

L.R. Counsell Vs. Srimati Sukumari Devi

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Court : Kolkata

Decided On : Jun-25-1925

Reported in : 91Ind.Cas.417

Judge : Ewart Greaves and ;B.B. Ghose, JJ.

Appellant : L.R. Counsell

Respondent : Srimati Sukumari Devi

Judgement :

Ewart Greaves, J.

1. This Rule was obtained at the instance of the petitioner L.R. Counsel against an order of the President of the Tribunal, dated the 4th April 1925, refusing to fix a standard rent in respect of the premises referred to in the petition on the ground that they were outside the provisions of the Calcutta Rent Act.

2. The facts are these. On the 30th November 1922 a lease was entered into between Sukumari Devi of the one part and Lionel Rose Counsell, the petitioner of the other part. By the lease the upper flat of No. 6 Rawdon Street and the out offices thereof together with a piece and parcel of land for 'pleasure garden' situate at Mudi Shahnagore within the jurisdiction of the Tollygunge Municipality were demised to the petitioner for a term of five years from the 1st December 1922 to the 30th November 1927 at a clear monthly rent of Rs. 450. The other provisions of the lease are not material for the purposes of this application. The schedule to the lease sets out in detail the demised premises. The first item in the schedule is the flat at 6 Rawdon, Street the second item is a plot and parcel of land situate at Mudi Shahnagore within the limits of the Tollygunge Municipality lying in Division 6, Sub-division Section being Holding No. 57, Dihi 55 grams, Police station Tollygunge, measuring about 10 cottas, more or less, bounded on the north and west by land, of Jadunandan Lala on (he east by land of Lakhi Bibi and on the south, by a common passage.

3. The dispute between the parties really arises with regard to the second item of land contained in the schedule. The landlord contends that there was a genuine demise not merely of the upper flat of No. 6 Rawdon Street but also of the 10 cottas of land at Tollygunge and that consequently the Rent Controller has no jurisdiction to fix the standard rent of the premises. The petitioner, on-the other hand, contends that there was no genuine letting of the 10 cottas of land at Tollygunge and that the real tenancy is of the upper flat of the premises No. 6 Rawdon Street and that consequently, the jurisdiction of the Rent Controller has not been ousted. The matter came before the Rent Controller in the month of August 1924 and no evidence was

adduced before him on behalf of the landlord. Apparently, his legal adviser left the Court without cross-examining any of the witnesses called on behalf of the petitioner. Some evidence, however, was called before the President of the Tribunal on behalf of the landlord. The evidence consisted of two persons employed by the husband of the petitioner but their evidence, has not been accepted by the President, of the Tribunal and both the Rent Controller and the President of the Tribunal have accepted the evidence which was given on behalf of the petitioner before us. The Rent Controller found that the relationship of landlord and tenant did not exist as regards the Tollygunge plot and he states that this had not been challenged but he relies for this finding on a judgment of the Munsif in certain civil proceedings between the parties. I understand that judgment was put in evidence as an exhibit before the Rent Controller but we think that it is better that this judgment should not be relied on for the purposes of this case. The sister of the petitioner gave evidence before the Rent Controller and she stated that the plot of land in Tollygunge could not be traced. In the result, the Rent Controller relying, I think, on the passage in the Munsifs judgment, to which I have referred, found that the letting merely extended to the upper flat of No. 6 Rawdon Street and accordingly, he has fixed a standard rent for the premises of Rs. 259 per month in elusive of taxes. If he had jurisdiction then no, question arises so far as we are concerned with regard to the standard rent that has been fixed. The matter was taken before the President of the Tribunal at the instance of the landlord and he raises as the second issue this: 'Does the tenancy of the opposite party include anything besides the upper flat of No. 6 Rawdon Street? Is the, fiat a premises within the meaning of Clause (e) of Section 2 of the Rent Act? If not can any standard rent be fixed for it? With regard to the second issue the President states, that it is admitted that the lease under which petitioner holds the flat covers also some land in Tollygunge and he states that the case of the petitioner was that although the land was mentioned in the lease he had never been put in possession of it. The President goes onto state that the petitioner had sworn to that and that he accepts his testimony on this point. Then he goes on to state that the contention of the tenant, that is to say the petitioner was that as the lessor has not put him in possession of the plot of land it could not be said to have been let to him and he seems' to have arrived at a conclusion in favour of the landlord on the ground that he finds comprised in the lease this plot of land in Tollygunge. He states that no other ground was raised by the petitioner other than that he had never been put in possession of this land. He then states that the petitioner used the word 'mythical' with reference to the land and that he also stated that he had obtained information about its location so that it could not be said that it was fictitious.

4. With all respect to the learned President of the Tribunal I do not think that these two reasons dispose of the case. The mere fact that we find comprised in an agreement of tenancy a certain plot of land is not conclusive that there was a genuine letting of that plot or that it was the intention of the parties that that should be included in the demise and I also think that the mere fact, that the land itself existed is not sufficient to dispose of the case. Whether the land in fact existed or not is not a question which we can decide but I am prepared to assume for the purposes of this judgment that there is a plot of land corresponding in general particularly with that feet out in the lease but even so I do not think that this disposes of the matter. I think, the real test to be applied is this. Was there any-genuine intention on the part of the lessor that the petitioner should be put in possession of this piece of land as part of the demise, that is to say, was it really his intention that the lease should extend as well to the land at Tollygunge as to the upper flat of No. 6 Rawdon Street. Turning to the evidence on behalf of the petitioner which has been accepted by both the Rent

Controller and the President of Tribunal we find that again and again the petitioner was asking both before the tenancy to be shown the land and after the tenancy to be shown the land and to be put in possession thereof and when we find that there is no attempt either to indicate the land or to put the petitioner in possession of it I think the conclusion is inevitable that it was not really the intention of the lessor to include this in the demise but that he merely put it in to the lease as an attempt to evade the provisions of the Rent Act with regard to the upper flat of the premises No. 6 Rawdon Street.

5. For these reasons, therefore, I think, that the judgment of the President of the Tribunal is not correct and that we ought to restore the judgment of the Rent Controller who, I think, rightly held that he had jurisdiction in the circumstances to fix a standard rent in respect of the upper flat of No. 6 Rawdon Street.

6. The result is that we make the Rule absolute and the petitioner will be entitled to his costs-hearing-fee 5 gold mohurs.

7. It appears that the President of the Tribunal having decided the question of jurisdiction against the petitioner stated that the other issues need not be considered. The matter, therefore, will go back, to the President of the Tribunal in order that he may deal with the issues other than the Issue No. 2 which deals with the question of jurisdiction.

Ghose, J.

8. I agree.