

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Sugato Majumdar

SA 51 of 2011

RUMA SARKAR

VS

GURUDAS SIL

For the Plaintiff : Mr. Samir Kumar Som, Adv.
Mr. Sayantan Bose, Adv.
Ms. Sohini Bhattacharya, Adv.
Mr. Shubham Khan, Adv.

Hearing concluded on : 19.05.2026

Judgment on : 21.05.2026

Sugato Majumdar, J :

The instant Second Appeal was filed against the judgment and decree passed by the Learned 12th Bench, City Civil Court at Kolkata dated 23rd December, 2003 whereby the said First Appellate Court upheld the Trial Court's judgment dated 24th September, 2002.

The Defendant/Respondent was a monthly tenant of the Appellant/Plaintiff at a monthly rent of Rs.150/- payable according to the Bengali calendar month. Alleging, subletting, causing nuisance and annoyance and on the ground of reasonable requirement, the tenancy was determined serving notice on the Respondent/Defendant. Since the Respondent/Defendant did not vacate the premises after determination, the suit was instituted in the Court of Presidency Small Causes Court at Kolkata, 4th Bench as Ejectment Suit No. 19 of 2000.

The Defendant contested the suit by filing written statement denying all allegations with further prayer of dismissal of the suit.

On the basis of rival pleadings, several issues were framed:

1. *“Is the suit maintainable in it’s present from and in law?”*
2. *Was the notice to quit served upon the defendant, is so, whether the same was legal, valid and sufficient?*
3. *Has the defendant sublet the suit premises to 3rd party without the consent of the plaintiff?*
4. *Is the defendant guilty of any act contrary to the provision of Clause (M) (O) (P) of Sec-108 of T.P.Act?*
5. *Does the plaintiff reasonably required the suit premises for her own use and occupation?*
6. *Whether the plaintiffs have any other reasonable suitable accommodation elsewhere?*
7. *Is the defendant guilty of causing nuisance and annoyance and waste resulting in material deterioration of the suit premises?*
8. *Are the plaintiffs owner of the suit premises?*
9. *Are the plaintiffs entitled to decreed for eviction and khas possession?*
10. *Are the plaintiffs entitled to the decree as prayed for?*
11. *To what other relief or reliefs are the plaintiffs entitled to?”*

The Trial Court dismissed the suit. It was observed that PW-1 did not make any statement on reasonable requirement as well as nuisance and annoyance. Therefore, the Trial Court considered those grounds as not proved. So far as subletting is concerned, it was observation of the Trial Court that part of the suit premises was not in exclusive for possession of the third party. Therefore, the Trial Court came to the conclusion that there was no sub-letting. Accordingly the Trial Court dismissed the Suit.

The First Appellate Court on appreciation of evidence and on scanning and on analyzing the Trial Court's judgment upheld the same.

On being aggrieved and dissatisfied, the instant appeal has been filed. The appeal has been decided to be heard on the following grounds:

- (a) "That the Defendant has sub-let the suit premises without the consent of the Plaintiffs and after the commencement of the West Bengal Premises Tenancy Act, 1956 as such the Defendant is liable to evicted has no protection against eviction.
- (d) The Defendant is guilty of nuisance, annoyance and waste resulting material deterioration of the condition of the suit premises."

Section 13(1) (a) of the West Bengal Premises Tenancy Act, 1956 provides grounds for eviction when the tenant without previous consent in writing of the landlord transfers, assigns or sublets in whole or in part of the premises held by the said tenant.

Certain aspects should be considered. Admittedly, Dr. Ghosh was in occupation of part of the premises. It is in evidence that furniture had been provided

to him by the landlord. This, coupled with the consistent statements of the tenant (DW-1) and Dr. Ghosh that the possession was not exclusive establish that Dr. Ghosh was not in exclusive possession, though in possession. The Learned Counsel for the Appellant relied upon postal articles and prescription of Dr. Ghosh bearing the address of the suit premises, those facts corroborated possession but failed to rebut the evidence of exclusive possession. Dr. Ghosh stated in course of examination-in-chief and reiterated in course of cross-examination that no rent was payable for the said occupation.

The Learned Counsel for the Appellant argued that there was parting with possession without consent of the landlord. These facts are proved. Both the courts below committed error in law in concluding that exclusivity of possession is the only criterion for subletting. The Learned Counsel for the Appellant further submitted that prescriptions of Dr. Ghosh clearly bear the address of the suit premises. Postal articles were sent to the said address by different senders. The Learned Counsel further argued that payment of consideration by the sub-tenant to the tenant may be a clandestine affair difficult to establish. But possession of Dr. Ghosh is undisputed. The Learned Counsel referred to **Bharat Sales Ltd. Vs. Life Insurance Corporation of India [(1998) 3 SCC 1]**, **Shri Dipak Kumar Mitra Vs. Shri Basanta Kumar Misra [(2000) SCC OnLine Cal 553]** and **Maureen Easton Vs. Moquima Khatoon & Ors. [(2001) 2 CHN 209]**.

The decisions, referred to by the Learned Counsel for the Appellant, were taken in the pretext of established exclusive possession.

I have heard the submission of the learned Counsel.

The decision of the Supreme Court of India in **Dipak Banerjee Vs. Lilabati Chakraborty [(1987) 4 SCC 161]** may be considered in this context. In

this case, the tenant without written consent of the landlord sublet or parted with the possession of two out of four rooms to one person who had been running tailoring business there, changing the user of two non-residential purposes. The suit was brought under Section 13(1) (a) and (h) of the West Bengal Premises Tenancy Act, 1956. The Supreme Court of India, held that in order to prove tenancy or sub-tenancy two ingredients are to be established; firstly, the tenant must have exclusive right of possession or interest in the premises or part of the premises is in question and secondly, that right must be in lieu of payment of some compensation. It was observed that the question is whether the sub-tenant was in exclusive possession of the part of the premises and whether the tenant had retained no control over the part of the premises. In this case, both the Trial Court the First Appellate Court as well as the High Court held that there was subletting and consequently allowed the claim for ejectment. But the Supreme Court of India set aside the claim of ejectment as well as the concurrent judgments passed by the three courts, on the ground that there was no sub-tenancy.

In **M/s Shalimar Tar Products Ltd. Vs. H.C. Sharma and Ors. [(1988) 1 SCC 70]** Justice Sabyasachi Mukherjee (as His Lordship then was) considered the issue of subletting under Delhi Rent Control Act. It was observed that there was no dispute in legal propositions that there must be parting of the legal possession. Parting of the legal possession means possession with right to include and also right to exclude others which is the crux of the matter according to the Court.

Coming to the case in hand, exclusivity of possession by the third person being Dr. Ghosh was proved. It was also not proved that monetary consideration had been payable. Therefore, following and applying the observations of **Dipak Banerjee's** case and **Shalimar Tar's** case (supra), this Court comes to the

conclusion that exclusive possession by the third party was not proved bringing the matter within the ambit of sub-letting, under Section 13(1)(a) of the West Bengal Premises Tenancy Act, 1956. I agree with the findings of the First Appellate Court.

Both the Trial Court as well as First Appellate Court correctly apply the principal of law in the given facts and circumstances of the facts. A concurrent finding demands no interference. In nutshell, the instant appeal fails, dismissed and disposed of accordingly.

Trial Court Record be returned.

(Sugato Majumdar, J.)