

Pieco Electronics and Electricals Ltd. Vs. Smt. Tribeni Devi

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Court : Kolkata

Decided On : Jul-27-1989

Reported in : AIR1990Cal135

Judge : Shamsuddin Ahmed and ;Pabitra Kumar Banerjee, JJ.

Acts : [Registration Act, 1908](#) - Sections 3, 8 and 49;; Transfer of Propety Act, 1882 - Sections 13(1), 53A, 107 and 108;; [West Bengal Premises Tenancy Act, 1956](#) - Sections 1 and 13;; [Constitution of India](#) - Article 254;; Indian [Registration Act, 1908](#) - Section 49

Appeal No. : First Appeals Nos. 48 and 49 of 1987

Appellant : Pieco Electronics and Electricals Ltd.

Respondent : Smt. Tribeni Devi

Advocate for Def. : A. Mitra and ;S.K. Deb, Adv.

Advocate for Pet/Ap. : B.C. Dutt, D.K. Banerjee and ;P.C. Motilal, Adv.

Judgement :

ORDER

Pabitra Kumar Banerjee, J.

1. These two appeals are on behalf of the defendant Pieco Electronics, and Electricals Ltd. (shortly the Company) and they arise out of two suits being T. S. Nos. 28 and 89 respectively of 1984 commenced by the plaintiff-respondents in the Court of the 4th Assistant District Judge, Alipore for a decree for eviction and mesne profits in respect of two flats and two garages described in the schedules to the respective plaints on the allegations inter alia that by two unregistered deeds of lease dated 1st February 1955 the defendant was inducted into the suit premises by Property Development Trust Private Limited at a monthly rental of Rs. 225/- and 250/- respectively for a period of 25 years and that in terms of the said lease the defendant was required to deliver up vacant possession to the lessor on the expiry of the lease. As the defendant failed and neglected to vacate the disputed premises even after the expiry of the tenure of the lease, the plaintiffs were obliged to file two suits for the reliefs hereinbefore stated.

2. The defence is one of the right of a monthly tenant which it is stated to have come into existence by payment to and acceptance of rents by the landlords and protected against eviction under the provisions of [West Bengal Premises Tenancy Act, 1956](#) (hereinafter referred to as the Act).

3. Upon the above facts the learned Assistant District Judge found that the unregistered deed of lease was admissible in evidence and could be looked into for collateral purposes, that the defendant lessee was not a monthly tenant under the Act, that its possession was protected under S. 53A Transfer of Property Act (hereinafter called the T.P. Act) and that its possession beyond the period of lease is that of a trespasser. He accordingly passed decrees for eviction and mesne profits by two separate judgments dated 31-3-86. Feeling aggrieved, the defendant company has come up to this Court in appeal. The plaintiffs respondents have filed cross-objection in both the appeals. As the appellant is the same and as common questions of fact and law are involved in both the appeals, these have been heard together for the sake of convenience and for avoiding unnecessary repetitions.

4. Mr. Bamkim Chandra Dutta, the learned advocate for the appellant in both the appeals argued before us that the alleged agreements for lease and the deeds of

lease for a period of 25 years not having been registered according to law are void and inoperative and consequently the plaintiff-respondents are not entitled to a decree for eviction and mesne profits on the basis of the void deeds. It was next contended that in the absence of any valid document creating the lease, the payment of rent by the defendant-appellant and acceptance of the same by the plaintiff-respondents together with long and uninterrupted possession in respect of the disputed premises constituted a monthly tenancy in favour of the appellant and that the incidents of the tenancy would be governed by the provisions of the Act. Mr. Dutta emphatically submitted that S. 53A of the T.P. Act cannot be invoked in aid of the plaintiffs' claim for ejectment in as much as the induction of the defendant into the suit premises was independent of any void document and that the protection under S. 53A of T.P. Act is available only by way of defence who can use it as a shield and not by the plaintiffs for the purpose of using it as a sword. Reference was made to S. 13(l)(a) of the Act and it was contended in the last resort that the defendant-appellant can be evicted only under any of the grounds covered by S. 13 of the Act and not otherwise. With regard to the cross-objection filed by the plaintiff-respondents, it was urged that they are not entitled to any mesne profits at all. We propose to discuss several decisions cited by Mr. Dutta at the appropriate stage.

5. Mr. Aninda Mitra, the learned counsel appearing for the plaintiff-respondents in both the appeals argued before us that the deeds of lease in respect of the respective flats were acted upon and that the defendant-lessee paid rents and continued in possession of the disputed flats in part performance of the unregistered deeds of lease. It was next contended that mere payment of rent together with possession by the lessee did not create a monthly tenancy under the West Bengal Premises Tenancy Act, but that the lessee was in protected possession of the suit premises for a period of 25 years on the expiry of which its possession was no better than that of a trespasser. With regard to the claim for mesne profits it was pressed that on the materials on record the learned Trial Judge should have awarded damages at enhanced rate together with interest thereon. The decisions relied on by Mr. Mitra will be discussed later on.

6. In the context of the rival contentions as aforesaid the Court is called upon to pronounce its decision on the following questions :--

(1) What should be the status and nature of possession of a person who enters into possession of the premises on the basis of a deed of lease which turns out to be void and inoperative for want of registration?

(2) Is such person entitled to protection against eviction under the provisions of the West Bengal Premises Tenancy Act?

7. An answer to these questions would be decisive of the appeals with which we are presently concerned.

8. Premises No. 5-B, Sarat Bose Road, Calcutta originally belonged to Property Development Trust Private Limited and the plaintiffs in both the suits are successors-in-interest to that Trust. From the averments made in the plaint of both the suits and from Exts. 6 and 11 it appears that there were two unregistered agreements for lease executed between Property Development Trust Private Limited and Phillips Electricals Co. (India) Ltd., on 14th February, 1953 whereby the lessor undertook to construct for and deliver to the lessee two flats (Flats Nos. 7 and 8) and two garages on some future dates in consideration of payment of Rs.45,000/- and Rs. 55,000/- respectively by the lessee to the lessor on terms and conditions set out in the third Schedule to the agreements. The terms material for the purpose of disposal of the suits and the appeals are that the rate of rent was fixed at Rs. 225/~ in one case and Rs. 250/- in the other, that the lease would be for a period of 25 years on the expiry of which the lessee was required to deliver up possession of the respective flats to the lessor and that 'the lessee shall have the first choice of renewal after the first period of 25 years is over'. The agreements were followed by two deeds of lease executed between the same parties on 1st February, 1955 incorporating exactly the same terms and conditions contained in the third Schedule to the agreements for lease. The deeds of lease dated 1st February, 1955 which were admittedly intended to operate as a present demise were not registered although required to be registered under S. 107, T.P. Act. The defendant entered into possession of both the flats being flats Nos. 7 and 8 and the two garages with effect from 1st February, 1955 and its possession

continued till 1st February, 1980 and the trouble started thereafter when the company refused to deliver possession of the disputed flats and garages to the plaintiffs in terms of clause 10 of the Third Schedule. These facts have been borne out from the evidence of PWs 1 and 2 and DWs 1 and 2 further evidenced by the letters Exts. 1 and 4 series that passed between the parties and Annexure B to the writ petition Ext. 4. Mr. Dutta cited a decision reported in : [1952]1SCR269 (Ram Kumar Das v. Jagdish Ch. Deo) and contended that the decision of the Supreme Court has consistently been followed by subsequent decisions reported in : AIR1955 Cal502 (Durgesh Nandini Debi v. Aolad Seikh); : AIR1960 Pat344 (FB) (Bastacolla Colliery Co. Ltd. v. Bandhu Belder); : [1980]1SCR650 (Biswabani Pvt. Ltd. v. Sontosh Kumar Dutta) and (1986) 2 Cal HN 253 (Hrishikesh Hati v. Bibhuti Bhusan Mondal) respectively. Our attention was also drawn to another decision of the Supreme Court reported in : [1973]1SCR403 (Hitkarini Sabha v. The Corporation of the City of Jabalpur). In Ram Kumar Das's case (supra), the defendant tenant executed a registered kabuliyat on 8-12-24 in favour of the Receiver and took settlement of the disputed property for 10 years at an annual rental of Rs. 46/-. The defendant paid selami and the rents for two years- 1925 and 1926. No further payment was made by the lessee. It was held that the kabuliyat not being an operative document, the tenancy created by implication of law in favour of the defendant should be held to be from month to month. In Durgesh Nandini's case (supra) Their Lordships relied upon the decision in Ram Kumar Das's case (supra) and held that although the parties intended to create a permanent lease, as no operative lease came into existence, from the possession of the defendant followed by payment of rent, a tenancy from month to month should be presumed. In the case of Bastacolla Colliery (supra) the lessee entered into possession on the basis of a void or invalid lease; but he paid rents and continued in possession. It was held that relationship of landlord and tenant had come into existence and the tenant must be deemed to be a monthly tenant. In Biswa-bani's case (supra) a tenant was inducted for a period of five years under a valid lease. After the first period of five years the lease was renewed for a further period of five years, but the second lease was found to be void for want of registration. Standard rent fixed by the Rent Controller was accepted as the rent to be paid under the second lease. Their Lordshipsheld that on the expiry of the first

contractual lease, a tenancy under the Rent Control Act came into existence. A similar view was taken by a Division Bench of this Court in the case of Hrishikesh Hati (supra) wherein Their Lordships held that where possession is taken under a void lease but rent is paid, a lease from month to month should be presumed. In the case of Hitkarini (supra) it was found that the Administrator who executed a deed of lease in favour of the lessee had no authority to grant lease and transfer the property, but the lessee continued in possession on payment of rents. Upon these facts it was observed that 'A relationship of landlord and tenant comes into existence and lease deed being void the terms of such a lease have to be determined with reference to the Transfer of Property Act'. In the decision in P. G. and Sawoo's case, reported in (1975) 79 Cal WN 317, the tenant was let into possession in the course of negotiation for lease for 5 years. Negotiation was broken off. It was held that on plaintiff's assenting to defendant's possession, a monthly tenancy was created.

9. It would be important to note that in all the cases cited above the question of lessee's protected possession under a void lease was neither raised nor discussed and it is possible to hold that perhaps such a question was not relevant and did not deserve any consideration. In Biswabani's case : [1980]1SCR650 (supra), however the contention raised on behalf of the lessor that S. 53A, T.P. Act would come into play in explaining the nature and character of possession of the lessee under a void lease was negated. The decision in Technicians Studio's case, : [1978]1SCR516 , was distinguished on facts and while taking a different view Their Lordships in Biswabani's case (supra) pointed out that, 'This Court in Technicians Studio's case (supra) did not once and for ever conclude the point that a person coming in possession under a void lease can never claim to be a tenant'. In fact in Technicians Studio's case (supra) the principle was tempered with some flexibility and it was observed that in a given case where a person enters into possession under a void lease, relationship of landlord and tenant can be created. In his endeavour to justify the applicability of the principles emerging out of Technicians Studio's case (supra) to the facts of the instant case, Mr. Mitra drew our attention to the distinguishing features in the cases cited by Mr. Dutta and laid particular emphasis on the observations made by Chittatosh Mukherjee, J. in Braithwaite's case, reported in (1984) 2 Cal LJ 1 : (AIR 1984 NOC 317)

relating to a different flat of the same premises being premises No. 5R, Sarat Bosc Road.

10. The first link in the chain of reasonings of Mr. Mitra was that as there was no transfer of any interest in the property, there was no letting and if there was no letting, no relationship of landlord and tenant could come into existence. In this connection reliance was placed upon a decision reported in : [1962]3SCR604 (Dr. Rikhy v. Delhi Municipality). This was a case under Delhi and Ajmer Rent Control Act where certain properties were settled with some persons by an officer not empowered to do so. The primary consideration in that case was whether S. 8 of the Act was applicable to the transactions in question. In ultimate analysis it was held that the transfer of the property was not binding on the Committee. It is true that Their Lordships incidentally observed that the payment of rent is not conclusive of the matter and it can be used in the legal sense of recompense paid by the tenant for his use and occupation. But in that case the authority of the person to transfer was challenged and the problem posed there was different from that in the case at hand. Payment of rent may not be conclusive but it is undoubtedly one of the most important incidents of tenancy. With almost similar facts the later decision of the Supreme Court in Hitkarini's case : [1973]1SCR403 (supra) took a contrary view. Moreover the principle expounded in Ram-kumar Das's case : [1952]1SCR269 (supra) was neither raised nor discussed in that case.

11. The next link in Mitra's argument was that while the possession of the defendant-appellant in this case is referable to the void lease, in the decisions cited by Mr. Dutta the tenant's possession had commenced from before the void documents were executed. The argument is not tenable inasmuch as in all the decisions cited by Mr. Dutta the Court started investigation from the period when the void lease or void kabuliyat was brought into existence and the learned Judges looked into the status and nature and character of possession of the tenant with reference to those void and inoperative documents. Their Lordships engaged themselves in ascertaining as to what would be the consequences if the void document is left out of consideration.

12. In *M/s. Technicians Studio's case* : [1978]1SCR516 a decree for eviction had already been passed against the defendant-sub-lessee and this had not been set aside even under the compromise which eventually turned out to be ineffectual. Still, as pointed out by Their Lordships in *Biswabani's case* : [1980]1SCR650 , Their Lordships in *Technicians Studio's case* (supra) did not lay down any inflexible principle of universal Application. With regard to the alleged protected possession of the lessee under S. 53A, T.P. Act the observations of Their Lordships in *Biswabani's case* (supra) were as follows (at p. 230 of AIR) :--

'It must further be made clear that S. 53A of the Transfer of Property Act is not at all attracted to the case equitable doctrine of part performance can be used as a shield and not as a sword. (See *Probodh Kumar Das v. Dantmara Tea Co. Ltd.* 0043/1939 . In fact any discussion of S. 53A in the facts of the case would be entirely beside the point.'

In *Braithwaite's case* (AIR 1984 NOC 137) (Cal) (supra), Their Lordship's wholly relied upon the decision in *M/s. Technicians Studio's case* and accordingly a decree for eviction was passed on the ground that once the protection to possession is withdrawn after the expiry of the period of the void lease the lessee's possession is reduced to that of a trespasser.

13. The last link in Mr. Mitra's argument was that while in *Ram Kumar Das's case* : [1952]1SCR269 a 'void kabuliyat' was intended to operate as an instrument of transfer, in the instant case it is a 'void lease' which is under consideration. This argument has no substance in it because in the matter of ineffectuality there is no difference between a 'void lease' and a 'void kabuliyat' and in *Biswabani's case* : [1980]1SCR650 (supra) no such distinction was sought to be drawn. Mr. Mitra drew our attention to three rulings reported in : [1950]1SCR75 (*Maneklal v. H. G. Ginwala*); AIR 1956 Mad 693 (*T. S. Karthikeya Mudaliar v. Singaram Pillai*) and : AIR 1954 SC758 (*Sheodhari Rai v. Suraj Prosad Singh*) respectively and argued that the Court must consider the protected possession of the defendant-appellant with reference to S. 53A, T.P. Act and that mere payment of rent is not conclusive of tenancy. In *Maneklal's case* and in the case from Madras the defendant's plea of part performance under S. 53A, T.P. Act was the principal issue involved in the

suits and Their Lordships were pre-eminently concerned to protect such possession under S. 53A, T.P. Act. In Sheodhari Rai's case in a different context Their Lordships observed that mere payment of rent does not necessarily establish relationship of landlord and tenant between the parties. In the instant case defendant never took the defence under S. 53A, T.P. Act and letting out to the defendant by the Property Development Trust and payment and acceptance of rents are admitted facts. The decisions do not therefore come in aid of Mr. Mitra's contention.

14. It is not disputed that the deeds of lease dated 1-2-55 are void and inoperative. That being the position it is impossible to look into the deeds for the purpose of ascertaining the intention of the lessor as to the duration of the lease. The decisions in the cases of Bastacolla Colliery Co. : AIR1960 Pat344 (FB) (supra) and Biswabani P. Ltd. (supra) respectively are authorities for such proposition. The following observations of Their Lordships in Biswabani's case would be relevant, 'Now, if the lease is void for want of registration neither party to the indenture can take advantage of any of the terms of the lease'. It was further observed that at best the equitable doctrine of part performance contained in S. 53A of the T.P. Act can be relied upon to protect possession, but no other terms of such an indenture inadmissible for want of registration can be the basis for a relief. The same view has been expressed by the Supreme Court in the case of Satish Chand Makhan v. Govardhan Das Vyas, reported in : AIR 1984 SC143 in the following terms, 'The unregistered deed of lease cannot also be taken into consideration on the ground that such deed can be admitted for collateral purpose, invoking proviso to S. 49 of the Registration Act, as terms of lease are not for collateral purpose within its meaning'. We may also refer to an earlier decision of this Court in the case of Indramoni Dasi v. Snehalata Dutta, reported in (1955) 59 Cal WN 1150, wherein it was held that an unregistered lease being inoperative, the express contractual lease did not take effect in law. It therefore follows from the observations quoted above that the plaintiff-respondents cannot ask for ejectment of the defendant-appellant solely on the basis of the duration clause in the unregistered deed. The unregistered deed can at best be looked into for ascertaining the commencement of possession, rate of rent or similar other provisions which are collateral to the principal transaction. This should be the true import of the proviso to Section 49,

Indian [Registration Act, 1908](#). It could never have been the intention of the Legislature that under the first part of the section we should discard an unregistered document for want of registration and at the same time under the camouflage of the proviso we should be permitted to look into and rely upon all the terms of the inoperative document which do form the integral parts of the principal transaction.

15. It would be appropriate to mention here that the allegations made in the plaints and reliefs sought for in both the suits are based solely on the unregistered deeds of lease dated 1-2-55 and not a word has been spoken about the Agreements preceding the deeds of lease. Strangely enough, at the trial the plaintiffs did not produce the deeds dated 1-2-55 and instead they relied upon an annexure to a writ petition Ext. 4 filed by the defendant-company earlier. It may be recalled that in Braithwaite's case (AIR 1984 NOC 137) (Cal) (supra), which was an action for ejectment on the expiry of the tenure of lease under an unregistered deed of lease, the plaintiffs had produced the unregistered lease. Then again, while the plaintiffs rely heavily upon the duration clause in the deed, they have unscrupulously refused to grant renewal of lease to the company in pursuance of the 'unconditional covenant of renewal' contained in the same document. We have been constrained to refer to these facts only to show that the plaintiffs' conduct throughout is not bona fide.

16. In the ultimate analysis the position reduces itself to this -- (1) the defendant-company is a tenant from month to month under the plaintiff-respondents in respect of both the disputed premises; (2) the ratio and principles emerging out of Rani Kumar Das's case : [1952]1SCR269 (Three Judge Bench) (supra) followed by several later decisions apply in full force to the facts of the present case; (3) the decision in Biswabani's case : [1980]1SCR650 (supra) being later in point of time and which does not come in conflict with Ram Kumar Das's case (supra) is applicable to the facts of the present case in preference to that pronounced in Technicians Studio's case : [1978]1SCR516 (Two Judge Bench) (supra) and (4) for the same reason we respectfully hold that the decision in Braithwait's case (supra) which is based entirely on the decision in Technicians Studio's case (supra) cannot be relied upon for a decision in the matters under appeal. Moreover

the judgment passed in Braithwaite's case is under appeal before the Supreme Court.

17. This brings us to another aspect of the case which seems to be no less important than the points discussed above. The purpose of the tenancy being admittedly residential and there being no valid or provable contract to the contrary, it would be a tenancy from month to month and the incidents of the tenancy would be governed by the provisions of the [West Bengal Premises Tenancy Act, 1956](#) which is a beneficial legislation intended to protect the tenants and arrest the evasion of the statute by unscrupulous landlords by taking recourse to cunning device. As the Act deals with a subject in the concurrent list and as it received the assent of the President on 30th March, 1956, under Article 254 of the Constitution, this State Act shall prevail even if some of the provisions corresponding to those of an Act of the Parliament suffer from repugnancy. It appears that a monthly tenancy may be exempted from the application of the Act only if it comes either under proviso to S. 1 or under S. 3. In order to attract the provisions of S. 3 of the Act, as it stands after the amendment of 1965, (1) the tenancy must be for a residential purpose, (2) created under leases entered between 1-2-48 and 24-8-65 for a period not less than 20 years and (3) the lease, registered under the [Registration Act, 1908](#). Obviously, the present tenancies do not come under S. 3 because the leases have not been registered. So also proviso to S. 1 is not attracted. For the aforesaid reasons the disputed tenancies must be governed by the Act of 1956 as amended by W.B. Act XXIX of 1965. Accordingly S. 13 of the Act comes into play and under that section, 'no order or decree for the recovery of possession of any premises shall be made by any Court in favour of the landlord against the tenant on one or more of the following grounds'. It would be important to note that in the present suits the ground on which eviction has been sought for is not covered by S. 13 and consequently the suits and the appeals arising out of the suits must fail. As there cannot be a decree for eviction, there cannot be a decree for mesne profits. The impact of the Premises Tenancy Act on the tenancies involved in *Technicians Studio's case* : [1978]1SCR516 (supra) or in *Braithwaite's case* (AIR 1984 NOC 137) (Cal) (supra) was neither raised nor discussed and this is an additional ground why we did not apply those principles to the suits under appeal. Moreover this decision of the Division Bench in *Durgesh Nandini's case* : AIR1955

Cal502 (supra) was not at all considered in Braithwaite's case (supra).

18. We are still left with another matter urged by Mr. Mitra challenging the competency of one Division Bench to disregard the decision of another Division Bench of the same Court having coordinate jurisdiction. We have the greatest regard for the learned Judges who decided the Braithwaite's case (AIR 1984 NOC 137) (Cal) but for reasons recorded earlier we are unable to apply the principles set down by Chittatosh Mukherjee (speaking for the Court) in that case; for in answer to the contention raised by Mr. Mitra. we would like to quote the following passage from a decision in the case of Virjiban Dass Moolji v. Bisweswar Lal Hargovind, reported in AIR 1921 Cal 169, wherein Ashutosh Mukherjee, Acting Chief Justice, as His Lordship then was, spoke in these words :--

'When a decision of a single Judge on the Original Side of the High Court is produced before another Judge, he is bound to treat it with respect, and ordinarily to follow it, if it is applicable to the circumstances of the case before him. But this does not imply that he cannot examine the matter and that it is not competent to him to take a contrary view, if he is convinced that the decision is erroneous. The answer to the question, what regard is to be had to an earlier decision of a court of coordinate jurisdiction, must depend upon a variety of circumstances. One important factor is the length of time during which it stood unchallenged. Another factor, possibly of greater importance, is whether the decision gives adequate reasons for the conclusion embodied therein. But the position is in-defeasible on principle, that although a Judge may feel absolutely convinced that the decision produced before him is erroneous in law, he is bound to decide against his own opinion. To take such a view is to hold that the Judge may be reduced to an automaton by the production of an earlier judgment.'

(underlining is ours)

19. The learned trial Judge failed to appreciate the ratio from the judgments of Ram Kumar Das v. Jagdish Chandra Deb : [1952]1SCR269 (supra) followed by several other judgments referred to in the preceding paragraphs and while following the decisions in the cases of Technicians Studio : [1978]1SCR516 and Braithwaite (AIR 1984 NOC 137) (Cal), he was only concerned with the

applicability of S. 53A, T.P. Act to the facts of the instant case. In doing so he completely ignored the provisions of the West Bengal Premises Tenancy Act and their applicability to the incidents of the tenancies in question. For these reasons the impugned judgments and decrees cannot be sustained.

20. In the light of all that has been stated above we allow the appeals with costs and set aside the judgments and decrees under appeal. The two suits being Title Suits Nos. 28 and 89 of 1984 of the Court of the 4th Assistant District Judge, Alipore are dismissed with costs. The cross-objection filed by the respondents in both the appeals is rejected without costs. This judgment shall govern both the appeals heard analogously.

Shamsuddin Ahmed, J.

21. I agree.

22. There will be an order for refund of the amount deposited in terms of the order passed by this Court dated 26th June, 1986 in both the appeals. Leave is given to file application for calculation, adjustment (sic).

23. There will be an order staying operation of the judgment for a period of six weeks from (sic) of stay will not affect the filing of the (sic) derived above.

24. Appeals allowed.

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