

Kali Prosad Vs. Jagadish Pada

Kali Prosad Vs. Jagadish Pada

SooperKanoon Citation : sooperkanoon.com/856915

Court : Kolkata

Decided On : Dec-19-1951

Reported in : AIR1953Cal149

Judge : Harries, C.J. and ;G.N. Das, J.

Acts : [Transfer of Property Act, 1882](#) - Section 105; ;West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 - Section 2(8)

Appeal No. : Civil Rule No. 914 of 1951

Appellant : Kali Prosad

Respondent : Jagadish Pada

Advocate for Def. : Atul Chandra Gupta, ;Bijan Behari Das Gupta and ;Ashutosh Ganguly, Advs.

Advocate for Pet/Ap. : N.C. Sen Gupta and ;Nani Coomer Chakravarit, Advs.

Judgement :

G.N. Das, J.

1. This is an application in revision. The question in controversy between the parties is what is the nature of the relationship between the parties by virtue of an agreement which was entered into by them. The appeal court has held that there

was letting within the meaning of the Rent Control Act. Dr. Sen Gupta appearing for the petitioner contends that on a true construction of the terms of the agreement the opposite party cannot be regarded as a lessee and the provisions of the Rent Control Act for fixing the rent would not be attracted. It would appear from the terms of the lease that the first party named therein who had been carrying on a business in cinema shows entered into an agreement with the second party who is the opposite party in this revision case, for the carrying on of the cinema business. According to Dr. Sen Gupta the arrangement merely provided for the further carrying on of the cinema business on a premium of Rs. 3000/-.

2. The contention of the opposite party, however, is that on a true construction of the agreement it was a lease of the premises on which the cinema business was being run. It would appear that the agreement entitled the second party to the use of the premises. It also entitled the opposite party to the use of the furniture, the machines and other fittings on the premises. An exclusive right to the enjoyment of the premises was conferred on the second party, in consideration of a lump payment per month. The agreement does not provide that the second party to the document must carry on the business. The agreement requires the second party to pay all taxes and rates. It entitles the second party to spend money for the improvement of the premises, the sum to be advanced being treated as loan to be set off against the premium on certain conditions. In my opinion, a perusal of the terms of the document clearly indicates that what was granted was a right to a furnished cinema house. An exclusive right to the enjoyment of the premises was conferred on B in consideration of a lump sum for month. Thus there was letting of the premises.

3. The question then arises whether, assuming it was a grant of a right to the use of a furnished cinema house, it would be regarded as letting within the meaning of the Act. Dr. Sen Gupta contends that this is not included in the definition of 'Premises' as defined in Section 2(8), Rent Control Act. The word 'Premises' includes the use of any furniture or fittings affixed in the building. The word 'building' used in Section 2(8) is not restricted in any way as being confined to residential houses. In my opinion Section 2(8) of the Act is wide enough to include

a case where premises on which a cinema was being carried on are let out. The question as to the basis on which the rent of such premises will be standardized is not a matter with which we are now concerned. The only question now is whether on a true construction of the agreement it can be said that there was a letting of the premises and secondly, whether the letting was included within the meaning of the word 'Premises' as defined in Section 2(8) of the Act.

4. I have already stated that there was a letting of the premises, the second party being entitled to the exclusive use and possession of the premises on which the business was being run. I have also held that the word 'premises' is wide enough to include any building including any furniture and fittings therein. It cannot be said that the furniture and fittings in Section 2(8) cannot include the furniture as also machines which are used for the carrying on of a cinema business.

5. In this view the court below was right in its conclusion and this Rule must accordingly be discharged with costs.

6. Let the affidavit in reply filed in court today be kept on the record.

Harries, C.J.

7. I agree.