

Binny Ltd. Vs. Alliance Properties and Industries Ltd.

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Court : Kolkata

Decided On : May-05-2006

Reported in : 2006(3)CHN322

Judge : Bhaskar Bhattacharya and ;Pravendu Narayan Sinha, JJ.

Acts : [West Bengal Premises Tenancy Act, 1956](#) - Sections 1(1), 1(3), 3, 31 and 36; ;West Bengal Premises Tenancy (Amendment) Ordinance, 1965; ;[Registration Act, 1908](#); ;[Transfer of Property Act, 1882](#) - Section 5

Appeal No. : F.A. No. 123 of 1996

Appellant : Binny Ltd.

Respondent : Alliance Properties and Industries Ltd.

Advocate for Def. : Alope Ghosh, Adv.

Advocate for Pet/Ap. : S.P. Roy Chowdhury, ;Harish Tandon and ;U.S. Menon, Adv.

Disposition : Appeal allowed

Judgement :

Bhaskar Bhattacharya, J.

1. This first appeal is at the instance of a plaintiff in a suit for declaration that it is a tenant governed under the provisions of the West Bengal Premises Tenancy Act and for permanent injunction restraining the defendant from interfering with the possession of the plaintiff and in anyway affecting the right of the plaintiff as a premises tenant and this appeal is preferred against the judgment and decree dated 13th June, 1995 passed by the learned Trial Judge thereby dismissing the suit.

2. The following facts are not in dispute:

(1) The plaintiff was put into possession of the suit property as a tenant on 1st October, 1965 and long thereafter, on 25th October, 1967 a registered deed of lease was executed between the parties by which the plaintiff was recognised as a lessee for ten years with effect from 1st October, 1965, the date of initial induction. It was specifically provided in the said deed of lease that the lease would come to an end with the expiry of 30th September, 1975 with a clause of renewal at the instance of the lessee.

(2) In spite of expiry of the said lease, the plaintiff continued in possession and subsequently, on 13th September, 1976 another registered lease-deed was executed by the parties by which it was stipulated that the second term of the lease would continue from 1st October, 1975 and would come to an end on 30th September, 1985.

(3) Subsequently, the suit was filed by the plaintiff for declaration that the plaintiff was a monthly tenant governed by the provisions of the West Bengal Premises Tenancy Act.

3. The defendant contested the suit by filing written statement thereby contending, inter alia, that the plaintiff having enjoyed the tenancy for a continuous period of twenty years by virtue of two successive registered deeds of lease of ten years each, the tenancy did not come within the purview of the West Bengal Premises Tenancy Act.

4. At the time of hearing of the suit, evidence was adduced on behalf of the parties and the registered deeds of lease were exhibited.

5. The learned Trial Judge by the judgment and decree impugned herein has held that the plaintiff having enjoyed a tenancy for twenty years by two successive registered deeds of lease of ten years each, such tenancy was not governed by the provisions of West Bengal Premises Tenancy Act.

6. Being dissatisfied, the plaintiff has come up with the present first appeal.

7. Mr. Roy Chowdhury, the learned senior Advocate appearing on behalf of the appellant, contended before us that there being two successive lease-deeds for ten years each, the tenancy in question cannot be said to be one created by virtue of a registered deed of lease for twenty years and thus, the tenancy is governed by the provisions of West Bengal Premises Tenancy Act.

8. Mr. Roy Chowdhury next contends that it would appear that the first registered lease-deed was executed on 25th October, 1967 and the same was given effect to from an anterior date, namely, 1st October, 1965, and therefore, the said lease-deed should be construed to be one for eight years.

9. Mr. Roy Chowdhury further contends that similarly, the second lease-deed dated 13st September, 1976 was really for nine years and thus the total period of lease was less than twenty years. Apart from the aforesaid fact, Mr. Roy Chowdhury contends that his client having been inducted in the property on 1st October, 1965 without execution of any deed of lease and the said tenancy being continuing, the same was definitely a tenancy governed under the West Bengal Premises Tenancy Act and the subsequent execution of two different deeds of lease for ten years did not affect the original tenancy. Mr. Roy Chowdhury, thus, prays for setting aside the judgment and decree passed by the learned Trial Judge and for passing a decree in terms of the prayer made in the plaint.

10. Mr. Ghosh, the learned Advocate appearing on behalf of the respondent, on the other hand, has supported the reasons assigned by the learned Trial Judge and has contended that once the second deed of lease was executed in terms of

the clause of renewal conferred by the first one, it should be held to be a lease for continuous twenty years and thus, the West Bengal Premises Tenancy Act cannot have any application to the facts of the present case. Mr. Ghosh in this connection relied upon a decision of the Supreme Court in the case of State of U.P. and Ors. v. Lalji Tandon, reported in : AIR 2004 SC32 .

11. Before considering the respective submissions made by the learned Counsel for the parties it will be profitable to refer to the provisions contained in Section 3 of the West Bengal Premises Tenancy Act which is quoted below:

3. Certain provisions of the Act not to apply to certain leases.--(1) The provisions relating to rent and the provisions of Sections 31 and 36 shall apply to any premises held under a lease for residential purpose, of the lease himself and registered under the Indian [Registration Act, 1908](#), where-

(a) such lease has been entered into on or after the 1st December, 1948, and

(b) such lease is for a period of not more than 20 years, and save as aforesaid nothing in this Act shall apply to any premises held under a lease for a period of not less than 15 years.

(2) Notwithstanding anything to the contrary contained in Sub-section (1) but subject to Sub-section (3) of Section 1, this Act shall apply to all premises held under a lease which has been entered into after the commencement of the West Bengal Premises Tenancy (Amendment) Ordinance, 1965: Provided that if any such lease is for a period of not less than 20 years and the period limited by such lease is not expressed to be terminable before its expiration at the option either of the landlord or of the tenancy, nothing in this Act, other than the provisions relating to rent and the provisions of Sections 31 and 36, shall apply to any premises held under such lease.

12. After hearing the learned Counsel for the parties and after going through the materials on record we are of the view that the tenancy in question is governed by the provisions of West Bengal Premises Tenancy Act and thus, the learned Trial Judge erred in law in dismissing the suit for the following reasons:

(a) There is no dispute that the plaintiff was inducted as a tenant on 1st October, 1965 and there was no registered deed of lease at that point of time. Therefore, the induction of the appellant without execution of any registered deed of lease for not less than twenty years brought the tenancy within the purview of the West Bengal Premises Tenancy Act. It is true that during the subsistence of such tenancy, the tenant and the landlord executed, a registered deed of lease for ten years on 25th October, 1967 by accepting the initial induction. In our view, the execution of such registered deed of lease dated 25th October, 1967 did not affect the status of the plaintiff in any way because that lease-deed really created a lease for about eight years, inasmuch as, a lease-deed cannot be executed by giving effect of the lease from an anterior date. In view of Section 5 of the Transfer of Property Act, any transfer of property provided in the said Act can be given effect to either from the date of execution and registration or from a future date but there is no scope of giving effect to any transfer from an earlier date.

(b) Similarly, when the second deed of lease was executed on 13th September, 1976 with effect from 1st October, 1975, the same was a fresh lease-deed for less than ten years and that tenancy is also governed by the provisions of West Bengal Premises Tenancy Act and, therefore, even after the expiry of the terms mentioned in the second deed, the original status of the plaintiff was not at all changed.

(c) Even if we accept for the sake of argument that the total period of time mentioned in the two deeds should be taken into account, there was definitely an option at the instance of the lessee for earlier termination at the expiry of first ten years because of the renewal clause mentioned in the first deed of lease. Therefore, even in such a case, there was an option of termination of the lease at the expiry of first ten years at the instance of the lessee and even in that case, the lease having been registered after the coming into operation of 1965 Ordinance, the tenancy is governed by the provisions of West Bengal Premises Tenancy Act.

13. We fail to appreciate how the decision of the Supreme Court in the case of State of U.P. and Ors. v. Lalji Tandon (supra), relied upon by Mr. Ghosh can be of any help to his client. In the said case it was held that there is a difference

between an extension of lease in accordance with the covenant in that regard contained in the principal lease and renewal of the lease in accordance with covenant for renewal contained in the original lease. According to the Supreme Court, in the case of extension, it is not necessary to have a fresh deed of lease executed, as the extension of lease for the term agreed upon shall be a necessary consequence of the clause for extension; on the other hand, the option for renewal has to be exercised consistently with the terms of the covenant for renewal and, if exercised, a fresh deed of lease shall have to be executed between the parties and failing the execution of a fresh deed of lease, another lease for a fixed term shall not come into existence though the principal lease in spite of the expiry of the term thereof may continue by holding over.

14. Therefore, even if we apply the principles laid down in the said Supreme Court decision, the same will go against the interest of Mr. Ghosh's client, inasmuch as, the second lease should be treated to be a separate lease for less than twenty years and even in that case, the tenancy should be governed by the provisions of West Bengal Premises Tenancy Act.

15. We, thus, find that the learned Trial Judge erred in law in not considering the aforesaid aspects and in accepting the contention of defendant that as the plaintiff continued in occupation for twenty years at a stretch by virtue of those two deeds of lease, the West Bengal Premises Tenancy Act did not govern the tenancy.

16. We, therefore, allow this appeal and set aside the judgment and decree passed by the learned Trial Judge.

17. Let it can be declared that the tenancy of the appellant is governed by the provisions of West Bengal Premises Tenancy Act and the respondents are restrained from interfering with the possession of the plaintiff except by due process of law as provided in the West Bengal Premises Tenancy Act.

18. In the facts and circumstances, there will be, however, no order as to costs.

Pravendu Narayani Sinha, J.

I agree.

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