SWADESH RANJAN SINHA

*v.*

HARADEB BANERJEE

OCTOBER 3, 1991

[T.K. THOMMEN AND R.M. SAHAI, JJ.]

*West Bengal Premises Tenancy Act, 1956:*

*Sections 2 and 13(1)(ff)—Eviction of tenant—Premises allotted by sub-lease rented out—Whether allottee owner entitled to evict the tenant—Ownership—Meaning of.*

**The appellant-plaintiff rented out to the respondent-defendant the suit premises allotted to him, by sub-lease, by a Housing Co-operative Society, which itself held the flat under a 99 years lease granted by the Metropolitan Development Authority. Sometime later he issued a notice of termination of the tenancy to the respondent and called upon him to vacate the premises within a stipulated time. On respondent's failure to vacate the premises, he instituted a suit on grounds of default of payment of rent and reasonable requirement for occupation under Sections 13 (1) (i) and 13(1)(ff) respectively. The trial court decreed the suit on the ground of reasonable requirement but held that the respondent tenant was not in arrears of rent.**

**On appeal by the respondent, the first appellate court did not examine the merits of the appellant's claim of reasonable requirement, but examined the appellant-plaintiff's title, though the respondent had not questioned the same and held that, since the appellant was only a lessee under a 99 years lease granted by the Society, which itself was a lessee holding a 99 years lease from the Metropolitan Development Authority, he was not an 'owner' within the meaning of Section 13(1)(ff) of the Act and was, therefore, not entitled to seek eviction under that provision. The High Court also did not examine the appellant's claim for eviction and affirmed the first appellate Court's finding on the question of title. Hence the appeal by the appellant-plaintiff.**

**On the question : whether the appellant was the owner of the suit premises for the purpose of instituting a suit for eviction in terms of the West Bengal Premises Tenancy Act, 1956.**

A Allowing the appeal, this Court,

HELD: 1.1 Ownership denotes the relation between a person and an object forming the subject-matter of his ownership. It consists in a complex of rights, all of which are right's in rem, being good against all the world and not merely against specific persons. [249 G]

B

Salmond on *Jurisprudence,* 12th ed. Ch. 8, p. 246 et. seq. referred to.

1.2 There are various rights or incidents of ownership all of which need not necessarily be present in every case. They may include a right to possess, use and enjoy the thing owned; and a right may be indeterminate in duration and residuary in character. A person has a right to possess C the thing which he owns, even when he is not in possession, but only retains a reversionary interest, i.e., a right to repossess the thing on the termination of a certain period or on the happening of a certain event. [249 G-H; 250 A]

1.3 All that a plaintiff needs to prove is that he has a better title D than the defendant. He has no burden to show that he has the best of all possible titles. His ownership is good against all the world except the true owner. The rights of an owner are seldom absolute, and often are in many respects controlled and regulated by statute. The question, however, is whether he has a superior right or interest vis-a-vis the person challenging it. [250 B]

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1.4 In the instant case, the appellant-plaintiff is an allottee in terms of the West Bengal Co-operative Societies Act, 1983. He has a right to possess the premises for a period of 99 years as a heritable and transferable property. During that period he has a right to let out the premises and enjoy the rental income therefrom, subject to the statutory terms and F conditions of allotment. The certificate of allotment is the conclusive evidence of his title or interest. No doubt he has to obtain the written consent of the Society before letting out the premises. But once let out in accordance with the terms of allotment specified in the statute, he is entitled to enjoy the income from the property. Although he is a lessee in relation to the society, and his rights and interests are subject to the G terms and conditions of allotment, he is the owner of the property having a superior right in relation to the defendant. As far as the respondent is concerned, the appellant is his landlord and the owner of the premises for all purposes dealt with under the provisions of the Act. [250 C-E]

1.5 Hence, the High Court and the first appellate court were wrong H in setting aside the decree of the trial court solely on the question of

**appellant's title, which was never an issue at any stage of the trial. There was no plea to that effect and no issue was, therefore, framed on the question. This being the position, the appellant's claim has to be decided on the basis of the pleadings, i.e. on the basis that he is the owner of the premises in question. Accordingly, the Judgments of the High Court and first appellate court are set aside and the matter remanded to the first appellate court for fresh disposal of respondent-tenant's appeal on merits. [250 E-G]**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4075 of 1991.

From the Judgment and Order dated 3.12.1990 of the Calcutta High Court in Second Appeal No. 1063 of 1982.

D.N. Mukherjee, N.R. Choudhary and Ranjan Mukherjee for the Appellant.

Manoj Swarup, Ms. Lalita Kohli, Ms. Sarla Chandra and S.K. Mitra for the Respondent.

The Judgment of the Court was delivered by

**THOMMEN, J.** Leave granted.

This appeal by the plaintiff in a suit for eviction arises from the judgment of the Calcutta High Court dismissing his appeal against the judgment of the 1st appellate court allowing the defendant's appeal against the decree of the trial court. The trial court found that the plaintiff was entitled to evict the tenant on the ground of reasonable requirement specified under Section 13(1)(ff) of the West Bengal Premises Tenancy Act, 1956 (the "Act"). Reversing that finding, the 1st appellate court held that the plaintiff was not the owner of the premises and was, therefore, not entitled to seek eviction. This finding was affirmed by the High Court by the judgment under appeal.

The only question which arises in the present appeal is whether or not the plaintiff is the owner of the suit premises for the purpose of instituting a suit for eviction in terms of the Act. The dispute concerns a flat allotted to the plaintiff by the Kadamtoia Housing Co-operative Society, Calcutta (the "Society"). This was one of the 16 flats held by the Society under a 99 years lease granted by the Calcutta Metropolitan Development Authority under a registered document. The Society in turn allotted these flats to its members, among whom the appellant is one, by a sub-lease for a term of 99 years. The appellant, being an allottee, is thus a sub-lessee under the Society with a heritable and transferable title. The

A appellant subsequently inducted the respondent into the flat on a rent of Rs.110 per month. On 29.10.1976, a notice of termination of the tenancy was issued by the appellant to the respondent calling upon him to vacate the premises not later than December, 1976. Since the respondent did not vacate the premises, title suit No. 165/77 was instituted by the appellant on the ground of default of payment of rent as specified under Section B 13(1)(i) of the Act and also on the ground of reasonable requirement for occupation as provided under Section 13(1)(ff). The trial court found that the premises were reasonably required by the appellant, and the suit was accordingly decreed on the ground mentioned under Section 13(1)(ff). It was, however, held that the tenant was not in arrears of rent.

C It is important to note that the defendant in his written statement did not question the plaintiff's title or claim of ownership. No issue regarding ownership had been framed as it was never questioned by the defendant at any stage of the proceedings in the trial court. On appeal by the defendant, the 1st appellate court examined the plaintiff's title and held that, since he was only a lessee under a 99 years lease granted by the Society, which itself was a lessee holding a 99 years lease from the D Metropolitan Development Authority, he was not an 'owner' within the meaning of Section 13(1)(ff) of the Act and was, therefore, not entitled to seek eviction under that provision. Accordingly, the merits of the plaintiff's claim were not examined by the 1st appellate court. This finding was affirmed by the High Court, and, like the 1st appellate court, it also did not consider the merits of the plaintiff's case for eviction.

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Section 13 protects a tenant from eviction except on one or more of the grounds specified thereunder. That Section, in so far as it is material, reads:

> "S.(13)(1) — Notwithstanding anything to the contrary in any other law, no order or decree for the recovery of possession of F any premises shall be made by any Court in favour of the landlord against a tenant except on one or more of the following grounds, namely: –
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> .....
>
> G (ff) Subject to the provisions of sub-section (3A), where the premises are reasonably required by the landlord for his own occupation if he is the owner or for the occupation of any person for whose benefit the premises are held and the landlord or such person is not in possession of any reasonably suitable accommodation.
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> .....

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On the facts of this case, the provision of sub-section 3(A) of this Section are not attracted. Clause (ff) is attracted as a ground for eviction if the landlord is in a position to prove that the premises are required by him for his own occupation, if he is the owner of the premises, or for the occupation of any person for whose benefit the premises are held, and the landlord or such other person, as the case may be, is not in possession of any reasonably suitable accommodation.

The 'landlord' is defined by Section 2 in wide terms so as to include 'any person who, for the time being, is entitled to receive or but for a special contract, would be entitled to receive the rent of any premises, whether or not on his own account:' This definition shows that even if the rent is received by a person not on his own account but on account of any other person, such as his principal or his ward, he is for the purpose of the Act a landlord. Any such person is, therefore, entitled to institute a suit for eviction. But to attract clause (ff), the requirement of the landlord must be either for his own occupation, if he is the owner, or, for the occupation of any person for whose benefit the premises are held. This clause is, of course, available only when no reasonably suitable accommodation is available to the person for whose occupation the eviction is sought.

It is submitted on behalf of the respondent that the appellant, although a 'landlord' within the meaning of Section 2, is not an owner so as to be able to seek eviction on the ground specified under clause (ff) of sub-section (1) of Section 13. The contention is that the appellant is only a lessee, and that too in terms of a sub-lease of 99 years granted by a Society which is itself holding a lease for the same period. Such a lessee is not an owner, for his rights are not absolute. He cannot claim to be an owner for the purpose of seeking eviction by recourse to the provisions of an Act which is intended to protect the tenant and prevent eviction except on specified grounds. The expression owner should be so strictly construed as to exclude any person having less than full ownership right.

'Ownership denotes the relation between a person and an object forming the subject-matter of his ownership. It consists in a complex of rights, all of which are rights *in rem*, being good against all the world and not merely against specific persons'. (Salmond on *Jurisprudence*, 12th ed., Ch. 8, p. 246 et. seq.). There are various rights or incidents of ownership all of which need not necessarily be present in every case. They may include a right to possess, use and enjoy the thing owned; and a right to consume, destroy or alienate it. Such a right may be indeterminate in duration and residuary in character. A person has a right to possess the thing which he owns, even when he is not in possession, but only retains a rever-

A sionary interest, i.e., a right to repossess the thing on the termination of a certain period or on the happening of a certain event.

All that a plaintiff needs to prove is that he has a better title than the defendant. He has no burden to show that he has the best of all possible titles. His ownership is good against all the world except the true B owner. The rights of an owner are seldom absolute, and often are in many respects controlled and regulated by statute. The question, however, is whether he has a superior right or interest vis-a-vis the person challenging it.

The plaintiff is an allottee in terms of the West Bengal Co-operative Societies Act, 1983: (See Sections 87 and 89). He has a right to possess the premises for a period of 99 years as a heritable and transferable C property. During that period he has a right to let out the premises and enjoy the rental income therefrom, subject to the statutory terms and conditions of allotment. The certificate of allotment is the conclusive evidence of his title or interest. It is true that he has to obtain the written consent of the Society before letting out the premises. But once let out in accordance with the terms of allotment specified in the statute, he is entitled to D enjoy the income from the property. Although he is a lessee in relation to the Society, and his rights and interests are subject to the terms and conditions of allotment, he is the owner of the property having a superior right in relation to the defendant. As far as the defendant is concerned, the plaintiff is his landlord and the owner of the premises for all purposes dealt with under the provisions of the Act.

E

In view of what we have stated above, the High Court and the 1st appellate court were wrong in setting aside the decree of the trial court solely on the question of the appellant's title. The appellant's title was never an issue at any stage of the trial. There was no plea to that effect and no issue was, therefore, framed on the question. This being the position, F the appellant's claim has to be decided on the basis of the pleadings, i.e., on the basis that he is the owner of the premises in question.

Accordingly, we set aside the judgment of the High Court and that of the 1st appellate court and remand this case to the 1st appellate court for fresh disposal of the respondent-tenant's appeal on the merits.

G

This appeal is accordingly allowed with costs of the appellant throughout.

N.P.V Appeal allowed.