

Item-17. 10-05-2023

sg Ct. 8

FA 286 of 2012

Namita Moulik
Versus
Ila Banerjee

Mr. Asim Banerjee, Adv.
Mr. Ambu Bindu Chakraborty, Adv.
...for the appellant

Ms. Shohini Chakraborty, Adv.
Mr. Sayantan Bose, Adv.
Mr. Samir Rout, Adv.
Mr. Sarbajit Mukherjee, Adv.
...for the respondent

This appeal is arising out of a judgment and decree dated 21st September, 2010 passed by the learned Judge, Bench-III, City Civil Court at Calcutta in Title Suit No.1301 of 2004.

During the pendency of the appeal, we permitted the learned Counsel representing the appellant to introduce four additional grounds, which essentially concern his right to agitate that the induction of the sub-tenancy was lawful.

Mr. Asim Banerjee, learned Counsel appearing on behalf of the appellant has argued that, if it is established that J.C. Roy with the consent of the original landlord has inducted the predecessor of the appellant/defendant, they cannot be thrown out on construction of section 2(g) of the West Bengal Premises Tenancy Act, 1997.

At the time when the suit was filed, J.C. Roy died and his legal heirs, excepting the widow, would have the undoubted right to stay for five years on a satisfaction being recorded that they were ordinarily living with the deceased. This fact is no more relevant as J.C. Roy claimed to have inducted the appellant as a

sub-tenant.

Mr. Banerjee, has strenuously argued that an opportunity should be given to the appellant to prove the sub-tenancy.

It appears from the impugned order that at the trial, two rent receipts purported to have been signed by J.C. Roy in 1990 and 1991 marked as Exhibits 'A' and 'A/1' were relied upon to establish sub-tenancy. Before us, it was argued that an opportunity ought to have been given to the appellant to establish sub-tenancy by production of documents conforming to the legal requirement. Since the sub-tenancy was claimed prior to 1997 Act, one would presume that there has to be a letter showing consent which is a mandatory requirement under the 1956 Act for the purpose of creation of sub-tenancy.

The appeal is pending since 2012. No application has been filed to bring on record any such documents by which J.C. Roy had obtained a consent in writing for induction of the respondent or her predecessor as sub-tenant in respect of the suit premises.

There are two other additional points taken by Mr. Banerjee as regards the decree impugned. The first is non-joinder of necessary parties, namely, that the legal heir of J.C. Roy was left out and secondly, the suit was filed by the transferee/landlord within three years from the date of purchase. The fact that emerged from the written statement as also the evidence of the appellant that the appellant claimed that J.C. Roy was her 'bhasur' meaning thereby the elder brother of her husband and they were residing with J.C. Roy and after his death, with Bani Roy, wife of J.C. Roy. The evidence clearly shows that the married daughters of J.C. Roy were never residing with J.C. Roy and hence, they

cannot be dependent tenant within the meaning of section 2(g) of the West Bengal Premises Tenancy Act. The question arises whether the niece of J.C. Roy could claim to be a legal heir so as to demand of service of notice before termination of tenancy.

The definition of section 2(g) of the West Bengal Premises Tenancy Act, 1997 which would govern the relationship has clearly stated that a tenant would include his spouse, son, daughter, parents and the widow of his predeceased son, who are ordinarily living with the tenant up to the date of death of the tenant as the members of his family and were dependent on him and who do not own or occupy any residential premises. accordingly, the judgement relied upon by Mr. Banerjee, in the case of *North Eastern Railway Administration, Gorakhpur vs. Bhagwan Das (Dead) by LRS* reported in (2008) 8 *Supreme Court Cases 511* with regard to the definition of section 2(h) of the 1956 Act will have no relevance in the instant facts of the case.

When the notice was served, the appellant was found to be in possession. The daughters were never in possession. They never had any right to succeed to the tenancy as they were married daughters and excluded from operation of section 2(g) of 1997 Act. Bani Roy admittedly died on 7th May, 2001. Accordingly, the status of the appellant is of a trespasser for which we are of the considered opinion that no separate notice to quit is required to be served upon the appellant. In fact, their evidence would show that they were inducted as licensee by J.C. Roy but they claimed to have paid rent on behalf of J.R. Roy, which cannot bind the plaintiff. The aforesaid grounds raised are, accordingly, not

accepted.

Under such circumstances, we are of the considered opinion that this appeal has no leg to stand. The appeal stands dismissed.

However, we permit the appellant to vacate the premises within four weeks from date, in default, in accordance with law.

FA 286 of 2012, thus, dismissed.

(Uday Kumar, J.)

(Soumen Sen, J.)