

(1966) 06 KL CK 0021
In the High Court Of Kerala
Case No : S.A. No. 1242 of 1965

Abdul Hameed Rawther

APPELLANT

Vs

Balakrishna Pillai and others

RESPONDENT

Date of Decision : 16-06-1966

Acts Referred:

Transfer of Property Act, 1882 — Section 106

Citation : (1966) KLJ 1025

Hon'ble Judges : T.C. Raghavan, J

Bench : Single Bench

Advocate : T.N. Sbbraonia Iyer, for the Appellant; K. George Varghese, for the Respondent

Final Decision : Dismissed

Judgement

T.C. Raghavan, J.—Both the lower courts have held that Ex. D-1, the lease deed in question, contains a contract to the contrary, which has the effect of dispensing with the statutory notice u/s 106 of the Transfer of Property Act. They have also found that if Section 106 is to apply, the notices sent by the respondents, Exx. D-3 and D-4 are not in conformity with section. In that view they have allowed the prayer for recovery of possession; and in the second appeal this decision is being challenged by the defendant. Ex. D-1 recites that the appellant should give possession without raising any objection at the end of the term of one year mentioned therein. An amount of Rs. 200/- was paid as advance; and the recital states further that the advance amount will be paid back at the close of the term, when the property should be surrendered without any objection. In my opinion the provision that the property should be surrendered without any objection is not a contract to the contrary dispensing with the notice u/s 106 of the Transfer of Property Act. I therefore disagree with the lower courts on the interpretation of Ex. D-1

2. The counsel of the appellant brings to my notice a Division Bench ruling of the Saurashtra High Court in Keshavlal Virchand v. Bai Ajawali Vachharaj (A.I.R.

1953 Sau. 119), wherein the learned Judges have held that a provision that the tenant is to deliver vacant possession to the landlord without delay or objection at whatever time the landlord makes a demand for vacating is not a provision dispensing with the notice u/s 106. I agree.

3. But, the counsel of the respondents draws my attention to two decisions of the Supreme Court. The first is Ram Kumar Das Vs. Jagadish Chandra Deb Dhabal Deb and Another, . Their Lordships have observed that Section 106 enunciates a rule of construction, which applies not only to express leases of uncertain duration but also to leases implied by law which may be inferred from possession and acceptance of rent and other circumstances. The next decision is Pooran Chand Vs. Motilal and Others, . In this case Subba Rao J., who spoke for the Court, has said:

It is not necessary in this appeal to express our opinion on the validity of this contention, for we are satisfied that the term of the tenancy had expired by efflux of time, and, therefore, no question of statutory notice would arise.

This passage indicates that Section 106 does not apply to cases where the parties have fixed a term for the lease; in other words, the section applies only to cases where the parties have not contracted for a term or where there is no local law or usage imposing a term.

4. Section 106 of the Transfer of Property Act deals with leases in which there is no contract between the parties or any local law or usage regarding their term. In such cases the section provides that a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year terminable on the part of either the lessor or the lessee by six months" notice expiring with the end of an year of the tenancy: and in other cases the lease shall be deemed to be from month to month terminable on fifteen days" notice expiring with the end of a tenancy month. Therefore, the deeming will come into operation only in the absence of a contract, local law or usage to the contrary regarding the term of the lease; and when it operates, the deeming is that the lease, in the case of agricultural and manufacturing leases, is an yearly lease terminable on six months" notice, and, in the case of other leases, a monthly lease terminable on fifteen days" notice. In other words, in the case of leases for terms no question of deeming arises; and if no deeming arises, no question of termination either on six months" notice or on fifteen days" notice can also arise. Putting the idea again differently, the deeming relates both to the term of the lease and the notice required for its termination: if the deeming does not arise u/s 106 regarding the term of the lease, the question of notice u/s 106 does not also arise. Thus, for term leases the statutory notice u/s 106 is not essential. In the above view of the matter I dismiss the second appeal, but, without costs.

Leave granted.