeal arises out of a suit for arrears of rent. The defence so far as it is necessary to be referred to for the purposes of the present appeal was that the Defendant was entitled to credit for two payments made by him to the former landlord, before the Plaintiff became entitled to his interest by transfer. The first Court gave effect to this defence ; but on appeal by the Plaintiff the lower Appellate Court has reversed the decision of the first Court and given the Plaintiff a decree, disallowing the objection of the Defendant, on the ground that the Defendant had notice of the transfer of the former landlord's interest to the Plaintiff before he made the payments in question, and that the payments were not made bona fide. In second appeal it is contended for the Defendant-Appellant, first, that the lower Appellate Court is wrong in finding that the Appellant had knowledge of the transfer of the landlord's interest to the Plaintiff before the payments were made, and that those payments were not made bona fide, there being no evidence to warrant such finding, and, secondly, that the lower Appellate Court is wrong in holding that the mere fact of the Defendant having knowledge of the transfer was sufficient to disentitle him to credit for the payments made, when upon a proper construction of sec. 72 of the Bengal Tenancy Act it ought to have held that in the absence of notice from the transferee such as that section requires the transferee was not entitled to recover rent. We are of opinion that both these contentions are unsound. As to the first, we think the facts and the circumstances referred to in the judgment of the learned District Judge are sufficient to warrant the finding he had arrived at, namely, that the Defendant knew of the izara before the payments in question

were made by him, and that those payments were not made bona fide. As to the second contention though it is true that the knowledge which the Defendant had of the transfer of his former landlord's interest to the Plaintiff was not the result of any notice given by the Plaintiff, the transferee, still that circumstance cannot make the payments in question valid payments when they were made after the Defendant had become aware that the landlord's interest had been transferred to the Plaintiff. Sec. 72, sub-sec. 1, no doubt, says that "a tenant shall not, when his landlord's interest is transferred, be liable to the transferee for rent which became due after the transfer and was paid to the landlord whose interest was so transferred, unless the transferee has before the payment given notice of the transfer to the tenant." But the reference to the notice as proceeding from the transferee could not have been intended to mean that unless such notice proceeded from the transferee, knowledge of the transfer on the part of the tenant would not affect the validity of any payment made by him to the former landlord. Ordinarily, the tenant would be made aware of the transfer of his landlord's interest by a notice proceeding from the transferee, but there may be case in which without the transferee's giving any formal notice, the tenant may become aware of the transfer, as for instance, where the transferrer himself gives to the tenant notice of the transfer, and that, according to the finding of the learned District Judge, is the case here. Indeed, it would be the strongest evidence of the transfer having taken place where the fact is intimated to the tenant by the former landlord, the transferrer himself; and it could not have been intended that such a notice would be altogether inoperative in making the tenant liable to pay rent to the transferee. To hold otherwise would be in many cases, and the present case is one of that type--to let the tenant take advantage of his own fraud. The tenant may, to defraud the rightful landlord, make payments not bona fide to the transferee after having become aware of the transfer. In the present case the finding is that the Defendant made the payments in question to the former landlord with a view to receive back the money from him in satisfaction of a decree against him, and to give effect to such payment would be to countenance fraud. It was then contended that the case came under the second sub-section of sec. 72, as there were more tenants than one ; and that being so, the notice required was, in the language of that sub-section, "a general notice from the transferee to the tenants published in the prescribed manner." This contention is wholly unsound. Sub-sec. (2) runs thus: "Where there is more than one tenant paying rent to the landlord whose interest is transferred, a general notice from the transferee to the tenants published in the prescribed manner shall be a sufficient notice for the purposes of this section." The object of this provision is to relieve the transferee landlord from the necessity of giving notice to each tenant individually. It says that a general notice published in the manner prescribed by law shall be a sufficient notice. It does not say that such a notice shall be a necessary notice.

2. Sec. 72 of the Bengal Tenancy Act, does not, therefore, in our opinion stand in the way of the accrual of liability in the Defendant to pay rent to the transferee

landlord, by reason of any defect of notice of the transfer. In support of the view we take we may refer to the case of *Cook v. Gnerra* L. R. 7 Common Pleas, p. 132 (1872) in which upon the construction of 4 Ann, Ch. 16 (Chap. 3 in the revised statutes) sec. 10--a statutory provision, somewhat similar to sec. 72 of the Bengal Tenancy Act--it was held that it would be sufficient that the transfer should be brought to the mind of the tenant. In support of the view that it is only bona fide payments made to the transferrer landlord that can be held valid, we may also refer to sec. 50 of the Transfer of Property Act. The result then is that the contentions urged before us on behalf of the Appellant fail ; and this appeal must be dismissed with costs.