

PETITIONER:
KHAGENDRA LALL DUTTA & ANR.

Vs.

RESPONDENT:
JACOB SOLE JACOB

DATE OF JUDGMENT 17/08/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
HANSARIA B.L. (J)

CITATION:
1995 SCC (5) 446 1995 SCALE (5) 32

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

This appeal by special leave arises from the judgment of the Division Bench of the High Court of Calcutta dated 22.9.1992 made in Appeal from Original Decree No. 130/88. The facts are not in dispute.

The appellant had demised ground floor flat bearing No. 25A, situated in Royd Street, Calcutta to one Mr. Stayner in 1940. After his death, his wife Mrs. Stayner, succeeded to tenancy rights and she died on July 9, 1981. Thereafter the appellant laid the suit for ejectment of the respondent from the premises with the plea that when the appellant had been to the demised premises to take khas possession, to their surprise, they found the respondent in the occupation of the suit premises. When possession was demanded, she obstructed. Consequently, treating the respondent as a trespasser, the appellant laid the suit for eviction. The trial court granted the decree for eviction. On appeal, the Division Bench set aside the decree solely on the ground that from an affidavit of Mrs. Stayner filed before the Metropolitan Magistrate, it appeared as if Mr. Stayner was alive on the date of the suit; and without determining the tenancy of Mr. Stayner, the suit for ejectment was not maintainable; and so, it dismissed the suit. Thus this appeal by special leave.

It is fairly not controverted by Shri Ganguli, learned senior counsel for the respondent, that the tenant Mr. Stayner was dead when the suit was filed. It is also not disputed that Mrs. Stayner died on 9.7.1981. The consequence being that with the death of the tenant, the tenancy rights created in 1940 came to an end. The only question then remains is whether the respondent has any right to remain in possession of the suit premises qua the landlord. In the plaint it was specifically pleaded that the respondent is a trespasser and that she has no manner right to continue in possession. In the written statement nothing has been

pleaded qua the landlord as to how a sub-tenancy has been created either by agreement or by acquiescence by the landlord. On the other hand, it is admitted that the appellant refused to accept the rent tendered by the respondent.

Shri Ganguli sought to contend that a sub-tenancy was created by acquiescence, as the appellant knew about the induction of the respondent into possession by Mrs. Stayner, and when the respondent filed a petition in the civil court (rent controller) for fixation of the fair rent in which the appellant was impleaded as second respondent, the former had not taken any action for eviction of the latter on the ground of sub-tenancy. He also seeks to rely upon a compromise decree said to have been recorded by the High Court on the original side between Mrs. Stayner and the respondent admitting sub-tenancy rights of the respondent.

In the absence of any specific plea in the written statement qua the appellant that a sub-tenancy was created between the appellant and the respondent by acquiescence of the appellant, no amount of evidence can be looked into in that behalf. It is a well settled principle of law and needs no elaborate consideration. Shri Ganguli fairly conceded that there is no such specific plea. He, however, pointed out that in para 2 of the written statement plea of limitation, estoppel etc. had been raised, which would show that the respondent has pleaded acquiescence in the sub-tenancy as well. We cannot agree, as the pleas advanced in para 2 are too general and akin to those pleas which are regularly taken virtually in all written statements.

In the absence of any specific plea of sub-tenancy qua the appellant, no amount of evidence can be looked into in that behalf. The trial court has given a finding that there is no sub-tenancy and the Division Bench has not gone into that question. We have applied our mind and find no substance in the case of the respondent.

The decree of the appellate court is set aside and that of the trial court is confirmed. The appeal is accordingly allowed with costs throughout.