
(1983) 12 CAL CK 0008
In the Calcutta High Court
Case No : A.F.A.D. No. 373 of 1977

Satyabrata Bose

APPELLANT

Vs

Sm. Amiya Bala Bose (dead) and in her place Anil Kr. Basu
and Others

RESPONDENT

Date of Decision : 08-12-1983

Acts Referred:

Evidence Act, 1872 — Section 116

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

Citation : AIR 1984 Cal 392 : 88 CWN 367

Hon'ble Judges : Amitabha Dutta, J

Bench : Single Bench

Advocate : S.K. Lahiri, Amal Sahu and G.N. Ghosh, for the Appellant; Samir Mukherji and Swapan Kr. Kar, for the Respondent

Final Decision : Dismissed

Judgement

Amitabha Dutta, J.—The defendant is the appellant in this appeal which arises out of a suit of 1968 for eviction of the defendant from the suit premises comprising the entire 1st floor and a portion of the ground floor of the house at 52, Mahanirvan Road, P. S. Tollygunge, within the Calcutta Corporation as described in the Schedule to the plaint.

2. Admittedly the defendant was a monthly tenant in the suit premises under the plaintiff at a rent of Rs. 150/- per month payable according to English Calendar. The plaintiff who died during the pendency of the second appeal, instituted the suit on 21-11-1968 after service of a notice u/s 13(6) of the West Bengal Premises Tenancy Act 1956 (hereinafter called the P. Act) alleging that she was the owner of the suit house, that she had no other house property in Calcutta and that she required the suit premises for her own occupation and the occupation of her youngest son Dr. P. C. Bose, Technical Officer, Central Drugs Laboratory, his wife, two daughters and maid servant. It was alleged that the accommodation available to the plaintiff in the remaining portion of the ground

floor of the suit house consisting of two rooms, half portion of covered verandah with kitchen, store and bath-cum-privy was quite insufficient and that a drawing room and a study room were required by her son and she required a thakur ghar. The other grounds for eviction stated in the plaint that the defendant damaged the suit premises by installing a domestic pump and that he used a portion of the suit premises for running a tutorial institution without the plaintiffs consent although the premises in suit were let out for residential purpose, have been negated by both the courts below.

3. The defendant contested the suit by filing written statement in which he pleaded that he was not aware whether the plaintiff was the owner of the suit premises that the plaintiff had her own house at Lucknow where she resided permanently and that the accommodation available to the plaintiffs youngest son and his family in the suit house was quite sufficient. He denied the other grounds for eviction taken in the plaint and challenged the validity of the notice of ejectment.

4. The trial court has found on the evidence that the plaintiff was the owner of the suit house and that as she required, besides her existing accommodation one drawing room and one study room for her youngest son Dr. P. C. Bose, the plaintiff made out a genuine case for partial eviction of the defendant from the ground floor portion of the suit premises comprising apart from bath-cum-privy one room and half portion of covered verandah which could be used as drawing room and study room respectively. The notice of ejectment has been found to be legal and valid. The first appellate court has held that as the defendant accepted the plaintiff as the sole landlord in respect of the suit premises it was not open to him to contend that the plaintiff was not the owner thereof. It has found that the plaintiff reasonably required one room in the ground floor of the suit premises for use as drawing room of her son and that the notice of ejectment is legal and valid. So, a decree has been passed for partial eviction of the defendant from one room in the ground floor of the suit premises subject to the agreement of the defendant to be intimated within two months, failing which for his eviction from the entire suit premises. The trial court's decree has been modified accordingly.

5. The defendant has appealed from the said decree. No cross-objection has been filed on behalf of the plaintiff. The first point raised on behalf of the appellant is that the first appellate court has erred in holding that it was not necessary for the plaintiff to prove her ownership of the suit premises as the provisions of Section 13(1)(ff) require that the plaintiff to get a de)(ff) require that the plaintiff to get a decree for eviction for her own occupation must prove her ownership of the suit premises, notwithstanding the fact that the defendant accepted the plaintiff to be his landlord and paid rent on that basis during all material period. It is submitted that in view of the opening words of Section 13(1) of the Act viz. "Notwithstanding anything to the contrary in any other law"" Section 116 of the Evidence Act which is procedural law. will not come to the aid of the plaintiff.

6. In this connection reliance has been placed on the decision in the case of Baidya Nath Dey v. P. K. Bose 83 CWN 621. In that case in a suit for eviction of the tenant u/s 13(1)(ff) of the Act the tenant in his written statement admitted that the plaintiff was the owner of the suit premises and the suit was decreed on contest. The defendant filed an application for amendment of the written statement before the appellate court by inserting a paragraph denying the plaintiffs ownership on the ground that his previous admission was made through error. The application was rejected and the defendant came up in revision before this Court. The learned Judge Salil Kumar Datta, J. held that the court in granting a decree for eviction on the ground mentioned in Section 13(1)(ff) of the Act must come to a decision on two points viz. about the ownership and requirement of the plaintiff for his own occupation. His Lordship has observed :

"This finding will have to be arrived at and order to be passed "notwithstanding anything to the contrary in any law". The effect of these words appear to be that whether there is an admission or not the court in a contested hearing has to come to its finding on these two points though the court may act on admission of parties on the existence of the material facts. In the circumstances I am of opinion that since it is incumbent for the plaintiff to prove his ownership of the property at the hearing of the case there will be no prejudice if the amendment is allowed only in respect of the defendant's amendment pleading in regard to ownership".

It is further submitted that the registered deed of release dt. 23-6-1934 (Ext. 4) by which the plaintiffs husband declared that the suit land was purchased in his name with the stridhan of the plaintiff and he as benamidar relinquished all interests therein in favour of the plaintiff, did not create title of the plaintiff to the suit property. It is pointed out that P. W. 1 the plaintiffs son was unable to say whether the plaintiff had any earning or fund of her own sufficient to acquire the suit property.

7. In my view, although having regard to the averments in the plaint the plaintiff could not succeed in evicting the defendant on the ground mentioned in Section 13(1)(ff) of the Act if she was not the owner of the suit premises, I cannot accept the contention on behalf of the appellant that the plaintiffs ownership has not been proved. In the plaint it was clearly stated that the plaintiff was the owner of the suit house. The defendant did not deny this fact in the written statement, although he pleaded that he was not aware whether the plaintiff was the owner of the suit house and that the plaintiff was to prove her ownership. Thus the defendant did not specifically deny nor did he state that he did not admit the plaintiffs ownership of the suit house. No doubt the pleadings in this country have to be liberally construed. But that does not mean that the aforesaid pleading of the defendant is tantamount to specific denial under Order 8 Rule 3 read with Rule 5 of the Code. During trial P. W. 1 son of the plaintiff stated that the suit house belonged to his mother the plaintiff. He denied the suggestion that it belonged to his father. The plaintiffs husband died sometime in 1954. The

defence case during trial was that the suit house belonged to the plaintiffs husband though there was no such averment in the written statement. But D. W. 1 the defendant stated in cross-examination that he did not know with whose money the suit premises were acquired, that he never challenged the title of the plaintiff to the suit premises and that he did not send any reply to the letter Ext. A(3) challenging the ownership of the plaintiff. Ext. A(3) is the letter dt, 24-5-1967 written by the plaintiffs son to the defendant in which it was stated inter alia : "Now in spite of the fact that she (the plaintiff) is the owner of the house she has no space to live in Calcutta". Ext- 4 is the registered deed of release dt. 23-6-1934 executed by the plaintiffs husband in favour of the plaintiff stating that the suit land was acquired by the plaintiff in the benami of her husband with her stridhan and he relinquished whatever interest he had in such property in favour of the plaintiff. By the said document the plaintiffs husband renounced all claims against the suit property as benamdar in favour of the plaintiff. It has been submitted on behalf of the appellant that title does not pass by admission and in this connection reference has been made to the decision of the Supreme Court in *Ambika Prasad v. Ram Ekbal Rai* AIR 1966 SC 605. But in this case the plaintiffs claim does not rest on mere admission. The apparent state of things appearing from the deed of release must be presumed to be real as the contrary has not been proved by the defence. Moreover if the defence theory is to be accepted, the registered instrument styled as deed of nadabi or release executed by the plaintiffs husband (who according to the defence was the owner of the suit property), releasing the right, title and interest of the releasor without consideration would operate as a deed of gift when it clearly shows an intention to transfer the property absolutely and was attested by two witnesses. (See *Kuppuswamy Chettiar Vs. A.S.P.A. Arumugam Chettiar and Another*, . There is ample evidence to show that the deed of release (Ext. 4) was acted upon as the plaintiffs name appeared as owner of the suit holding in the municipal assessment records of the Calcutta Corporation. The plaintiff also possessed the suit house through tenants and the defendant all along paid rent accepting the plaintiff as his landlord. In my view, there is sufficient prima facie proof of the plaintiffs ownership of the suit house to fulfil one of the requirements of Section 13(1)(ff) of the Act.

8. It is not disputed that the defendant was inducted in 1943 on behalf of the plaintiff and that he paid rent accepting the plaintiff as the landlord since inception of the tenancy. The learned advocate for the respondent has contended that the defendant is estopped from disputing the plaintiffs title u/s 116 of the Evidence Act and that even if the plaintiff is found to be an ostensible owner holding the suit house for the benefit of the real owners, a suit for eviction on the ground of Section 13(1)(ff) would lie if the premises are required for the occupation of the real owners for whose benefit the premises were held. In support of this contention he has relied on the decision of *Debi Prasad Pal J. in Bhagyalaksmi Dey and Others Vs. Nanda Dulal Kundu and Others*, . In reply it has been submitted on behalf of the appellant that the reported case has not

been properly decided. It is not necessary for me to express any opinion on the reported decision as it is distinguishable on facts from the instant case. In the reported case the kobalas in respect of the suit premises stood in the names of benamdars who sued for eviction for the occupation of the real owners for whose benefit the premises were held, while in the present case it is neither party's case in the pleadings that the plaintiff was a benamdar. In my view, irrespective of the operation of Section 116 of the Evidence Act which is a branch of adjective law, the plaintiff in order to get a decree for eviction on the ground mentioned in Section 13(1)(ff) of the Act has to prove that he is the owner of the suit premises. Otherwise the expression "if he is the owner" in the said clause would be virtually redundant. The expression "or for the occupation of any person for whose benefit the premises are held" in the said clause does not do away with the requirement of the suit being brought by a person as landlord with the legal title to the suit premises vested in him although the premises are held by him for the benefit of another person.

9. I, therefore, hold that although the first appellate court is not right in its finding that it was not necessary for the plaintiff to prove her ownership of the suit house in view of the admitted relationship of landlord and tenant between the parties, there is sufficient evidence on record to establish that the plaintiff was the owner of the suit house.

10. The only other point raised on behalf of the appellant is that as there is no sufficient pleading or evidence to prove that the plaintiff was not in possession of any reasonably suitable accommodation as required by the latter part of Section 13(1)(ff) of the Act and no issue has been framed or decided on this question, the decree for eviction cannot be sustained. But in my view, this contention cannot prevail. Although the suit was filed in November 1968 before the coming into operation of the West Bengal Premises Tenancy (2nd Amendment) Act XXIV of 1969, the plaintiff pleaded in para 3 of the plaint that she had no house property in Calcutta except the suit house and that she used to reside with her son Dr. P. C. Bose in a rented house at Tollygunge which they had to quit ultimately to shift to a portion of the ground floor of the suit house (after it was vacated by another tenant) and in para 5 of the plaint it was pleaded that the accommodation available to them in the suit house was quite insufficient. This pleading is, in my view, sufficient to cover the latter part of Section 13(1)(ff) of the Act. There is also un rebutted evidence of P. W. 1 the plaintiff's son that the plaintiff had no other house except the suit house either in Calcutta or in West Bengal. There was no suggestion from the side of the defendant that the plaintiff had any other accommodation available to her in Calcutta. D. W. 1 the defendant stated that the plaintiff had a house at Lucknow. He could not say whether the plaintiff had any other property in Calcutta besides the suit property. There is evidence that the plaintiff used to reside ordinarily with her youngest son Dr. P. C. Bose who was posted in the Central Drugs Laboratory in Calcutta. In my view, there are sufficient materials on record to come to a finding that the plaintiff was not in possession of reasonably suitable accommodation elsewhere in Calcutta.

Absence of any issue on the point was not fatal and did not vitiate the proceedings as the parties went to trial fully knowing the rival case and each party led evidence to refute the other party's contention. (See *Nedunuri Kameswaramma Vs. Sampati Subba Rao*,). In view of the provisions of Section 103 and Order 41 Rule 24 of the Civil P. C. as the evidence on record is sufficient for the determination of question whether the plaintiff was in possession of any reasonably suitable accommodation, I considering the same answer it in the negative.

11. Both the courts below have concurrently found that the accommodation of the plaintiff and the members of her family including her youngest son, his wife and two grown up daughters in a portion of the ground floor of the suit house is insufficient as they have only two rooms and half of the covered verandah besides kitchen store and bath-cum-privy. According to the trial court the plaintiffs son Dr. P. C. Bose holding a research degree in Chemistry requires a drawing room and a study room. The defendant has in his occupation the entire first floor and a portion of the ground floor comprising one room and half of the covered verandah along with bath-cum-privy and he has been running a tutorial institution in that portion. The trial court has found that the plaintiff's son requires the entire ground floor portion of the suit premises to use the room as a drawing room and the portion of covered verandah as study. On the other hand the first appellate court has found that the plaintiffs requirement would be substantially met if the defendant is evicted from the room only of the ground floor portion of the suit premises. So it has in modification of the trial court's decree passed the decree for partial eviction from one room in the ground floor of the suit premises subject to agreement of the defendant to be intimated within two months of the date of judgment. In the absence of any cross-objection from the plaintiff respondent, the finding of the first appellate court regarding the reasonable requirement cannot be disturbed as in my view it does not involve any substantial question of law. But Sub-section (4) of Section 13 of the Act provides that after the court forms the opinion that the requirement of the plaintiff may be substantially satisfied by ejecting the tenant from a part only of the suit premises and allowing the tenant to occupy the regaining portion then if the tenant agrees to such occupation the court shall pass a decree for partial eviction and fix the proportionate rent. So the decree of the court of appeal below requires slight modification to fulfil the requirements of Section 13(4) of the Act.

12. The appeal, therefore, fails and is dismissed. The decree of the court of appeal below is confirmed with slight modification, on the grounds, mentioned in this judgment. The plaintiff shall get a decree for possession of one room in the ground floor of the suit premises after the defendant agrees to occupy the remaining portion of the suit premises by intimating his agreement in writing to the trial court within one month of getting notice of arrival of the records in that court and in that event, the trial court shall fix the proportionate rent for such portion. If the defendant fails to intimate his agreement within the time fixed,

there will be a decree for eviction of the defendant from the entire premises in suit. Parties will bear their own costs throughout.