

Narendra Krishna Bose Vs. Great Eastern Hotel Ltd. and anr.

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Court : Kolkata

Decided On : Mar-31-1950

Reported in : AIR1951Cal394

Judge : Harries, C.J. and ;Sinha, J.

Acts : [Transfer of Property Act, 1882](#) - Section 50; ;[Code of Civil Procedure \(CPC\), 1908](#) - Section 151 - Order 21, Rule 35 - Order 41, Rule 2

Appeal No. : A.F.O.O. No. 26 of 1950

Appellant : Narendra Krishna Bose

Respondent : Great Eastern Hotel Ltd. and anr.

Advocate for Def. : E.R. Meyer and ;H. Rahman, Advs.

Advocate for Pet/Ap. : A.K. Sen and ;S. Roy, Advs.

Disposition : Appeal dismissed

Judgement :

Sinha, J.

1. This is an appeal from an order made by Banerjee J. dated 14-2-1950, whereby he dismissed the application of the applt. for an injunction restraining resp. 1 from executing a decree for possession obtained by him against resp. 2.

2. Respondent 2 (hereinafter referred to as the tenant) was a tenant under resp. 1 (hereinafter referred to as the landlord) in respect of Room No. 12, in premises no. 29, Waterloo street, at a monthly rent of Rs. 51. In August 1949, the tenant sub-let a portion of the said room to the applt. at a monthly rent of Rs. 70. The tenant did not pay any rent to the landlord for June, July and August 1949. On 9-9-1949, the landlord through his attorney wrote to the tenant to vacate the room within three days. The tenant not having vacated, on 21-9-1949, the landlord filed Suit No. 3938 of 1949 against the tenant for recovery of possession and for arrears of rent.

3. The applt's. case is that in January 1950 he came to know that the landlord had filed a suit for possession against the tenant and was going to obtain a decree. The appellant thereupon offered to pay rent to the landlord which was refused. On 10-1-1950, the applt. wrote to the landlord through his attorney alleging that the interest of the tenant having been determined, the applt. should be deemed to be a tenant directly under the landlord.

4. The landlord's suit against the tenant was decreed on 20-1-1950.

5. The applt. on the next day filed the suit out of which this appeal arises for a declaration that the said decree dated 20-1-1950, could not be executed against him, for a declaration that he was a tenant under the landlord direct and for an injunction restraining the landlord from executing the decree against him.

6. On 1-2-1950, notice of motion was taken out for an injunction restraining the landlord from proceeding with the execution of the decree dated 20-1-1950.

7. The learned Judge was of opinion that the tenant having defaulted in payment of rent for 3 consecutive months viz. June, July & August 1949, the interest of the tenant stood ipso facto determined. The result was that under Section 11 (3) the apt., who was a lawful sub-tenant, became a statutory tenant holding directly under the landlord on the same terms & conditions on which he was holding under the tenant. The applt., therefore, became liable to pay the rent under the statutory tenancy to the landlord from September onwards. He did not pay any rent and his statutory tenancy determined ipso facto by reason of non-payment of rent for 3 consecutive months.

8. It was contended before the learned Judge that the interest of the tenant did not determine till the decree had been made on 20-1-1950. It was not contended before the learned Judge that the applt. was not a defaulter if he was deemed to have become a tenant under the provisions of Section 11 (8.) immediately after the determination of the interest of the original tenant. It was, however, argued that though the tenancy of the original tenant had determined at the end of August 1949 he had a right to continue in possession till the decree for ejectment had been made against him and his interest as a tenant continued and was not lawfully determined till the decree had been made. The learned Judge did not accept this contention & held that the pltf. had not been able to make out a prima facie case & refused the appln.

9. Before us it was not urged that the interest of the tenant had not been lawfully determined till the decree for ejectment was made. It was, however, contended that the applt. had paid the rent to his immediate landlord regularly & this payment should be deemed to be payment to the landlord. If so the applt. was not in default & had made out a prima facie case & was entitled to the injunction.

10. Section 50, T. P. Act, was relied on which provides that no person shall be chargeable with any rents or profits of any immovable property, which he has in good faith paid or delivered to any person of whom he in good faith held such property, notwithstanding it may afterwards appear that the person to whom such payment or delivery was made, had no right to receive such rents or profits.

11. It was urged that the applt. had paid rent in good faith to his immediate landlord regularly & without the knowledge of the fact that the interest of the tenant had ipso facto determined. The applt. was not, therefore, chargeable for payment of any rent to the landlord, for the period he had paid rent to his immediate landlord & therefore, he was not in default for 3 consecutive months & his statutory tenancy had not determined.

12. It appears to me, however, that Section 50 contemplates payment of rent in good faith for the same tenancy to a wrong person. In this case the applt. paid the rent of the subtenancy to his immediate landlord. The rent paid by the applt. to the resp. 2 was in respect of a contractual sub-tenancy. It was paid to the right person

who was entitled to receive the rent under the sub-tenancy. The rent was not paid in respect of the statutory tenancy to a wrong person. The default of the applt. was in respect of payment of rent under the statutory tenancy under Section 11 (3) of the Act & his payment of rent of the sub-tenancy to resp. 2 cannot, therefore, be relied upon as payment of rent to the resp. 1 under the statutory tenancy.

13. It is, however, not necessary to decide the point inasmuch as this point was not argued before the learned Judge, nor was this point taken in the grounds of appeal.

14. The decision of this point depends on questions of fact, viz., whether the rent was paid by the appellant in good faith to a person of whom the applt. in good faith held such property.

15. I do not think it will be right to allow the applt. to take this point for the first time on appeal.

16. Mr. Sen also attempted to argue that the decree could not be executed against his client because he was a statutory tenant. Unfortunately, this point was also not argued before the learned Judge nor mentioned in the grounds of appeal. I do not think it will be right to allow the applt. to take this point for the first time in the appellate Ct.

17. If the applt. is not bound by the decree dated 20-1-1950, it would be for him to take appropriate steps under Order 21, C. P. C. to protect his rights. A decree made in a suit cannot be executed against one who is not a party to the suit, unless the latter is bound to obey the decree. If such execution is attempted, Order 21 provides a complete procedure for protection of the rights of a person who is not bound by the decree where the Code provides a procedure for protection of such rights, I do not think it is ordinarily right for the Ct. to exercise its inherent power & make an order restraining execution of the decree at the instance of one who was not a party to the suit in which the decree was made.

18. A speedy & cheap procedure is provided by Order 21, C. P. C. & that procedure should ordinarily be adopted.

19. The learned Judge on the materials before him exercised his discretion judicially & this Ct. cannot possibly interfere with the order in this appeal.

20. The appeal is, therefore, dismissed with costs, certified for two counsel.

Harries, C.J.

21. I agree.

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