

(1957) 02 PAT CK 0001
In the Patna High Court
Case No : A.F.A.D. No. 500 of 1950

Babu Lal Seth and Others

APPELLANT

Vs

Gopi Lal Seth and Others

RESPONDENT

Date of Decision : 07-02-1957

Acts Referred:

Transfer of Property Act, 1882 — Section 105, 111

Citation : AIR 1957 Patna 490 : (1957) 5 BLJR 291

Hon'ble Judges : Ramaswami, C.J.;Kanhaiya Singh, J

Bench : Division Bench

Advocate : Shambhu Barmeshwar Prasad, for the Appellant; U.C. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

1. The question at issue in this appeal is whether defendant first party are mere tenants at will or whether they are monthly tenants of the house in dispute which fell exclusively to the share of the plaintiff in a private partition. Both the lower courts have held on an examination of the evidence adduced by the parties that the tenancy was a tenancy at will and that no notice to quit was necessary to be given by the plaintiff-landlord.

2. The argument put forward on behalf of of the appellants is that the tenancy created between the parties was a monthly tenancy and in view of the finding of the lower courts that the notice to quit was not a valid notice, the plaintiff was not entitled to be given a decree for ejectment and for damages. We do not accept his argument as correct. In the course of hearing the defendants produced the original lease exhibit A, dated the 5th of September, 1952, granted by Muni Lal Seth. This document States that the defendants may remain in the house "as long as they please." It is true that there is another clause in the document to the effect that the occupation would be on a monthly rental of Rs. 10/- but as a matter of construction it must be held that the tenancy of the appellants was a tenancy at will. That was the view taken by the Madras High

Court with regard to a similar document in *Karani Manicka Mudaliar v. Chinnappa Mudaliar* ILR 36 Mad 557 (A).

It was pointed out in that case that a lease by which the lessees were to hold for such time as they required or wished was a tenancy at will of the lessee which in law was a tenancy at the will of the lessor also. In support of their view the learned Judges referred to Coke on Littleton, page 55 (a), and also the English law laid down in the Halsbury's Laws of England Volume 18 page 434. This view has been accepted by a Division Bench of this High Court in *Ram Lal Sahu and Another Vs. Mt. Bibi Zohra and Others*, . At page 230 of the report Fazl All J. has quoted the following passage from Coke on Littleton:--

"It is regularly true, that every lease at will must in law be at the will of both parties, and therefore, when the lease is made, to have and to hold at the will of the lessor the law implyeth it to be at the will of the lessor also, for it cannot be only at the will of the lessor, but it must be at the will of the lessee also. And so it is when the lease is made to have and to hold at the will of the lessee, this must be also at the will of the lessor; and so are all the books that seem prima facie to differ, clearly reconciled. There is also a reference to a passage in volume 18 at page 438 of Halsbury's Laws of England to the following effect:--

"A tenancy at will is a tenancy under which the tenant is in possession, and which is deter-minable at the will of either landlord or tenant, and although upon its creation it is expressed to be at the will of the landlord only or at the will of the tenant only, yet the law implies that it shall be at the will of the other party also; for every lease at will must in law be at the will of both parties. As in other tenancies, a tenancy at will arises by contract bringing both the lessor and lessee and the contract may be express or implied."

It must, therefore, be held that in the present case the document, exhibit A must be construed to create a tenancy at will and not a monthly tenancy in favour of the defendant-appellants.

3. It was argued, however, on behalf of the appellants that the tenancy at will terminated after the plaintiffs purchased the house. In support of this preposition reference was made to *Anwarali Bepari and Others Vs. Jamini Lal Roy Choudhury and Others*, . But that does not improve the case of the appellants, for it is admitted by the appellants in paragraph 3 of their written statement that the same terms and conditions continued after the plaintiff purchased the house. This means that the appellants continued to be in occupation of the disputed house under the plaintiff on the same term and conditions as mentioned in Exhibit A. It follows, therefore, that even when the plaintiff purchased the house the defendant first party remained in occupation of the house in the character of tenant at will. If that is the correct position, the lower courts were certainly right in holding that there was no necessity of a notice to quit and that the plaintiff was entitled to a decree for ejectment and for damages for the occupation of the house.

4. For these reasons we held that there is no merit in this appeal and we dismiss it with costs.