
(2018) 01 CAL CK 0132
In the Calcutta High Court
Case No : 441 of 2003

Pankaj Kumar Santra

APPELLANT

Vs

Asish Nag

RESPONDENT

Date of Decision : 11-01-2018

Acts Referred:

[West Bengal Premises Tenancy Act, 1956](#), [Section 2\(h\)](#) - Definition

Citation : (2018) 01 CAL CK 0132

Hon'ble Judges : Sanjib Banerjee, Sabyasachi Bhattacharyya

Bench : Division Bench

Advocate : H. K. Mitra, Suchismita Chatterjee, Md. Z. Rahaman, Siba Prosad Ghose

Final Decision : Disposed off

Judgement

1. It is with some regret that it has to be recorded that a completely different stand on facts has been taken on behalf of the respondent upon, possibly, the respondent discovering that he may have no legal right to be in possession of the suit premises. Unfortunately, the change of stand has taken place after the Court's mind was indicated to Advocate for the respondent on the last occasion.

2. It is not in dispute that one Kalipada Dey was the original tenant at the suit premises. Upon Kalipada's death in 1971, Kalipada's widow Susama and daughter Ranjita inherited the tenancy. The notice to quit was issued on October 01, 1971 to both Susama and Ranjita. It appeared, prior to today, to be the admitted position that at the relevant time Ranjita was married and did not stay at the suit premises. However, it is now sought to be asserted on behalf of the respondent that Ranjita resided with her mother at the suit property at the time that the notice was issued to the heirs of Kalipada. It is also recorded that it is the appellant's case that the notice to Ranjita was delivered to Ranjita at some other address and not at the suit premises.

3. It is not in dispute that subsequently, Ranjita may have moved out from the

suit premises and Ranjita's daughter lived at the suit premises with maternal grandmother Susama. During the pendency of the suit, the property was transferred by the erstwhile owners, to the present appellant. The suit has now been dismissed and the appeal arises from such judgment and decree of June 30, 1997.

4. The principal issue that has arisen in the appeal is as to which of the heirs of a tenant or a statutory tenant are given the protection in view of Section 2 (h) of the West Bengal Premises Tenancy Act, 1956. The appellant has relied on a judgment reported at 1995 (1) SCC 164 for the recognition therein, on the basis of the definition of a "tenant" in the 1956 Act that a tenant would include any person continuing in possession of the tenanted premises after the termination of his tenancy or, in the event of such person's death, such of his heirs as were ordinarily residing with him at the time of his death.

5. In other words, for Labanya to be entitled to the protection under the 1956 Act, two things must have to be established by Labanya's heir: that Ranjita continued in possession of the suit premises after the termination of the tenancy; and, that such possession of Ranjita continued till her death, at which time Labanya was ordinarily residing with Ranjita.

6. Since it is the case of the appellant that Ranjita did not stay at her paternal place after her marriage and moved a few houses away, upon mother Susama's death in 1992 neither Ranjita nor any other person was entitled to remain in possession of the suit premises. The suit was contested, initially on behalf of Labanya and, on Labanya's death, by her heir. Labanya would have had no right to retain possession of the suit premises under the 1956 Act after the death of Susama since Labanya was not an heir of Susama and Labanya could only claim to be an heir under Ranjita but Ranjita did not reside at the suit premises at the relevant point of time. However, the respondents herein have now joined issue on such score to suggest that Ranjita continued in possession of the suit premises after her tenancy was terminated and till her death.

7. It is difficult to accept such position, particularly since Labanya or her heir set up an alternative case of Labanya claiming as an heir of Susama under an alleged Will. If Labanya was entitled to protection under the 1956 Act in respect of the suit premises, there was no need for the exercise of Labanya being shown as a legatee under Susama's alleged Will. In any event, a legatee under a Will of a statutory tenant cannot be regarded as an heir of such statutory within the definition of "tenant" in Section 2(h) of the 1956 Act.

8. Thus, the matter hinges on whether Ranjita was in possession of the suit premises at the time that she received the notice determining the tenancy and whether Ranjita continued to be in possession thereof till her death and, further, whether Labanya was residing with Ranjita at the suit premises at the time of Ranjita's death.

9. Since no evidence is available on such aspect of the matter, the judgment and

decree impugned dated June 30, 1997 stand set aside and the matter is remanded for a fresh consideration on the above issue by the trial court. The trial court will limit its consideration to such issue and render a reasoned judgment within three months of the receipt of a copy of this order.

10. In the event the issue is decided in favour of Labanya upon it being found that Ranjita resided at the suit premises at the time of receipt of notice to quit and continued in possession thereafter till her death, the trial court will be at liberty to award such costs as it may be deemed fit. In the event the issue is answered against the respondent herein, the respondent herein will be liable to pay costs assessed at Rs. 1 lakh and it will be open to the appellant herein to take appropriate steps against the respondent for perjury, in accordance with law.

11. F.A. 441 of 2003 and CAN 9969 of 2015 are disposed of without any immediate order as to costs. Certified website copy of made available to the parties upon compliance of all requisite formalities.