

**G.A. No. 2658 of 2011
G.A. 2656 of 2011
C. S. No. 97 of 2011**

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction

PRABIR KUMAR JALAN

.....**Plaintiff**

Vs

LAXMI NARAYAN JALAN & ORS.

.....**Defendants**

For Plaintiff : Mr. Ranjan Deb, Senior Advocate with
Ms. Noelle Banerjee,
Mr. Dipak Dey.....Advocates

For Defendants : Ms. Usha Doshi.....Advocate

Heard on : 25.01.2012

Judgment on : **6th February, 2012**

I.P. MUKERJI, J.

This is a Chapter XIII A application made by the plaintiff. He seeks a final judgment and decree in his suit for possession of the third floor of premises No. 68/A/1B Nimtolla Ghat Street, Kolkata -700006 (hereinafter referred to as "the said premises"). He also claims an enquiry into mesne profits and a decree therefor.

The cause of action arises in this way. The original owner of the said premises was a Tara Devi Jalan.

On 26th December, 1967 she granted a lease of the said premises for 21 years to Uma Shankar Jalan commencing on 26th December, 1967 at the rent reserved by the deed of lease. Now, Clause 12 of this lease empowered the lessee to give two months' notice to the lessor for vacating the said premises.

Whatever may have been the construction of the lease made by Tara Devi Jalan, a suit was instituted by her in this Court being Suit No. 177 of 1989 for eviction of the lessee Uma Shankar Jalan on the ground that the lease had expired by efflux of time. In that suit a Chapter XIII A application was taken out by the plaintiff. This Court by a decree dated 6th July, 1989, in that application, ordered the eviction of Uma Shankar Jalan. Uma Shankar preferred an appeal from this judgment and decree before the Division Bench of this Court, which by its judgment and order dated 10th November, 1994 set aside the decree based on the Chapter XIII A application. On 7th December, 1994 Uma Shankar filed his written statement in the suit. On 25th December, 1999 Uma Shankar died. The present defendants are the heirs of Uma Shankar, the first and second defendants being his sons and the third and fourth defendants being his daughters.

Now, Tara Devi Jalan did not feel interested to retain the said premises anymore. On 13th February, 2001 she made a gift of the said premises to the present plaintiff. The records show that the above suit (Suit No. 177 of 1989) is still pending in this Court.

Before proceeding further with the narration of events it is to be noted that the defence which Uma Shankar Jalan had taken in the suit was that, since by Clause 12 of the lease, the lessee had the option to determine the lease earlier, he was protected by the West Bengal Premises Tenancy Act, 1956.

On 10th July, 2001, the West Bengal Premises Tenancy Act, 1997 came into force.

On 12th May, 2008 Tara Devi Jalan died.

The present suit C.S. No. 97 of 2011 was then instituted by the donee of the said premises being the present plaintiff for eviction of the heirs of Uma Shankar Jalan who are the defendants in this suit.

RIVAL CONTENTIONS:

Plaintiff:

On the basis of Clause 12 of the said lease the plaintiff accepts the contention of the predecessor-in-interest of the present defendants that the initial letting out was protected by the Rent Act of 1956. The new Rent Act came into force on 10th July, 2001. Section 2(g) of the said Act defines a tenant as follows:

“2.(g) “tenant” means any person by whom or on whose account or behalf the tenant of any premises is or, but for a special contract, would be payable, and includes any person continuing in possession after termination of his tenancy and, in the event of death of any tenant, also includes, for a period not exceeding five years from the date of death of such tenant or from the date of coming into force of this Act, whichever is later, his spouse, son, daughter, parent and the widow of his predeceased son, who were ordinarily living with the tenant up to the date of death of the tenant as the members of his family and were dependent on him and who do not own or occupy any residential premises, and in respect of premises let out for non-residential purpose his spouse, son, daughter and parent who were ordinarily living with the tenant up to the date of his death as members of his family, and were dependant on him or a person authorised by the tenant who is in possession of such premises but shall not include any person against whom any decree or order for eviction has been made by a Court of competent jurisdiction:

Provided that the time-limit of five years shall not apply to the spouse of the tenant who was ordinarily living with the

tenant up to his death as a member of his family and was dependent on him and who does not own or occupy any residential premises,

Provided further that the son, daughter parent or the widow of the predeceased son of the tenant who was ordinarily residing with the tenant in the said premises up to the date of death of the tenant as a member of his family and was dependent on him and who does not own or occupy any residential premises, shall have a right of preference for tenancy in a fresh agreement in respect of such premises on condition of payment of fair rent. This proviso shall apply mutatis mutandis to premises let out for non-residential purpose.”

According to this sub-section upon the death of the tenant, inter alia, his sons and daughters who were ordinarily living with him up to the date of his death as the members of his family and were dependant on him and who did not own or occupy any residential premises would also be considered to be tenants for a period of five years from the date of death or from the date of coming into force of this Act whichever was later. Therefore, upon the death of the original tenant Uma Shankar Jalan on 25th December, 1999, the tenancy came to an end on the expiry of five years from the date of coming into force of the new Act.

Hence, the defendants, assuming them to be the heirs of Uma Shankar Jalan and dependent on him and having no other place of residence have lost their right to reside in the said premises. So, they should be evicted.

Defendants:

The suit of 1989 is still pending. Both the plaintiff and the defendant of that suit are dead. The present plaintiff made no effort to cause substitution of the parties. Therefore, the suit has abated.

For the above reason, the plaintiffs were precluded from instituting the present suit.

Uma Shankar Jalan died on 25th December, 1999 before coming into force of the new Act on 10th July, 2001. Since Uma Shankar was a monthly tenant and died during the operation of the old Act, valuable rights had accrued to the present defendants, such right being the right to succeed to the tenancy of Uma Shankar Jalan. Such right was protected by Section 8 of the Bengal General Clauses Act 1897.

No notice determining the tenancy was given by the plaintiff.

Discussion:

The issues between the parties in the suit of 1989, assuming the same to be pending in the records of this Court, is: whether the original defendant, Uma Shankar was a tenant under the West Bengal Premises Tenancy Act, 1956 or was the lease under the Transfer of Property Act, 1882?

Let us for the sake of argument assume that the suit as of today stands decreed in favour of the defendants herein being the successors-in-interest of the original defendant. The decree which could be passed in their favour, at the highest would be that they were monthly tenants of the said premises from 26th December, 1967.

Now, the question is whether the present suit is on the same cause of action? Let us continue to assume that the defendants were monthly tenants under the West Bengal Premises Tenancy Act, 1956. The original tenant Uma Shankar died on 25th December, 1999. The defendants are his sons and daughters, in occupation of the said premises after the demise of their father.

Now, comes the new Act with effect from 10th July, 2001. The new Act protects an heir of a deceased tenant for a period of five years from the date of death of the tenant or five years from the date of coming into force of the Act whichever is later.

Now, if Ms. Doshi's argument that the rights of the original tenant vested in the defendants on his death on 25th December, 1999 was true, then there would be no occasion for the legislature to enact that the status of a tenant would cease on expiry of five years from the date of the Act or five years after the death whichever was later. If the legislature had intended to protect the heirs of a tenant under the 1956 Rent Act, the tenant having died before coming into force of the new Rent Act, the legislature would have only prescribed five years from the date of death which must occur on or after coming into force of the new Act. Or better still it could have said five years from the death and no more. The legislature need not have said any more. Then the provisions of Section 8 of the Bengal General Clauses Act, 1897 would come into play to interpret date of death as death after the new Act came into force to save and protect the rights of the heirs of a tenant who died during the operation of the old Act. The legislature has said five years from the date of death of a tenant or from the date of coming into force of this Act whichever is later. If the legislature had intended death after the new Act came into force the five year period would always end on and after five years from the date of coming into force of the Act. Therefore, there was no need to provide the phrase "five years.....from the date of coming into force of the Act". This phrase was inserted to give limited protection to the heirs of the tenant who died before the new Act came into force. By inserting the phrase "coming into force of the Act" the legislature has specifically referred to deaths of tenants before the coming into force of the new Act. This express provision excludes any protection that may be claimed under Section 8 of the Bengal General Clauses Act, 1897.

Further, assume that right up to the date of coming into force of the new Act, the tenant was a monthly tenant under the old Act and continued to be a monthly tenant under the new Act. But on the basis of the above provision a right was conferred upon the lessor, by statute, to evict the heirs of a deceased tenant on expiry of five years from the death or coming into force of the new Act, whichever

was later. This conferment of right by the statute upon the plaintiff is certainly a new cause of action and this suit is competent. Even accepting the entire contention of Ms. Doshi that the earlier suit has abated or was abandoned and that no fresh suit could be brought on the same cause of action, this suit is maintainable as it is based on a fresh cause of action as stated above.

Therefore, since the original tenant Uma Sankar Jalan died on 25th December, 1999 any right of the defendant to remain on the premises was extinguished after five years of the new Act on 9th July, 2006.

Section 6 of the West Bengal Premises Tenancy Act, 1997 does not contemplate any notice to be given to the tenant when the tenancy has been extinguished in the above manner. Notice is required when eviction is sought on one or more of the grounds mentioned in section 6 of the said Act. Therefore, the plaintiff rightly did not give any notice to the defendants.

For all those reasons this application succeeds.

Order in terms of prayer (a) of the Master's Summons, I appoint Mr. L.K. Chatterji, Advocate and former Sr. Central Government Advocate, as a Special Referee to determine the mesne profits payable by the defendants to the plaintiff for wrongful occupation of the said property in accordance with order XX Rule 12 for a period which should not commence earlier than three years from the date of institution of this suit. Such determination of mesne profits may be made within a period of three months from date. The Special Referee may be paid remuneration at the rate of 350 Gms. per sitting to be shared equally by the parties.

The application G.A. No. 2658 of 2011 is allowed. The suit is decreed to the above extent. The department is directed to draw up the decree expeditiously.

Consequently G.A. 2656 of 2011, being an application by the defendants seeking leave to file the Written Statement is dismissed.

Urgent certified photocopy of this judgment and order, if applied for, to be provided upon complying with all formalities.

(I.P. MUKERJI, J.)