

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CIVIL APPEAL NO.5785 OF 2002

DULAL CHOUDHARY & ORS.

Appellant (s)

VERSUS

HIRAK ROY CHOWDHURY & ORS.

Respondent(s)

(With office report)

Date: 21/04/2009 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. AGRAWAL
HON'BLE MR. JUSTICE G.S. SINGHVI

For Appellant(s) Mr. Ranjan Mukherjee,Adv.

For Respondent(s) Mr. Shiv Shankar Sarkar,Sr.Adv.
Mr. P.K. Chakravarty,Adv.

UPON hearing counsel the Court made the following
ORDER

Heard learned counsel for the parties.

The civil appeal is allowed.

No costs.

[Alka Dudeja] [Savita Sainani]
Court Master Court Master
[Signed order is placed on the file]
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

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...Appellant(s)

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O R D E R

Heard learned counsel for the parties.

Sri Rai Mohan Chaudhury and his wife Smt. Jyotsna Chowdhury filed a suit against Smt. Sulata Ghosh for her eviction from premises bearing No.20-B, Ballygunje, Station Road, Calcutta, on the grounds of default, damage to the premises, their bonafide need and sub-letting to Sri Bireswar Roy Chowdhury without their knowledge and consent. The defendant contested the suit by alleging that there did not exist landlord-tenant relationship between the parties. She also denied the allegations of default, damage to the property and sub-letting. She pleaded that the premises were let out to her husband late Sri Jitendra Nath Ghosh by the erstwhile owner, Sri Janak Nath Sen and after disposal of the suit premises by Sri Sen, her husband became tenant under Sri Dulal Chowdhury and Sri Sunil Chowdhury. She also claimed her brother, Sri Bireswar Roy Chowdhury along with members of his family were residing in suit premises since 1947 and that there was no question of sub-letting.

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During the pendency of the suit, one of the plaintiffs, namely, Sri Rai Mohan Chowdhury died and his legal representatives were brought on record. Defendant Smt. Sulata Ghosh also died on 17.8.1986. Thereupon, an application was made by the plaintiffs on 17.11.1986 for bringing on record Sri Hiarak Roy Chowdhury (respondent no.1 herein) as legal representative of the deceased defendant. Later on, the plaintiffs filed an application for amendment of the substitution petition and bringing on record Sri Madan Ghosh and Sri Bankim Ghosh sons of late Subodh Chandra Ghosh, as legal representatives of defendant-Smt. Sulata Ghosh, by claiming that they were the heirs of the original tenant, namely, Sri Jitendra Nath Ghosh. They also applied for condonation of delay in filing the application. The trial Court allowed the application of the plaintiffs and ordered substitution of Sri Bankim Ghosh as the defendant being the legal representative of the husband of Sulata Ghosh. Soon thereafter, respondent no.1 filed an application under Order 1 Rule 10 read with Section 151 of the Code of Civil Procedure for being impleaded as a defendant by claiming that he was the only surviving heir of the deceased defendant and was living with her. His application was allowed and he was impleaded as defendant no.2. Thereafter, he filed written statement to contest the suit. He denied the plaintiffs assertion regarding subletting and claimed that his family was living in the tenanted premises since long being direct relations of the deceased tenant and they were having one and joint mess. Sri Bankim Ghosh filed an affidavit dated 8.9.1988, stating therein that there never existed any relationship between him and the deceased; that he never stayed in the tenanted premises; that the deceased had been living with her brother and brother's son since long and that he does not have any claim over the tenanted premises.

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The trial Court decided the issue of default against the plaintiffs but decreed the suit on the ground of sub-letting. The judgment and decree of the trial Court were confirmed by the lower appellate Court. However, the High Court allowed the Second Appeal filed by respondent No.1 and dismissed the suit for eviction after holding that the suit had abated because steps were not taken for bringing her legal representatives on record within the period of limitation. So far as the finding recorded by the Trial Court and confirmed by the Appellate Court on the question of subletting is concerned, the High Court was of the view that the tenant, i.e., Sulata Ghosh, could not have been penalised for the act of sub-letting of her husband. Hence, this appeal by special leave.

Learned counsel for the appellants argued that the High Court committed an error by recording a finding that the suit had abated because application for bringing on record the legal representatives of the deceased was not filed within time. Learned counsel pointed out that the application for bringing on record respondent No.1 as legal representative of Sulata Ghosh was filed on 17.11.1986 and, therefore, the suit could not be treated to have abated. Learned counsel then submitted that application filed on 11.5.1988 for amendment of the substitution application, which was accompanied by an application for condonation delay was allowed by the trial Court and as that order was not challenged by respondent No.1, the High Court was not justified in recording a finding that the suit filed by the plaintiffs had abated. Learned counsel emphasized that even

though the trial Court had ordered substitution of Bankim Ghosh in place of the original defendant, namely, Sulata Ghosh, in view of the impleadment of respondent No.1 as defendant No.2, the High Court was not justified in declaring the suit as having abated. Learned counsel for the respondents supported the finding recorded by the High Court on the issue of abatement of the suit by arguing that even though respondent No.1 was entitled to be brought on record as legal representative of the defendant, the plaintiffs dropped his name and applied for substitution of Bankim Ghosh and in this view of the matter, the High Court was fully justified in declaring the suit as abated.

In our view, the High Court was not justified in holding that the suit was abated because, as mentioned above, the application for substitution was filed on 17.11.1986 and after amendment thereof, the trial Court ordered substitution of Bankim Ghosh in place of Sulata Ghosh. The application for impleadment filed by respondent No.1 was also allowed by the trial Court. The order of substitution by the trial Court was not challenged by respondent No.1 in the first and second appeal. Therefore, the High Court did not have any occasion to go into the issue of abatement of the suit and make a declaration in that respect.

So far as the finding of the High Court in relation to sub-letting is concerned, we find that the trial Court after taking into consideration the evidence adduced on behalf of the parties, came to the conclusion that the plaintiffs were able to prove the case of sub-letting. This finding was confirmed by the lower appellate Court in appeal. This was a pure finding of fact, which could not have been interfered with by the High Court in second appeal.

Accordingly, the appeal is allowed, impugned judgment rendered by the High Court is set aside and the second appeal filed by Respondent No.1-Hirak Roy Chowdhury before the High Court is dismissed. The respondents are, however, granted time till 31st October, 2009, to vacate the premises in question upon filing usual undertaking in this Court within four weeks from today. It is directed that in case the respondents fail to vacate the premises in question within the aforesaid time, it would be open to the decree holder to file an execution petition for delivery of possession and in case such a petition has been already filed, an application shall be filed therein to the effect that the respondents have not vacated the premises in question within the time granted by this Court. In either eventuality, the Executing Court is not required to issue any notice to the respondents. The Executing Court will see that delivery of possession is effected within a period of fifteen days from the date of filing of the execution petition or the application aforementioned. In case for delivery of possession any armed force is necessary, the same shall be deputed by the Superintendent of Police within forty eight hours from the date requisition is received therefor. It is also directed that in case anybody else, other than the respondents, is found in possession, he shall also be dispossessed from the premises in question.

No costs.

.....J.

[B.N. AGRAWAL]

.....J.

[G.S. SINGHVI]

New Delhi,
April 21, 2009.