

SAFALI ROY CHOUDHURY & ORS. A

v.

## AMARENDRA KUMAR DUTTA

May 6, 1976

[P. N. BHAGWATI, A. C. GUPTA AND S. MURTAZA FAZAL ALI, JJ.] B

*Interpretation of statutes—Repeal and saving provision—Intention of Legislature—Whether saving provision can override new rights created by repealing statute.*

*Transfer of Property Act, 1882—Sec. 5—52—Transfer of Property—List Pendants—If applies to rights created by a statute.*

*West Bengal Premises Rent Control (Temporary Provisions) Act 1950—West Bengal Premises Tenancy Act 1956—Sec. 2(h), 16 and 40.* C

The respondent was the tenant of the suit premises and Dilip Narayan Roy Choudhury was his sub-tenant. The tenant instituted a suit against the sub-tenant when the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 was in force seeking to evict the sub-tenant on the ground that he was a defaulter in payment of rent. After the suit was instituted, West Bengal Premises Tenancy Act, 1956, was brought into operation. Section 40 of the subsequent Act repealed the 1950 Act and further provided that notwithstanding the repeal of the said Act any proceedings pending on the date of the repeal may be continued as if the said Act had been in force and had not been repealed or had not expired. Section 16 of the 1956 Act confers on the sub-tenant, on his complying with certain conditions the right to become a tenant directly under the landlord and authorise the Rent Controller to pass necessary orders directing that the sub-tenant shall become tenant directly under the landlord from the date of the order. The sub-tenant adopted proceedings under section 16 of the Act against the superior landlord and in February, 1957, the Rent Controller held that the sub-tenant was entitled to the declaration asked for over-ruling the objections raised by the tenant. An appeal filed by the tenant against the said order was dismissed. Thereafter, the sub-tenant amended his written statement in the suit for eviction filed by the tenant against him and pleaded that the relationship of the landlord and tenant between the tenant and the sub-tenant no longer subsisted. The Munsiff dismissed the application for eviction filed by the tenant on the ground that in view of the order passed under the 1956 Act declaring the sub-tenant to be a direct tenant under the landlord the relationship of landlord and tenant between the parties ceased. In a revision, the High Court maintained the order rejecting the application for eviction but set aside the finding that the relationship of the landlord and tenant between the tenant and the sub-tenant ceased. The High Court held that in spite of section 40 of the repealing Act, section 16(3) of the Repealing Act must be given effect to. The High Court, however, took the view that the proceedings under section 16(3) having been initiated during the pendency of the suit the principle of *lis pendens* would apply and, accordingly, the order under s. 16(3) would not govern the suit. D

In an appeal by special leave by the heirs of the sub-tenant, the counsel for the respondent did not rely on s. 52 of the Transfer of Property Act but sought to support the decree on the ground that in view of s. 40 of the Repealing Act the entire proceedings under s. 16 was without jurisdiction. E

Allowing the appeal, F

HELD: (1) The doctrine of *lis pendens* can have no application to this case. The doctrine of *lis pendens* means that no party to the litigation can alienate the property in dispute so as to affect the other party and rests upon the foundation that it would plainly be impossible that any action or suit could be brought to a successful termination after alienation *pendente lite*. Section G

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**A** 5 of the Transfer of Property Act defines transfer of property as an act by which a living person conveys property to another. When the Legislature in exercise of its sovereign powers regulates or alters the rights of landlord and tenant, what it does is not transfer of property attracting the doctrine of *lis pendens*. [599B, C-F]

**B** (2) It is true that in view of s. 40 of the Repealing Act a pending proceeding may be continued as if the Repealing Act was not passed. This, however, does not mean that even if the 1956 Act created a new right in favour of the tenant, he would be denied this right because a suit for ejection was pending against him when the Act came into force. The intention of the Legislature, which is paramount, is clear to upgrade the sub-tenant and make him a tenant directly under the superior landlord. A sub-tenant is a tenant within the meaning of s. 2(h) of the Repealing Act. Thus, the suit must continue under the 1950 Act but the right acquired by the sub-tenant under 1956 Act has to be given effect to and the suit decided accordingly. Therefore, the relationship of landlord and tenant ceased between the parties on the date when the order under s. 16 was made. [599F-H, 600B-C]

**C**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1599 of 1968.

Appeal by Special Leave from the Judgment and Order dated the 16th February 1968 of the Calcutta High Court in Civil Rule No. 1030 of 1967.

**D**

*D. N. Mukherjee and N. R. Chaudhury* for the Appellants.

*Sukumar Ghosh* for the Respondent.

The Judgment of the Court was delivered by

**E**

GUPTA, J. This appeal by special leave is directed against a Judgment of the Calcutta High Court setting aside in revision the finding of the trial court on the issue whether the relationship of landlord and tenant subsisted between the parties in a suit for ejection. The issue which arises on the interaction of two statutes, the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 and the West Bengal Premises Tenancy Act, 1956, which repeals the earlier Act but keeps it alive for proceedings pending on the date of repeal, involves the question,—is the right conferred on the sub-tenant by the 1956 Act of being declared a tenant directly under the superior landlord available to a sub-tenant against whom a suit for ejection was pending when that Act came into force? The appeal turns on the answer to this question.

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The material facts leading to the impugned order are these. The respondent was a tenant of premises No. 17/1E Gopal Nagar Road, Alipore, Calcutta, and his landlord was one Jagabandhu Saha, the owner of the house, Dilip Narayan Roy Chowdhury was a sub-tenant under the respondent in respect of the ground floor flat paying a monthly rent of Rs. 75/-. The respondent instituted a suit in the Munsif's court at Alipore on March 21, 1956 when the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 was in force, seeking to evict Roy Choudhury on the ground that he was a defaulter in payment of rent. This Act was a temporary statute due to expire on March 31, 1956, but on that date the West Bengal Premises Tenancy Act, 1956 was brought into operation repealing the

**H**

temporary Act before it expired. The material part of section 40 of the 1956 Act which repealed the 1950 Act is as follows :

“*Repeal and savings.*—(1) The West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 (in this section referred to as the said Act), is hereby repealed.

(2) Notwithstanding the repeal of the said Act :—

(a) any proceeding pending on the 31st day of March, 1956, may be continued, or,

(b) x x x

as if the said Act had been in force and had not been repealed or had not expired :”

Section 16 of the 1956 Act confers on the sub-tenant the right to become a tenant directly under the landlord. Sub-section (2) of section 16 provides *inter-alia* that where before the commencement of this Act, the tenant, with or without the consent of the landlord, has sublet any premises either in whole or in part, the tenant and every sub-tenant must give notice to the landlord of such subletting within the prescribed period. Sub-section (3) of section 16 provides that in any such case where the landlord had not consented in writing or denies that he gave oral consent, the Rent Controller on an application made to him either by the landlord or the sub-tenant shall make an order declaring that the tenant's interest in so much of the premises as has been sublet shall cease and that the sub-tenant shall become a tenant directly under the landlord from the date of the order. The Rent Controller is also required to fix the rent payable by the sub-tenant to the landlord from the date of the order. Sub-tenant Roy Choudhury served a notice under section 16(2) of the 1956 Act upon the superior landlord and applied under section 16(3) for being declared a tenant directly under him. On July 31, 1956 the Rent Controller recorded a finding on this application that Roy Choudhury was entitled to the declaration asked for overruling the objections raised by the respondent. On February 23, 1957 the Rent Controller concluded the proceeding under section 16(3) by finally declaring that the sub-tenant was a tenant directly under the superior landlord with effect from that date, and fixing the rent payable by him. The appeal preferred by the respondent from this order was dismissed by the appellate authority.

In the meantime, on August 21, 1956 the respondent had made an application under section 14(4) of the 1950 Act in the suit for eviction which was pending. Section 14(4) of the 1950 Act permitted the landlord to make an application in the suit for an order on the tenant to deposit month by month the rent at the rate at which it was last paid and also the arrears of rent, if any, and provided that on failure to deposit the arrears of rent or the rent for any month within the period prescribed for such deposits, the court would make an order striking out the tenant's defence against ejection so that the tenant would be in the same position as if he had not defended the claim to

**A** ejectment. On this application the Munsif on September 26, 1956 directed the appellant to deposit a certain sum as arrears of rent and also rent month by month at the rate of Rs. 75/-. After the declaration of tenancy under section 16(3), Roy Choudhury was permitted to amend his written statement in the suit by adding a paragraph questioning the relationship of landlord and tenant between the respondent and himself. It is unnecessary to refer to the various proceedings in the suit that followed, in the course of which the High Court was moved more than once by either party. On January 24, 1965 Roy Choudhury died and the present appellants were substituted in his place in the suit as his heirs and legal representatives. On November 1, 1965 the Munsif framed an additional issue, being issue No. 9, which was as follows :

**B**

**C** "Has the alleged relationship of landlord and tenant between the parties been determined by final orders dated 31-7-56 and 23-2-57 passed by the R. C. (Rent Controller) Calcutta in Case No. 243B of 1956?"

The Munsif took up for consideration the application under section 14(4) and the additional issue No. 9 together and by his order dated February 20, 1967 found that the Rent Controller had jurisdiction to pass the order under section 16(3) declaring the defendant to be a direct tenant under the superior landlord, and that the relationship of landlord and tenant between the parties ceased by virtue of the order made under section 16(3). The additional issue No. 9 was accordingly decided in favour of the defendant and the application under section 14(4) of the 1950 Act was dismissed. The plaintiff moved the High Court in revision against this order. The revision case was disposed of on February 16, 1968, the learned Judge maintained the order rejecting the application under section 14(4) but set aside the finding on issue No. 9 and held that "for the purposes of the present suit for ejectment there is a relationship of landlord and tenant". The propriety of this order is challenged by the tenant defendants.

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**F** In the course of his Judgment the learned Judge recorded the following findings :

- (i) "The validity or the binding nature of the order under section 16(3) of the 1956 Act cannot be challenged nor can it be found in this suit to be inoperative".
  - (ii) The rights arising out of a valid proceeding under section 16(3) cannot be overlooked in spite of the *non-obstante* clause in section 40 of the 1956 Act and the effect of the order under section 16(3) has to be considered in the suit.
  - (iii) As the proceeding under section 16(3) was started during the pendency of the suit, the principle underlying section 52 of the Transfer of Property Act should apply to this case and "the decision made in the proceeding under section 16(3) would not control the decision in the ejectment suit".
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- H**

It thus appears that the High Court was of the view that in spite of section 40 providing that a pending proceeding would continue to be governed by the provisions of 1950 Act as if that Act had not been repealed or had not expired, the order made under section 16(3) of the 1956 Act must be given effect to. The High Court however held that the proceeding under section 16(3) having been initiated during the pendency of the suit, the principle of *lis pendens* should apply and accordingly the order under section 16(3) would not govern the suit. Before us, counsel for the respondent did not rely on section 52 of the Transfer of Property Act, but sought to support the decree on the ground that in view of section 40, the entire proceeding under section 16(3) was without jurisdiction. The doctrine of *lis pendens* can of course have no application to this case. Section 52 of the Transfer of Property Act forbids alienations *pendente lite* providing *inter alia* that the property forming the subject matter of a pending suit cannot be transferred or otherwise dealt with by any party to the suit so as to affect the rights of any other party under any decree or order which may be made therein, except under the authority of the court and on such terms as it may impose. The doctrine of *lis pendens* means that no party to the litigation can alienate the property in dispute so as to affect the other party, and rests "upon this foundation, that it would plainly be impossible that any action or suit could be brought to a successful termination if alienations *pendente lite* were permitted to prevail". [Observation of Turner L. J. in *Bellamy v. Sabine*, (1857) 1 D. & J. 566 (584) quoted with approval by the Privy Council in *Faiyaz Husain Khan v. Munshi Prag Narain & Others*, 34 I.A. 102 (105).] But a sub-tenant who avails of the provisions of section 16(3) which extinguishes the tenant's interest in the portion of the premises sublet and confers on the sub-tenant the right to hold the tenancy directly under the superior landlord, cannot be said to have alienated property *pendente lite*. Section 5 of the Transfer of Property Act defines transfer of property as an act by which a living person conveys property to another. When the legislature in exercise of its sovereign powers regulates the relations of landlord and tenant, altering or abridging their rights, what it does is not transfer of property attracting the doctrine of *lis pendens*.

As stated already, counsel for the respondent put his case on the provisions of section 40 of the 1956 Act. According to him the suit must continue to be governed by the 1950 Act even after its repeal in view of section 40, unaffected by the provisions of the 1956 Act. Section 40 of the 1956 Act keeps alive a proceeding pending on the date when the 1950 Act was repealed as if it is still in force and has not been repealed. This however does not mean that even if the 1956 Act created a new right in favour of the sub-tenant, he would be denied this right because a suit for ejection was pending against him when the Act came into force. 'Tenant' as defined in section 2(h) of the 1956 Act includes a person continuing in possession after the termination of his tenancy until a decree or order for eviction has been made against him. A sub-tenant is also a tenant, and when the order under section 16(3) was made no decree or order for eviction had been passed against him. That being so, we do not see why he

- A** should not be entitled to the benefit conferred by section 16(3). The intention of the legislature, which is paramount, is clear—to upgrade the sub-tenant and make him a tenant directly under the superior landlord. This is a new right given to the sub-tenant, and though the pending proceeding may continue to be regulated by the repealed statute in view of section 40, there is nothing in that section to suggest that the sub-tenant against whom a suit was pending will be denied this additional right. The High Court has held that the effect of the order under section 16(3) must be considered in the suit. Thus the suit may continue in spite of the repeal of the 1950 Act, but the right acquired by the sub-tenant under the 1956 Act has to be given effect to and the suit decided accordingly. It must therefore be held that the relationship of landlord and tenant ceased between the parties on the date when the order under section 16(3) was made.
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- C**

The appeal is allowed, the order of the High Court appealed from is set aside and that of the trial court restored. The appellants will be entitled to their costs in this Court and in the High Court.

P.H.P.

*Appeal allowed.*