

(1951) 09 BOM CK 0019

In the Bombay High Court

Case No : Second Appeal No's. 826 and 827 of 1948

Aminsa and Another

APPELLANT

Vs

Kallappa Adivappa

RESPONDENT

Date of Decision : 21-09-1951

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 84
Transfer of Property Act, 1882 — Section 111

Citation : AIR 1952 Bom 361 : (1952) 54 BOMLR 309

Hon'ble Judges : Dixit, J

Bench : Single Bench

Advocate : G.R. Madbhavi and V.V. Albal, for A.V. Albal and D.M. Honavar, for the Appellant; R.B. Kotwal, for the Respondent

Judgement

(1) These two appeals raise a pure question of law u/s 84 of the Bombay Land Revenue Code, 1879. The facts giving rise to the suits in which this question is raised are simple and are not seriously in dispute. I will mention the facts so far as they are relevant to the determination of the question.

(2) The plaintiffs in the two suits are the same, while the defendants are different. Plaintiff No. 2 is the owner of two lands, Survey No. 391 and 368. For the year 1945-46, plaintiff No. 2 let out to defendant Kallappa Survey No. 391. Plaintiff No. 2 also let out Survey No. 368 to Gurappa. Each was an oral tenancy. Kallappa is defendant in suit No. 333, while Gurappa is defendant in suit No. 334. It is not in dispute that the period expired on March 31, 1946, in each case. On April 1, 1946, plaintiff No. 2 let out to plaintiff No. 1 the two lands for the consideration of Rs. 500 for a period of one year. The payment of rent was made in advance and this is evidenced by a receipt which is Exhibit 54 in the case. On May 21, 1946, plaintiff No. 1 executed in favour of plaintiff No. 2 a rent note evidencing the transaction of tenancy between plaintiff No. 1 and plaintiff No. 2. That rent-note is Exhibit 55 in the case. It seems that two defendants offered obstruction in about June of 1946. The defendants thereafter filed suits for

injunction against plaintiff No. 1 in the Mamlatdar's Court.

(3) In the meanwhile, the two plaintiffs filed the "two suits giving rise to these two appeals for possession of the lands in suit against defendant. Kallappa and defendant Gurappa. The plaintiffs alleged that the lease in favour of the defendant in each case expired on March 31, 1946, and thereafter plaintiff No. 2 let out the two lands in suit, to plaintiff No. 1 and that it was only after plaintiff No. 1 obtained possession of the lands and performed summer operations in the lands that the defendant in each case falsely contended that the land had been leased to him for the year 1946-47.

(4) The defendant in each case filed a written statement raising various contentions. One of the contentions which is material to the appeals is involved in Issue No. 4, and that issue was whether the plaintiffs were entitled to possession without giving notice.

(5) The trial Court decreed the plaintiffs' suit in each case. From the decree made in each suit each defendant filed an appeal, in the District Court, Bijapur, & the two appeals were heard by the learned District Judge and he came to the conclusion that in this case the plaintiffs had not given notice to each of the two defendants as required by Section 84 of the Land Revenue Code and so the plaintiffs were liable to be non-suited. In accordance with that conclusion the learned District Judge dismissed each of the two suits. The plaintiffs appeal.

(6) In the Courts below the respondent in each case had contended that the defendants were entitled to hold possession under the provisions of the Bombay Tenancy Act and that the defendants had entered into a fresh agreement of lease with plaintiff No. 2. Those contentions were negatived in the trial Court and were rejected in first appeal. The learned advocate who appears for the respondent in each case has not disputed the correctness of the two findings upon those two questions. The only question is whether a notice is necessary before the defendant in each case can be evicted, as required by Section 84 of the Land Revenue Code. The lower appellate Court relied upon a ruling of this Court reported in "ICHHALAL v. ANJIBAI". 30 Bom L R 1602. In his opinion that decision went to support the view that, a statutory notice of three months was necessary to terminate the annual tenancy. As the question turns upon the construction of Section 84 of the Land Revenue Code, it will be convenient to reproduce the section in this place. Section 84 runs as follows: "An annual tenancy shall in the absence of proof to the contrary be presumed to run from the end of one cultivating season to the end of the next. The cultivating season may be presumed to end on the 31st March.

"An annual tenancy shall in the absence of any special agreement in writing to the contrary require for its termination a notice given in writing by the landlord to the tenant, or by the tenant to the landlord, at least three months before the end of the year of tenancy at the end of which it is intimated that the tenancy is to cease."

(7) Para. 1 of Section 84 refers to the period of an annual tenancy and provides that it shall be presumed to run from the end of one cultivating season to the end of the next and the cultivating season may be presumed to end on 31st March. Para. 1 mentions a qualification and the qualification is that this is the period in the absence of proof to the contrary. This suggests that there may be a period other than the period presumed under para. 1 of Section 84, i.e., it may be less than the period mentioned in para. 1 of Section 84. Section 84, para. 2 requires a notice to be given by the landlord to the tenant or by the tenant to the landlord and that notice is to be given at least three months before the end of the year of tenancy. Under paragraph 2 also there is a qualification and that is that notice will not be necessary in a case where" there is a special agreement in writing to the contrary. This suggests that unless there is a special agreement in writing to the contrary, an annual tenancy would require for its termination a notice to be given in writing by the landlord to the tenant, and para. 2 also prescribes the mode in which the notice has to be given.

(8) The expression "an annual tenancy" has not been defined in the Land Revenue Code. The present case relates to an agricultural lease and will, therefore, be governed by Section 84.

(9) Mr. Albal for the appellants contends that in this case there is a fixed period and so the matter would be governed by Section 111(a) of the Transfer of Property Act. His contention is that here the period is fixed which is a period of one year and the lease has expired by efflux of time, I am referred to no authority directly in point, and as happens in such cases, the question of construction is by no means an easy task. One does not get any indication or assistance in the definition section as regards the expression "an annual tenancy" in the Land Revenue Code. One has, therefore, to go by the provisions contained in Section 84, and all that Section 84 provides is the period which is to run in the case of an annual tenancy. The point of construction turns upon para. 2 of Section 84, and in this case it is not suggested that there has been any special agreement in writing to the contrary. The question, therefore, is whether in the present case a notice is not necessary because of the circumstances that the lease is for a fixed period.

It is clear that the question will have to be answered not by reference to the Transfer of Property Act, but by reference to Section 84 of the Land Revenue Code, and, as I read Section 84, I see no possible escape from the conclusion that in the case of a lease like the one in the present case a notice is necessary to be given by the landlord to the tenant. The intention seems to be that a notice will have to be given either by the landlord or by the tenant at least three months before the end of the year of tenancy in order that either the landlord or the tenant may be free to act in his own way, that is, if the tenant gives notice to the landlord, in that event it would be open to the landlord to grant a lease to any other person, or if the landlord gives notice to the tenant, that is an indication on the part of the landlord to tell the tenant that he will not recognise

him any longer as his tenant.

But Mr. Albal for the appellants argues that the expression "an annual tenancy" should be read as meaning a tenancy which comes into existence after the termination of the first tenancy. He says that in this case if for example, there was a fresh tenancy after March 31, 1946, then in that event Section 84 would have applied. But I do not see why the words of the section should be construed in that restricted sense. I do not see why the lease in the present case is not an annual tenancy merely because the period of the lease expired on March 31, 1945. Even, according to para. 1 of Section 84, the lease would have terminated at the end of the cultivating season which, according to para. 1, is March 31 of each year. I think, therefore, the better construction would be to give the words their plain meaning and to hold that in the case of a tenancy which begins at the end of one cultivating season and ends at the end of the next cultivating season the tenancy is an annual tenancy and such a tenancy would require for its termination a notice given in writing by the landlord to the tenant. Mr. Albal argues for a proposition in a contrary sense and relies upon a passage occurring in Wood-fall's Law of Landlord and Tenant, 24th Ed., p. 271, which runs as follows:

"Where a tenant for a term of years holds over after the expiration of his lease, he becomes a tenant on sufferance; but when he pays, or expressly agrees to pay, any subsequent rent, at the previous rate, a new tenancy from year to year is thereby created upon the same terms and conditions as those contained in the expired lease, so far as the same are applicable to and not inconsistent with a yearly tenancy."

I think myself the expression "an annual tenancy" is not an expression of art. That expression is used merely to indicate a tenancy which is presumed to run from the end of one cultivating season to the end of the following cultivating season. I do not see why such a lease should not be considered as an annual tenancy. That exactly is the lease in the present case. In this case the tenancy expired on March 31, 1946, which is in complete accord with the period mentioned in Section 84, para. 1. Mr. Albal referred me to a decision of the Calcutta High Court in "ANWAR ALI v. JAMINI LAL ILR (1939) Cal 254. But that is not a case which is governed by Section 84 of the Land Revenue Code.

(10) As no case has been referred to me which has previously interpreted Section 84, it seems to me that I should give Section 84 its plainest and most natural meaning. Since I take this view, I must hold that in this case a notice was necessary to be given for termination, and such a notice has not been admittedly given.

(11) Mr. Albal for the plaintiffs-appellants pointed out that this particular point had not been taken by the defendants in their written statements. It seems, however, from the contentions taken both in the trial Court as well as in the Court of first appeal that an issue was raised in both the Courts as to whether a

notice was necessary, and I think the parties understood that the question was one of dispute between them and I am satisfied that neither party is prejudiced in this case.

(12) This being my view of the interpretation of Section 84, I must hold that the decision of the lower appellate Court in each case is correct.

(13) The result is that S. A. No. 826 of 1948 fails and the same will be dismissed with costs, and for the same reasons S. A. No. 827 of 1948 also fails and that too will be dismissed with costs.

(14) Appeals dismissed.