

(1960) 06 CAL CK 0022
In the Calcutta High Court
Case No : A.F.O.D. No. 79 of 1954

Sri Gurupada Haldar

APPELLANT

Vs

Sri Haripada Mukherjee and Others

RESPONDENT

Date of Decision : 10-06-1960

Acts Referred:

Transfer of Property Act, 1882 — Section 108

Citation : AIR 1962 Cal 263 : (1962) 1 CALLT 320 : (1961) 2 ILR (Cal) 80

Hon'ble Judges : U.C. Law, J;P.N. Mookerjee, J

Bench : Division Bench

Advocate : Jitendra Kumar Sen Gupta and Rabiranjan Das Gupta, for the Appellant; Bholanath Roy and Siti Kanta Lahiri, for the Respondent

Final Decision : Partly Allowed

Judgement

P.N. Mookerjee, J.—This appeal is by the defendant No. 1 and it arises out of a suit which was originally instituted for ejectment, mesne profits (damages or compensation for use and occupation) and compensation or damages for loss or injury, caused to the disputed premises.

2. The claim was laid in the plaint at Rs. 14997-8-0 and comprised the following items, namely, ejectment, valued at Rs. 1410/- on the basis of the monthly rental of Rs. 117-8-0, mesne profits or damages for use and occupation at Rs. 587/-and the remaining item of compensation or damages for loss or injury, caused to the disputed premises at Rs. 13,000/-. The suit was filed on September 19, 1951, and it was decreed by the learned Subordinate Judge on June 26 1953. There were three defendants in the suit, namely, defendant No. 1 who was the immediate tenant under the plaintiff landlord, defendant No. 2, who was a sub-tenant under defendant No. 1 in respect of the entire disputed premises and defendant No. 3, who was a sub-tenant under defendant No. 2 in respect of a Portion or a part of the said premises. So far as the ejectment decree was concerned, the defendant No. 3 moved this Court in appeal (F. A. No. 232 of 1953) but that appeal was eventually dismissed. Defendant No. 1

preferred the present appeal (F. A. No. 79 of 1954), complaining against the decide for damages or compensation for Rs. 7,000/-, which was made by the Court below against all the defendants, for the loss or injury, caused to the disputed premises, as aforesaid. It is this claim and this part of the decree which is the matter for consideration in this appeal. 3. The facts, which have given rise to this appeal, have already been broadly stated but, for convenience of understanding, and for appreciating the precise point in dispute it is necessary to set out the same in some particular details.

4. The disputed property comprises premises No. 25, Rakhal Das Auddy Road, formerly premises Nos. 17 and 17/1 Bridge Road, Alipore containing a brick-built godown, partly one-storied and partly two-storied, with C. I. roof. Admittedly defendant No. 1 was the monthly tenant under the plaintiff in respect of the above premises at a monthly rental of Rs. 117-8-0 per month, payable according to the English Calendar. It is the plaintiff's allegation that the suit premises were let out to the defendant No. 1, as aforesaid only for the purposes of their being used as a godown for stacking and storing commodities and that the said defendant No. 1 had no right of subletting the same to defendant No. 2. without the plaintiff's consent and, then, defendant No. 2, again sublet a part of them to defendant No. 3 similarly without the plaintiff's consent and the suit premises were used by these sub-tenants (defendants Nos. 2 and 3) for purposes other than the purpose of the original tenancy, namely, of defendant No. 1, and they were used for residential purpose and were not restricted to user as a godown only as conditioned under the terms of the said original tenancy. That, in the course of this unlawful user, which included cooking on the wooden floor of the disputed premises, and through negligence on the part of the sub-tenant or sub-tenants, the suit premises were set on fire and the godown was burnt down causing loss to the plaintiff to the extent of Rs. 13000/- as estimated by his expert Mr. K.C. Bose, Builder and Contractor. The plaintiff's claim for damages for loss or injury to the disputed premises was based on the above allegation or allegations and, to this part of the plaintiff's claim, which alone is material for our present purpose, the defence was that there was no contravention of the term as to user, as even in the original tenancy of defendant No. 1, there was no restriction on user but it was an ordinary monthly tenancy, whereunder the disputed premises were usable for inter alia residential Purpose and also for godown purposes, that the fire in question was accidental and there was no negligence in the matter on the part of any of the defendants and no contravention of any law or any contract to involve them in any liability or responsibility for the same or for the damages, caused thereby. The defendants also controverted the plaintiff's estimate of damages and characterised it as exaggerated and excessive. In the written statement of defendant No. 1 it appears to have been stated that the damages could not, on any account, be more than Rs. 5000/- but this figure was later alleged to be a mistake, due to clerical error or accidental slip for Rs. 500/-.

5. On the above allegations and counter allegations, the issue as to damages, as

aforesaid, was tried by the learned Subordinate Judge and he, having found on the evidence before the Court, that the purpose of defendant No. 1's tenancy was simply to use the suit premises as godown for storing and stacking goods, as alleged by the plaintiffs, eventually reached the conclusion that there was contravention of the term as to user by the sub-letting or sub-lettings as aforesaid, and by the user of the premises for residential purposes including cooking which was the direct cause of the fire, resulting in damage to the disputed premises. The learned Subordinate Judge, accordingly held that all the defendants were liable for such damage and he assessed the same at the figure of Rs. 7000/-, taking into consideration the plaintiff's evidence and estimate of Rs. 13,000/- and the defendants' maximum estimate of Rs. 5000/-, as given in the written statement. The learned Subordinate Judge does not appear to have paid any attention to the case attempted to have been made by the defendant at the time of evidence and by his petition, filed in the course of trial, that the above figure of Rs. 5000/-, as mentioned in the written statement was a mistake for Rs. 500/- or, it may be that he was not impressed with this explanation of the defendant and took his estimate for damages at the maximum amount of Rs. 5000/-, as stated in the written statement. From this decree of the learned Subordinate Judge, the defendant No. 1 has preferred the present appeal and the plaintiff, in his turn, has filed the connected cross-objection.

6. Before us, Mr. Sen Gupta, arguing the appeal on behalf of the appellant defendant no. 1, has contended that, in the circumstances of this case, the learned Subordinate Judge was in error in holding that, by the contract of his tenancy, defendant No. 1 was precluded from sub-letting the suit premises or from using it for any purpose other than as a godown for stacking and storing goods. The evidence on this point is, no doubt, not very dear or satisfactory, but taking an all-round view of the materials before us and in the absence of any specific statement in denial on the defendant's behalf by any competent person and having regard also to the nature of the Premises, we are inclined to hold that the plaintiff's case in this respect is true and that the learned Subordinate Judge reached the correct conclusion on the point. If that be the position, the sub-letting by defendant No. 1,--and also by defendant No. 2--was undoubtedly unlawful and in contravention of the terms of the aforesaid tenancy and beyond the powers of the said two defendants. Plainly, also, in view of our above findings there was clear contravention of the term and conditions of the tenancy so as to bring the case within the terms and mischief of Clause (e) (proviso) and Clauses (j), (m) and (o) of Section 108 of the Transfer of Property Act in the light, particularly, of the legal Position, as explained hereinafter. In such circumstances, the tenant would prima facie be liable for damages caused to the preemies, and the onus would clearly be on him to show that there was no negligence in the matter either on his part or on the part of the subtenants, for whose negligence, also, he would in the context, be liable, or answerable in law.

7. In the peculiar facts and circumstances of this case, having regard particularly, for the nature of the structure concerned and the admitted uses for which it was

Put by the alleged sub-tenant or sub-tenants, there would be, upon a reasonable view of things, a presumption of negligence on the part of the alleged sub-tenants, for which, in law, the tenant defendant no. 1 would be liable. It is enough, for this purpose, to refer to the decision of the Allahabad High Court in Deputy Lal Vs. Reoti Prasad Gupta, where the law on the point has been more or less thoroughly and exhaustively reviewed in the light of the earlier cases and other relevant authorities. In view of that decision, it is unnecessary to discuss any of the other authorities (including text books) cited before us, as broadly speaking, they were all duly considered and explained in that judgment. We would only add that the Privy Council case of AIR 1929 69 (Privy Council) to which Mr. Sen Gupta drew our attention on the point, has no application, as there apart from anything else, the tort in question was not, strictly speaking, done or committed by the alleged sub-tenants either in respect of the demised property or during the currency of the tenancy or sub-tenancy in respect thereof.

8. A point was raised by Mr. Sen Gupta that the proper issues from the above point of view were not framed in the suit and that accordingly the case should be remanded for fresh or further trial. We do not think there is any substantial or legitimate cause for this grievance of Mr. Sen Gupta. The parties appear to have been fully alive to the above aspect too, though no express issue or issues were framed on the Point. We, accordingly, reject this submission of Mr. Sen Gupta.

9. In the above view there can be no answer to the plaintiff's claim for damages or compensation under this head as a matter of law, although the quantum thereof would still require investigation. (The rest of the judgment is not material for the purposes of this report--Ed.).

Law, J.

10. I agree.