

(1986) 04 CAL CK 0047
In the Calcutta High Court
Case No : A.O.D. No. 473 of 1967

Pankajini Ganguli and Others

APPELLANT

Vs

Ranjit Singh and Others

RESPONDENT

Date of Decision : 07-04-1986

Acts Referred:

West Bengal Premises Tenancy Act, 1956 — Section 13(1)(a)

Citation : 90 CWN 1191

Hon'ble Judges : Sukumar Chakravarty, J;A.M. Bhattacharjee, J

Bench : Division Bench

Advocate : M.M. Saha, for the Appellant;P.N. Bhattacharjee, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Bhattacharjee, J.—This is an appeal by the tenant and her sub-tenants against the decree passed against them on the ground of unauthorized sub-letting made by the tenant to and in favour of the sub-tenants. The tenant-appellant has not denied the sub-lettings but has pleaded that those were done with the consent of the then landlord and before the commencement of the West Bengal Premises Tenancy Act, 1956. The learned Judge has, however, found that while some of the sub-lettings were made before the commencement of the West Bengal Premises Tenancy Act, 1956, some were also made after such commencement without the previous consent in writing of the landlord as required u/s 13(1) (a) of the West Bengal Premises Tenancy Act, 1956 and that the tenant is, therefore, liable to be evicted on that score. It has been urged that the learned Judge ought to have held that all these sub-tenancies were pre-Act sub-tenancies and were, therefore, outside the mischief of Section 13(1)(a). Under the provisions of Section 13(1) (a), a landlord is entitled to eject his tenant "where the tenant without the previous consent in writing of the landlord transfers, assigns or sub-lets in whole or in part the premises held by him". It has been held by this Court in Radharani Dasi v. Angur Bala (65 Calcutta Weekly Notes 1119 at 1122) and also in Deokaran v. Renuka (82 Calcutta Weekly Notes

30 6 at 30 8) that Section 13(1)(a) of the West Bengal Premises Tenancy Act, 1956 applies only to post-Act sub-tenancies. It is true that the Supreme Court, while construing the corresponding provisions of Section 13(1)(e) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 in *Goppulal Vs. Thakurji Shriji Shriji Dwarakadheeshji and Another*, has held (at 1294) that it is immaterial as to whether the sub-letting is pre-Act or post-Act, that "the words take within their sweep any sub-letting which was made in the past and has continued up to the present time", that "it does not matter that the sub-letting was either before or after the Act came into force" and that "all such sub-lettings are within the purview of clause (e)". It must however, be noted that Section 13(1)(e) of the Rajasthan Act uses the expression "the tenant has assigned sub-let or otherwise parted", while the relevant expression in Section 13(1)(a) of the West Bengal Act is "the tenant transfers, assigns or sub-lets". As would appear from the observations of Bachawat, J. in *Gappulal* (supra, at 1294), the user of the present perfect tense namely, "has sub-let", led the Supreme Court to observe in the manner as quoted hereinabove and to conclude that the relevant provisions would cover all sub-tenancies, whether pre-Act or post-Act. The relevant provisions of Section 13(1)(a) of the West Bengal Act, however, use the present tense namely, "sub-lets", and that, in our view, makes all the difference for which the ratio of the Supreme Court decision "in *Gappulal* (supra) would not apply in the construction of the provisions of Section 13(1)(a) of the West Bengal Act. And when we find further that the preceding Rent Control Act of West Bengal of 1950 also used present perfect tense, namely "has sub-let", and that the legislature while replacing the 1950-Act by the present Act has used present tense in Section 13(1)(a), the natural conclusion would be that such switching over to present tense is deliberate and purposeful and that only post-Act sub-lettings are within the contemplation of the present Section. In our view, therefore, the decisions of this Court in *Radharani* (supra) and in *Deokaran* (supra) are still good laws, the decision of the Supreme Court in *Gappulal* (supra) notwithstanding.

2. But it would not be necessary for us to decide in this appeal as to whether the learned Judge was right in holding that some of the sub-tenancies were post-Act and were made without the previous consent in writing of the landlord, as in our view, we would have to allow the appeal and set aside the judgment and decree of the Court below for some other obvious reason. The suit premises have been described in paragraph 1 of the plaint as well as in the Schedule thereto as "premises no. 10, Khelat Ghosh Lane, Calcutta, excepting two rooms in the ground floor". The defendant No. 1 has in paragraph 4 and 9 of the written statement categorically stated that "the entire premises" being no. 10, Khelat Ghosh Lane are the subject-matter of the tenancy and that "the suit is bad for wrong description of the suit-premises as they left out two rooms on the ground floor of the premises". Even the plaintiff-landlord's own transferor, P.W.-1, has stated in his deposition that "I let out the entire premises" to the husband of the tenant-appellant. There can, therefore, be no doubt that the entire house being

no. 10, Khelat Ghosh Lane is the suit-premises and no portion thereof is excluded from the tenancy. It is true that the tenant-defendant has herself admitted that the previous landlord, P.W.-1 "dispossessed me from two rooms of the ground floor", but forcible dispossession of a tenant by the landlord of a portion of the tenancy does not affect the continuity or extent of the tenancy which continues as before. As observed by the Privy Council in *Midnapore Zamindari Co. v. Naresh Narayan Roy* (A.I.R. 1924 Privy Council 144 at 147), "in India persons are not permitted to take forcible possession" and "they must obtain such possession as they are entitled to through a Court" and this observations have been quoted with approval by the Supreme Court in *Lallu Yeshwant Singh v. Rao Jagdish Singh* (A.I.R. 1968 S.C. 620 at 622). Forcible recovery of possession by a landlord of a part or whole of the tenancy is no recovery of possession in the eye of law, and, unless the statute of limitation intervenes, the tenancy continues as before and the possession in law remains with the tenant. At any rate, after the evidence of the previous landlord (P.W.-1) to the effect that the entire premises were let out and in the absence of any evidence whatsoever on this point from the present landlord, it must be held that the entire house, being No. 10, Khelat Ghosh Lane, is the subject matter of the tenancy and no portion thereof is excluded from the tenancy.

3. That being so, the plaintiff-respondent sued the tenant appellant in abetment not in respect of whole of the tenancy, but omitted a part of. the premises from the ambit of the suit. This, it is settled law, the landlord can not do. The landlord must sue the tenant in abetment for the whole of the premises and if the whole is not included in the suit and a part is excluded there from, the suit can not but fail. No authority should be necessary for such a well-settled proposition; but still, if need be, reference may be made to the Full Bench decision of the Madras High Court in *Kannyan v. Alikutti* (A.I.R. 1920 Madras 838) where Wallis, C.J., after referring to and relying on the Privy Council decision in *Harihar Banerjee v. Ramasashi Roy* (A.I.R. 1918 Privy Council 102), pointed out that a lesser can not sue to eject a lessee from a part of the lease-hold.

We, therefore, allow the appeal, set aside the judgment and decree under appeal and dismiss the suit. We, however, make no order as to costs.

Sukumar Chakravarty, J.

I agree.