

Sm. Daya Debi Vs. Chapala Debi

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Court : Kolkata

Decided On : Mar-23-1959

Reported in : AIR1960Cal378,63CWN976

Judge : S.C. Lahiri and ;A.N. Ray, JJ.

Acts : [West Bengal Premises Tenancy Act, 1956](#) - Section 17 and 17(1); ;Transfer of Property Act - Section 6; ;[Constitution of India](#) - Article 227

Appeal No. : Civil Revn. Case No. 2655 of 1958

Appellant : Sm. Daya Debi

Respondent : Chapala Debi

Advocate for Def. : Lala Hemanta Kumar, ;Amiyalal Chatterjee (Senior) and ;Jitendra Nath Bagchi, Adv.

Advocate for Pet/Ap. : Hemanta Krishna Mitter, Adv.

Judgement :

Lahiri, J.

1. The question raised by the petitioner in this Rule is of some importance and that question is whether in a proceeding under Section 17 of the West Bengal Premises Tenancy Act of 1956 the tenant is required to deposit under Sub-section

(1) of that section, the arrears of rent which were transferred by the landlord in favour of another. The admitted facts are these: Premises No. 101, Durga Charan Mitra Street belonged to a lady named Harimati and under her the petitioner was a tenant at a monthly rent of Rs. 70/- and the tenancy was held by the petitioner according to the Bengali calendar month. On 13-4-1949 Harimati executed a deed of settlement by which she appointed one Dulal Chandra Dutta and Purna Chandra Agarwalla as her trustees. On 27-9-1957 Dulal Chandra Dutta and Purna Chandra Agarwalla sold the premises to the opposite party Sin. Chapala Devi by a document -- Ex.

1. By another document Ext. 3, the two trustees sold the arrears of rent from the month of July up to date i.e. up to 27-9-1957 to Chapala Devi. Shortly thereafter the assignors of the arrears of rent gave notice of the assignment to the tenant by Ex.

3. The 27th of September, 1957 corresponds to the 10th of Aswin, 1364 B. S. It is admitted that the petitioner, as soon as she came to know of the assignment, sent the rent due for the 20 days of Aswin 1364 B. S. by money order to Chapala Devi but Chapala Devi refused the money order and the petitioner has been depositing the rent from month to month with the Rent Controller ever since that date. On 23-2-1958 Chapala Devi instituted a suit for ejectment and arrears of rent. In paragraph 4 of the plaint she states that the tenant is a habitual defaulter and has failed to pay rent from the 17th Ashar, 1363 B. S. up to Magh, 1364 B. S. (corresponding to 1st July, 1956 up to 12th February, 1958), and as such the defendant is not entitled to any protection under the provisions of the West Bengal Premises Tenancy Act of 1956. On the 5th of May, 1958 the plaintiff Chapala filed an application under Section 17(3) of the West Bengal Premises Tenancy Act, 1956 for striking out the defence of the petitioner against delivery of possession on the ground that she had made defaults in depositing in court within one month from the service of the writ of summons on her, the arrears of rent as well as current rent. Upon this application the learned Chief Judge of the City Civil Court has made an order in favour of the plaintiff opposite party. In his order the learned Chief Judge has held

(1) that the petitioner sent rent for 20 days of the month of Ashar by money order to the present plaintiff,

(2) plaintiff's witness No. 3 stated that he received the sum of Rs. 560/- on account of rents sent by defendant by money order, which was actually received by him on the 25th Bhadra, 1361 B. S. and he has further testified that since then the defendant did not pay any rent to them either by hand or by money order,

(3) 'On a careful consideration of the evidence on the record I must hold that the plaintiff has succeeded in proving that rent remains in arrears from the defendant from the 17th Ashar, 1363 B. S. to the date of the plaintiffs purchase and this amounted to Rs. 980/- as stated by Dulal Babu and it also appears from the deed of assignment -- Ex. 3". The learned Chief Judge accordingly made an order under Section 17(3) of the West Bengal Premises Tenancy Act of 1956 and against that order the tenant defendant has obtained the present Rule.

2. Mr. Hemanta Krishna Mitter appearing in support of the Rule has raised a point that under Section 17(1) of the West Bengal Premises Tenancy Act of 1956 the tenant is not required to deposit arrears of rent which have been transferred by the last owner to the present plaintiff. On hearing the learned advocates on both sides it appears to us that this point must be accepted. The point has to be considered from three points of view. In the first place it seems to us that a claim for arrears of rent loses the character of rent as soon as it is assigned. Mr. Lala appearing for the landlord opposite party contends that what is assigned to the assignee is not the right to recover arrears of rent but the cause of action for recovery of arrears of rent and he contends that a consideration of the recitals of Ext. 1 and Ex. 3 would show that what was intended to be assigned by the last owners was the cause of action for recovery of arrears of rent. In order to avoid the effect of section 6 (e) of the Transfer of Property Act, which provides that the transfer of a mere right to sue is non-transferable. Mr. Lala contends that in the present case the right to sue was assigned in favour of the same person to whom the proprietary right in the house itself was conveyed, otherwise the transfer of a mere right to sue would be invalid under Section 6 Clause (e) of the Transfer of Property Act. To give effect to Mr. Lala's contention would lead to the consequence that a claim for recovery of

arrears of rent in order to be valid cannot be transferred to anybody else except the person to whom the proprietary right in the house itself has been conveyed. I cannot agree that this is a legal consequence of the assignment of arrears of rent. In my opinion, the cause of action for recovery of arrears of rent is completely satisfied as soon as the assignor receives the consideration for which he sells the arrears of rent and what the assignee purchases is not the cause of action for recovery of arrears of rent, but the right of the assignor to recover those arrears. The right of the assignor to recover arrears of rent is a property and as such it is transferable under the main provisions of Section 6 of the Transfer of Property Act and it is not hit by any of the clauses which appear in that section. Such a right can be transferred either in favour of the person who has acquired title to the house itself or in favour of a stranger. It is quite possible that the house is sold to 'X' and the claim for recovery of arrears is sold to 'Y'. For these reasons I have reached the conclusion that the claim for arrears of rent ceases to be a claim for rent and is converted into an actionable wrong as defined by Section 3 of the Transfer of Property Act and is assignable in the manner contemplated by Section 130 of that Act. This conclusion is supported to some extent by the decision of the Full Bench of this Court in the case of Hari Lal Sinha v. Tripura Charan Roy, ILR 40 Cal 650. In that case arrears of rent were transferred to a legal practitioner who instituted a suit for recovering the arrears assigned to him. One of the points raised before the Division Bench was that the claim for arrears of rent was an actionable claim and as such the plaintiff's suit was hit by S. 136 of the Transfer of Property Act. On this point the Division Bench recorded the following opinion:

'On the third point we are of opinion that the right of arrears of rent purchased is an actionable claim under Section 136 of the Transfer of Property Act and that the plaintiff cannot, therefore, enforce it in any court'.

3. The Full Bench made the following observation at page 677 on this point:

'It is conceded that, as held by the Division Bench, the plaintiff cannot successfully claim the arrears of rent purchased by him'.

4. Although the point was not raised before the Full Bench and was not decided by it, still the decision of the Division Bench is there and this decision was accepted

as correct by the Full Bench. This decision accordingly lends some support to the petitioner's contention that arrears of rent loses the character of rent as soon as they are assigned and are converted into an actionable claim.

5. Mr. Lala appearing for the opposite party cited before us the decision in the cases of *Ellis v. Torrington* 1920-1 K. B. 399 and *Suryanarayana Garu v. Venkayya* AIR 1923 Mad 177. These cases however, are of no assistance on the question which we have to consider in the present case, because in those cases the validity of the assignment was challenged on the ground that it was champartous and was a mere assignment of the right to sue. It was held by the courts that assignments were not merely assignments of the right to sue, but assignments of rights to a property along with right to sue for damages.

6. The second decision which has been cited before us on this point is a decision of the Patna High Court in the case of *Rameshwar Narain Singh v. Reknath Koeri*, 67 Ind Cas 451: (AIR 1923 Pat 165). In that case Das and Adami JJ. had to consider the question whether an oral gift of the claim for arrears of rent was valid and in considering that question they had to consider a further question whether the claim for arrears of rent, if assigned was an actionable claim, and their answer to that question was in the affirmative. They held that as the claim for arrears of rent loses its character of arrears of rent upon assignment, the gift must be effected in accordance with the provision of Section 130 of the Transfer of Property Act, which requires registered instruments. This decision, therefore, also supports the petitioner's contention.

7. Mr. Lala then contends that what the tenant has to deposit under Section 17(1) of the West Bengal Premises Tenancy Act is rent nor arrears of rent but

'an amount calculated at the rate of rent, at which it was last paid for the period for which the tenant may have been in default'.

It is true that the word 'rent' has not been used by the legislature in Section 17(1) of the West Bengal Premises Tenancy Act, but under that Sub-section the tenant is required to deposit in court or pay to the landlord. The deposit in court is an alternative to payment to the landlord and this requirement clarifies the nature of

'amount calculated at the rate of rent'. If the landlord to whom the arrears of rent fell due institutes a suit for ejectment, under the terms of Section 17(1), the tenant must deposit all the arrears within 30 days of the service of the writ of summons, but where, as in the case before us, the suit for ejectment is instituted not by the landlord to whom the arrears of rent became due, but by his assignee there is no obligation in our opinion, on the part of the tenant to deposit arrears of rent, which became due to the ex-landlord.

8. The second point of view from which the question can be looked at is that the assignment of arrears of rent may be in favour of a person, who has no interest in the premises from which ejectment is asked for. Section 17(1) requires that the arrears should be either deposited in court Or paid to the landlord. If the arrears have been assigned to a stranger, who has no interest in the premises, obviously, Section 17(1) can have no possible application. In the present case it is merely an accidental circumstance that the arrears of rent have been assigned to the same person, who has acquired title to the house itself. The character of the tenant's duty or the character of the tenant's obligation under Sub-section (1) of Section 17 has to be determined by a consideration of all possible cases and if the tenant is not under an obligation to make, the deposit in case of an assignment of arrears of rent to a stranger, he cannot also be said to be under any obligation to make the deposit when the arrears are assigned to a person who has acquired title to the property. For this reason also I hold that in the present case the petitioner was not required to make the deposit of the arrears of rent which were assigned to the plaintiff, under the deed of assignment, dated 27-9-1957.

9. The third ground upon which the tenant's obligation to make the deposit has been challenged is that upon the findings of the learned Chief Judge of the City Civil Court rent is in arrears from the petitioner from the 17th Ashar, 1363 B. S. upto the date of the plaintiff's purchase, which took place, as I have already stated, on the 10th Aswin 1364 B. S. It has been found that the total amount due for this period is a sum of Rs. 980/-. Upon, this finding Mr. Mitter has contended that a monthly tenant is under no obligation to deposit rent for a fraction of a month of the tenancy. In our opinion this contention is also sound. I have already stated that the tenancy in the present case was held according to the Bengali calendar month and

as such it runs from the 1st of each Bengali month upto the last day of each, month. It is a settled law that in the absence of a contract or a custom to the contrary rent is payable at the end of the period for which it is reserved. As the default found commenced from the middle of a Bengali month and terminated with the middle of another Bengali month, I hold that both the starting point and the terminus of this period of default are invalid.

10. The second point raised by the petitioner in support of the Rule is that there is nothing on the record to show that anything was due from the petitioner. We are not prepared to decide this question because upon the evidence, if it were really necessary for us to decide this question, we would have sent the case back to the trial court, as we are not satisfied with the findings that have been arrived at by that court. But since the petitioner is getting relief on the first point raised by her, it is not necessary for us to express any opinion on this point.

11. Mr. Lala appearing for the opposite party wanted to point out that there were acts of default on the part of the petitioner after the 5th of May, 1958, on which date the application under Section 17(3) of the West Bengal Premises Tenancy Act was filed by the plaintiff. As there are no materials on the record on this point and as we are not prepared to allow any party to introduce new facts in a proceeding under Article 227 of the Constitution we express no opinion on this point.

12. For the reasons given above, I would make this Rule absolute, set aside the order, dated the 16th June, 1958 made by the learned Chief Judge of the City Civil Court and dismiss the plaintiff's application with costs in all the courts.

13. Hearing fee in this court is assessed at 5 gold mohurs.

Ray, J.

14. I agree.