

(1957) 06 CAL CK 0010
In the Calcutta High Court
Case No : Letters Patent Appeal No. 1 of 1956

Pulin Behary Shaw

APPELLANT

Vs

Miss Lila Dey

RESPONDENT

Date of Decision : 10-06-1957

Acts Referred:

Transfer of Property Act, 1882 — Section 109, 111, 113

West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 — Section 12(1)

Citation : AIR 1957 Cal 627 : (1958) 2 ILR (Cal) 426

Hon'ble Judges : Lahiri, J;Guha, J

Bench : Division Bench

Advocate : Atul Chandra Gupta, Charu Chandra Ganguly and Narendranath Chaudhury, for the Appellant;Prafulla Chandra Roy and Hemendra Chandra Ghose, for the Respondent

Final Decision : Allowed

Judgement

Lahiri. J.

1. The appellant Pulin Behari Shaw, was a monthly tenant under one Amulya Ranjan Dey, brother of the plaintiff respondent, in respect of a shoproom on the groundfloor of premises No. 66/4 (formerly 48) Strand Bank Road at a monthly rent of Rs. 130/3/6. The plaintiff sued the appellant for ejectment on the allegation that she had purchased the interest of her brother and served a notice of attornment and had determined the defendant's tenancy by a notice to quit dated 2-1-1952 17th Pous. 1358 requiring the defendant to vacate on the expiry of the month of Magh. According to the plaintiff the defendant is not entitled to the protection of the Rent Control Act of 1950, because the plaintiff reasonably required the room for her own occupation and also for building a stair case; she further alleged that the defendant was a defaulter from Chaitra, 1356 up to Kartik, 1357 which disentitled him to the protection under the Act of 1950. The plaintiff's case of reasonable requirement has been disbelieved by all the courts and does not arise for consideration. The only question is whether the defendant

was a defaulter on three occasions of two months each within a period of eighteen months. On this point the defence is that the tenancy stood in the name of the plaintiff's brother Amulya Ranjan Dey who had been prosecuting Rent Appeal No. 132 of 1950 in respect of the tenancy in suit as landlord in the court of the Third Judge of the Small Cause Court till the 21-9-1950 when the said appeal was withdrawn by him; consequently the defendant deposited the rent for the entire period in the office of the Rent Controller in the name of the plaintiff's brother Amulya in the bona fide belief that he was entitled to the rent of the said period. The defendant also pleaded that the plaintiff obtained a decree against the defendant for rent for the same period in Rent Suit No. 6592 of 1950 of the Court of the Sixth Judge on 11-12-51 and on 13-12-51 the defendant again deposited the entire amount of rent decreed against him together with all costs. The defence also contained a denial of the receipt of the notice of attornment but on this point the finding is against the defendant.

2. The trial court dismissed the suit upon the findings that the defendant was not a defaulter within the meaning of the proviso to Section 14(3) read with Section 12(1) Proviso (i), that the notice to quit had not been proved and that at any rate the plaintiff had waived the notice to quit by accepting rent from Falgun 1358 up to Chaitra 1359 which had been sent by money order by the defendant to the plaintiff. This decision of the trial court was reversed on appeal by a Special Bench of the Court OF Small Causes and the decision of the Special Bench has been affirmed on second appeal by P. N. Mookerjee, J. and against the judgment of P. N. Mookerjee, J. the tenant has brought this appeal under clause 15 of the Letters Patent.

3. It is admitted by both sides that the tenant deposited the entire rent from Chaitra 1356 to Kartik 1357 in the office of the Rent Controller; but that deposit has been held to be invalid both by the Special Bench and also by P. N. Mookerjee, J. because the deposit was not in the name of the plaintiff but in the name of her brother, Amulya Ranjan who had sold his interest to the plaintiff and who had also sent a notice of attornment to the tenant. It has been held that after the receipt of the notice of attornment the tenant should have deposited the rent in the name of the assignee and not in the name of the original lessor who is the brother of the assignee and consequently the deposit in the name of the brother was invalid. It is also an admitted fact that on 16-9-50 the plaintiff instituted Suit No. 6592 of 1950 of the Court of the 6th Judge of the Court of Small Causes for recovery of arrears of rent from Chaitra 1356 to Aswin 1357 and that suit was decreed on 11-2-51 and the tenant deposited the entire decretal dues with costs on 13-2-51 which were withdrawn by the plaintiff. After depositing the decretal dues the tenant applied to the Rent Controller for withdrawing his deposit when he found that the deposit with the Rent Controller had been withdrawn by the plaintiff's brother Amulya Ranjan De. Mr. Roy appearing for the plaintiff respondent has pointed out that the finding of the trial court to the effect that Amulya Ranjan had withdrawn the entire deposit with the Rent Controller is not correct. It is pointed out that what appears from the

evidence of D. W. 2 Ganesh Ranjan Chowdhury, a clerk of the Rent Control Office is that on 6-2-1952 Amulya Ranjan De withdrew the rents deposited for the months of Bhadra. Aswin and Kartik 1357 in spite of an order of the Registrar dated 20-12-51 to the effect that the rents for those three months were not to be withdrawn by Amulya Ranjan. The position therefore is this: the tenant paid the entire rent from Chaitra 1356 to Aswin, 1357 to the assignee under the decree in Suit No. 6592/1960 and he again paid the rents for Bhadra, Aswin and Kartik to the assignor through the Rent Controller"; and in spite of that he is denud to be a defaulter within the meaning of Section 12(1) (i) read with the proviso to Section 14(3). With regard to the deposit under the decree there can be no question that the deposit was beyond time and would not protect the tenant. With regard to the deposit in the office of the Rent Controller it is said to be invalid because it was made in name of a wrong person.

4. Dr. Gupta appearing for the appellant has argued that u/s 109 Transfer of Property Act the transferee of the lessor is not entitled to rent from the lessee if the lessee has paid it to the lessor "not having reason to believe that such transfer has been made." Reliance has also been placed on Section 50 which protects a lessee who pays rent, in good faith to a person holding under a defective title. If, therefore the appellant deposited rent in the office of the Rent Controller in the name of Amulya Ranjan not having reason to believe that he had transferred his interest to his sister, Miss Lila Dey, the deposit would be a valid deposit.

5. Amulya Ranjan sold his interest to the plaintiff, his sister, by a conveyance dated 12-8-1949. It appears that from 1948 the relationship between Amulya Ranjan and the appellant was extremely strained and the following is a list of cases between the parties, (a) In 1948 the appellant Pulin brought a case for compelling Amulya Ranjan who was the landlord to reconstruct a certain wall which had been pulled down by the Port Commissioners under whom Amulya Ranjan held as a lessee. The Rent Controller directed Amulya Ranjan to reconstruct the wall and on his failure to comply with the order authorised the tenant, Pulin to spend a sum of Rs. 650/- for the purpose and this sum was ordered to be recovered from the monthly rent at the rate of Rs. 140/- per annum. The final judgment in this proceeding was delivered by A.N. Sen J., in Civil Rules 939 and 940 of 1949 on 14-11-1949. See Ex. C.

(b) Amulya Ranjan applied u/s 13 of the Calcutta Rent Ordinance for permission to eject Pulin and this application was rejected as a counter blast to the proceeding for reconstruction of the wall.

(c), Pulin brought a case u/s 34 of the Act of 1948 against Amulya Ranjan for causing obstruction to the construction of the wall sanctioned by the Rent Controller and Amulya Ranjan was sentenced to a fine of Rs. 50/- which was reduced on appeal to Rs. 30/- judgment of the appellate court is Ex. B dated 14-2-50.

(d) There was a proceeding for standardisation of rent under the Act of 1948 and in this proceeding the rent was standardised on 10-12-49. Amulya as the landlord of the tenancy filed an appeal against that order which was Rent Appeal No. 1327 1950. It appears from Ex. D, ordersheet of the court of appeal that it was withdrawn on 21-9-1950.

6. It is against the background of all these facts which have been found by all the courts below and which are not challenged before us that We shall have to determine the question whether the tenant deposited rents in the name of Amulya Ranjan not having reason to believe that he had made any transfer. Mr. Roy appearing for the plaintiff respondent places strong reliance upon the letter of attornment dated March 18, 1950 signed by Amulya Ranjan and Confirmed by Miss Lila Dey by her letter dated 19-3-1950. Both these letters are full of inconsistent claims; for example the first sentence in Amulya Ranjan's letter the tenant is required to look to Miss Lila Dey "as your landlady" which implies the subsistence of the relationship of lessor and lessee; but the very next sentence calls upon the tenant to go on paying her "damages by way of rent, on account of the determination of your tenancy by my ejectment notice dated 10-2-1949." The same inconsistency also vitiates the letter of Miss Lila Dey. Be that as it may, it is contended by Mr. Roy that Amulya Ranjan's letter gives unequivocal notice of assignment of the lessor's interest & that is all that is required to take away the lessor's protection under the proviso to Section 109. If the matters rested here it might be, said that from the date of receipt of these letters the tenant was under an obligation to pay rent or damages to the assignee and not to the original lessor. It, however, appears that although Amulya Ranjan purported to have transferred his interest to his sister on 12-8-1949 he was prosecuting Civil Rules 939 and 940 of 1949 in this Court as he landlord of Pulin Behari in a proceeding u/s 38 till 14-11-1949 when A. N. Sen, J. finally discharged those Rules by a judgment, Ex. C. Again although; Amulya sold his interest to his sister on 12-8-1949, he as the landlord of Pulin Behari filed an appeal against an order of the Rent Controller dated 10-12-49 in a proceeding for standardisation of rent under the Act of 1948 and this appeal was Rent Appeal No. 132 of 1950 before the Third Judge of the Court of Small Causes. It also appears that though Amulya Ranjan served the notice of attornment on 19-3-1950, he was prosecuting the aforesaid Rent appeal as the landlord of P-l'n B hari till 21-9-1950 when the appeal was finally withdrawn, (See Ex. D.). Amulya Ranjan was therefore speaking to the tenant in two voices. By the latter of attornment he was proclaiming that the plaintiff was the landlord of Pulin Behari; but in proceedings before this Court and before the Rent Controller he was proclaiming that he was himself the landlord. Pulin Behari was a party to all these proceedings and he knew that in spite of the letter of attornment and in spite of the purported assignment Amulya Ranjan was holding himself out as his landlord in all the aforesaid proceedings. No tenant could, without considerable risk to his interest, ignore the solemn proceedings in Courts of Law to act upon a dubious letter of attornment. I accordingly hold upon Ex. C and Ex. D that the tenant had no

reason to believe that any transfer had been made in favour of the plaintiff and consequently under the proviso to Section 109 Transfer of Property Act the tenant was not liable to pay rent to the transferee at least up to 21-9-1950 when Rent Appeal No. 13271950 was withdrawn by Amulya Ranjan, September 21, 1950 corresponds to the 5th Aswin, 1357 B.S. The tenant was therefore fully justified in depositing all rents up to Aswin 1357 in the name of his original lessor Amulya Ranjan and the deposit in the Rent Controller's office up to Aswan 1357 in the name of Amulya Ranjan must be regarded as valid.

7. The dual role played by Amulya Ranjan subsequently also supports the conclusion that the tenant had good reasons for not believing that Amulya, had transferred his interest to his sister. In spite of the letter of attornment dated March 19, 1950 we find that even as late as February 6, 1952, exactly thirteen days before the institution of the present suit, Amulya was surreptitiously withdrawing the deposit in the Rent Controller's office for the months of Bhadra, Aswin and Kartik, 1357 presumably in assertion of his right as a landlord and at the same time we find his sister, on whose behalf Amulya himself was looking after the litigation and was present in court on all the dates of hearing, as pointed out by the trial Judge, challenging the validity of the deposit in his name. The trial Judge points out that the interest of the plaintiff and Amulya are identical. Upon this finding we are confronted with the curious spectacle of a sister challenging the validity of deposits made in the name of her brother and the brother, looking after the litigation for his sister, surreptitiously withdrawing the deposits as if they were valid. It is as if the deposit is invalid for the purpose of ejectment, but valid for the purpose of getting the money. It is impossible to accept such a preposterous claim which is inherent in the plaintiffs case.

8. With regard to the decree obtained by the plaintiff in Rent Suit No. 6592 of 1950 there can be no doubt that it does not operate as *res judicata*, first because it was not open to appeal and secondly because the decree was passed by a Court of Small Causes which was not competent to try the subsequent suit (i.e. the present suit) for ejectment. I have no hesitation in holding that the decree was erroneous as it did not consider the effect of the proviso to Section 109 Transfer of Property Act with reference to C. Rules 939 and 940 of 1949 and Rent Appeal No. 132 of 1950 which was pending till 21-9-1950.

9. For these reasons it seems to me that till 21-9-1950 upto which date Amulya Ranjan was holding himself out as the landlord of Pulin there was no obligation of Pulin to pay rent to Amulya's assignee. Mr. Roy relied upon a decision of this Court in the case of *Pyarilal v. Madhoji* 17 Cal LJ 372 (A) for the proposition that u/s 109 Transfer of Property Act, the title of the assignee is complete on the execution of the deed of assignment and is not postponed till the notice of assignment. It is true that under the Indian Law a letter of attornment is not necessary to complete the title of the assignee of the reversion; but nevertheless under the proviso to Section 109 the lessee is under no obligation to pay rent to the assignee if he has paid it to the assignor without having reason to believe

that there was an assignment. In my opinion the present case comes within the proviso. The plaintiff may have acquired a good title to the property by virtue of the assignment by her brother in her favour, but she had no light to recover the rent up to 21-9-1950 corresponding to the 5th Aswin, 1357 from the lessee and would have to look to her brother for the rent for this period; but it appears that she has already realised it from the lessee under the decree in the Small Cause Court Suit No 6592 of 1950.

10. As I have held that the deposits made by the tenant in the office of the Bent Controller in the name of Amulya Ranjan De were valid deposits under the proviso to Section 109 Transfer of Property Act it is not necessary to consider whether those deposits were also valid u/s 50 which has also been relied upon by Dr. Gupta. The tenant cannot accordingly be held to be a defaulter Within the meaning of Section 12(1) Proviso (i) read with the proviso to Section 14(3) of the Rent Control Act of 1950.

11. The defence on which the defendant succeeds before us, though specifically raised in paragraphs 3, 4 and 5 of the written statement and though hinted at by the trial Judge was unfortunately lost sight of before the first appellate court and also in Second Appeal. The trial court committed serious mistakes on questions of law in holding that the period of eighteen months in the proviso to Section 14(3) must be a period immediately preceding the institution of the suit and also in holding that the landlord had waived the notice to quit by accepting rents for a period subsequent to the notice.

12. The glamour of the points of law on which the trial court went wrong was responsible for the oversight of the real question which strikes at the very foundation of the plaintiff's case, although it was specifically raised by the defence and although all the materials for its determination are on the record. In view of the decision on the first point raised by the appellant it is hardly necessary to consider the second point involved in the appeal, but having regard to the very learned argument advanced before us by Dr. Gupta I consider it proper to express my opinion.

13. The second point raised by Dr. Gupta is that the plaintiff must be deemed to have waived the notice to quit by accepting rent for the period after the expiry of the notice. The facts upon which this argument is based are these: the plaintiff served a notice to quit on the 17th Pous 1358 requiring the defendant to vacate on the expiry of the month of Magh, 1358. Thereafter rents from Falgun, 1358 upto Chaitra 1359 were sent by money order by the tenant and accepted by the plaintiff. Upon these facts it is argued that the tenant by the tender of the rent was expressing his intention to continue the tenancy and the landlord by accepting it was showing an intention to treat the lease as subsisting, and accordingly the consensus ad idem required to constitute a waiver within the meaning of Section 113 Transfer of Property Act was present. Strong reliance was placed upon illustration (a) to Section 113 and it was argued that Section 113 Transfer of Property Act has to be read along with illustration (i). The value

of illustration to a section as pointed out by the Judicial Committee in the cases of Syedul v. Yeoh Ool, 43 Ind APP 256: (AIR 1916 PC 242) (B) and AIR 1944 67 (Privy Council) was also relied upon. There is no doubt that the facts of the present case are exactly similar to the facts in illustration (a) and if we were to, decide the case upon the Transfer of Property Act alone we would be bound to hold that there was a waiver; but the question that requires consideration is whether the West Bengal Premises Rent Control Act (1950) has made any difference to the rights of the parties. I have no doubt in my mind that it has. Section 12 (1) of the Act has imposed a bar to the eviction of the tenant unless the landlord is able to bring the case within one of the nine clauses mentioned in the proviso. So long as this bar subsists the tenant is entitled to a statutory protection against eviction notwithstanding the fact that his tenancy has been effectively determined by a notice to quit u/s 106 Transfer of Property Act. This statutory right of the tenant to remain on the demised premises even after the determination of his contractual tenancy has been described in some decided cases as a statutory tenancy. If therefore there has been payment and acceptance of rent after the determination of the contractual tenancy such payment and acceptance may be attributed either to the contractual tenancy or to the statutory tenancy brought into existence by Section 12 (1). Accordingly the payment and acceptance of rent after the determination of the contractual tenancy does not unequivocally lead to the conclusion that the contractual tenancy has revived and cannot by itself prove waiver of notice to quit which is equivalent to the revival of the contractual tenancy. That is why it has been said that some evidence to prove an agreement to revive the contractual tenancy is necessary to constitute a waiver under the different Rent Control Acts and that is why. it has been said that after the Rent Control Acts have come into operation mere payment and acceptance of rent are not sufficient by themselves to constitute waiver of notice to quit. This is the principle underlying the decisions of this Court in the case of Panchanan Ghose Vs. Haridas Banerjee, , a decision to which I was a party and Mahadeo Prasad Vs. Sm. Sulekha Sarkar, , decided by P.N. Mookerjee J. which was approved in Panchanan's case (D), and all other decisions which were approved in Panchanan's case (D). Dr. Gupta has argued that the principles of the English Law of waiver as based upon principles of English jurisprudence and borrowed from English decisions cannot be relied upon for nullifying the effect of the plain provisions of Section 113 Transfer of Property Act. It has been pointed out that under the English Law there can be no waiver of a notice to quit and waiver or withdrawal of a notice to quit under the English Law can only be effected by the creation of a new tenancy. See Foa on Landlord and Tenant -- 7th Edition -- Page 607 -- Article 972 and also Woodfall on Landlord and Tenant -- (25th edition) page 1052, Articles 2248 and 2249. Under the Indian law. however. Section 113 Transfer of Property Act contains an express provision relating to waiver of a notice to quit and full effect must be given to the provision of Section 113 without any reference to notions derived from English Law. It is true that the law of waiver of a notice to quit is not the same in India as in England and it is also true that if a case comes under

illustration (a) of Section 113 it is not necessary to prove the creation of a new tenancy which is necessary under the English Law. For these reason it may not be proper to decide the question of waiver of notice under the Indian Law by reference to English decisions. The question, however, still remains whether under the Indian Law after the enactment of the Rent Control Acts mere payment and acceptance of rent after the termination of the contractual tenancy will constitute waiver of notice to quit. I have no doubt in my mind that it will not in the absence of evidence to prove that the rent that was paid and accepted was for the contractual tenancy that had been determined and not for the statutory tenancy u/s 12 (1) of the Act of 1950. The consensus ad idem required under the English Law is different from that required under the Indian Law, but nevertheless it must be proved to constitute waiver of notice to quit u/s 113 Transfer of Property Act read with Section 12 (1) of the Rent Control Act of 1950.

14. Dr. Gupta has also argued that the concept of a statutory tenancy is peculiar to English Law under which a statutory tenancy normally arises when a tenant holds over after the expiration of a term. See Megarry on Rent Acts (8th Edition) -- page 172. Such a concept it is argued cannot be incorporated into Indian Law in the absence of any statutory provision. I am however entirely unable to agree. The concept of a statutory tenancy is inherent in Section 12 (1) of the West Bengal Premises Rent Control Act of 1950 and it is an encroachment on the rights of the lessor under the provisions of the Transfer of Property Act. Under the Transfer of Property Act the lessor had a right to evict the tenant merely on proof of service of notice to quit u/s 106 whereas under the Rent Control Law he must in addition bring his case under one or other of the nine clauses mentioned in the proviso to Sub-section (1) of Section 12 of the West Bengal Premises Rent Control Act of 1950. This in my opinion has brought about all the difference in the law of waiver before and after the coming into operation of the Rent Control Laws. The statutory tenancy under the Indian Law may not be the same kind of statutory tenancy as it is understood in English Law; but nevertheless the concept is known to Indian Law. Dr. Gupta has also argued that the tenancy that comes into existence u/s 12 (1) of the West Bengal Premises Rent Control Act (1950) is nothing but the old tenancy and therefore the notion of two tenancies is misleading. I am afraid, I cannot accept this argument as correct. The tenancy that subsists u/s 12 (1) is a tenancy under the Statute, whereas the tenancy that has been determined is a tenancy created by the act of parties. If the tenancy that subsists u/s 12 (1) be treated as the same as the old contractual tenancy it would require another notice u/s 106 Transfer of Property Act its its determination. Accordingly although the terms and conditions of the tenancy u/s 12 (1) may be the same as in the contractual tenancy it cannot be denied that in the eye of law they are different tenancies. For these reasons I am not prepared to hold that the decision in Panchanan's case (D) is wrong and the argument on the question of waiver cannot be accepted.

15. It is stated by the learned Advocates on both sides that the tenant has deposited all rents up-to-date in the trial court. The plaintiff will be at liberty to

withdraw all the rents thus deposited without prejudice to her rights and contentions.

16. In the result this appeal succeeds on the first point raised by the appellant, the judgment and decree in the Second Appeal and also the judgment and decree of the Special Bench of the Court of Small Causes are set aside and the decree of the 6th Bench restored though for different reasons. On the question of costs I must say that under ordinary circumstances I would not have allowed costs to the appellant because the point on which the appeal succeeds before us was not raised in this form either before P. N. Mookerjee J. or before the Special Bench; but the extraordinary dishonesty displayed by Amulya Ranjan in this litigation and the readiness with which the plaintiff allowed herself to be used as a tool in the hands of her designing brother induce me to make her liable for all costs incurred by the appellant in all the courts below, the hearing fee before us being assessed at ten gold mohurs.

Guha, J.

17. I agree.