
(1998) 08 AP CK 0098
In the Andhra Pradesh High Court
Case No : CCCA No. 77 of 1997

Bhagyanagar Khadi Samithi, Hyderabad	APPELLANT
Vs	
S.B. Chitnis (Died) and others	RESPONDENT

Date of Decision : 28-08-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 14, 96
Transfer of Property Act, 1882 — Section 106

Citation : (1998) 5 ALD 339 : (1998) 5 ALT 199 : (1998) 3 APLJ 307 : (1999) 4 CivCC 709

Hon'ble Judges : S.R. Nayak, J

Bench : Single Bench

Advocate : Mr. T. Veerabhadrayya, for the Appellant; Mr. C.R. Pratap Reddy, for the Respondent

Judgement

1. CCCA No.77 of 1997 is the first appeal filed by the defendant u/s 96 CPC and it is directed against the judgment and decree dated 21-2-1997 passed in the suit OS No. 1227 of 1986 on the file of the 6th Additional Judge, City Civil Court, at Hyderabad, decreeing the suit. Cross Objection in No. CCCA No.77 of 1997 filed by the plaintiffs directs against the same judgment and decree as regards the rejections of the claim of the plaintiffs for a sum of Rs.5,000/-towards the compensatory mesne profits for the month of September, 1986 and the future compensatory mesne profits at the rate of Rs.5,000/- per-month. The parties are referred to in this judgment as they are arrayed in the suit. Originally the deceased - plaintiff No. 1 viz., S.B. Chitnis filed the suit for evicting the defendant from the suit schedule property i.e., pacca built double storied buildings with mulgics bearing Municipal No.4-4-266 along with the portion of godown in underground consisting of two halls and three rooms on the northern side situated opposite to Residency Main Gate, Sultan Bazar, Hyderabad. During the pendency of the suit S.B. Chitnis died. Plaintiffs 2 to 5 were added as legal representatives as per the orders of the Court below dated 9-8-1995 passed in IA No.379 of 1995.

2. The plaint averments be summarised briefly as under:

The suit property was originally owned by one Late Ramji Patangay and he died on 15-3-1956 and his wife late Smt. Lakshmi Bai Ramji Patangay succeeded to the suit property. Smt. Lakshmi Bai Ramji Patangay executed a lease deed dated 27-9-1956 (Ex.A1) in favour of the defendant leasing out the suit schedule property for a period of five years commencing from 1-6-1956 on a monthly rent of Rs. 1050/- and that period of lease expired on 1-6-1961. Again on 13-2-1980, Smt. Lakshmi Bai Ramji Patangay executed another registered lease deed (Ex.A2) in favour of the defendant commencing from 1-8-1978 for a period of five years only, on a monthly rent of Rs.3,000/-. The said period of lease expired on 31-7-1983. In spite of the expiry of the lease dated 13-2-1980, the defendant is continuing in the possession of the suit property as a tenant holding over. Smt. Lakshmi Bai Ramji Patangay died on 15-4-1984 leaving behind her foster daughter, Smt. Sharada Bai (plaintiff No.2) who is no other than Smt. Lakshmi Bai Ramji Patangay's husband's brother's daughter. Smt. Lakshmi Bai Ramji Patangay has executed a Will Deed dated 28-6-1970 (Ex.A4) under which she has bequeathed suit property in favour of her foster daughter (plaintiff No.2) and three sons of her foster daughter (plaintiffs No.3 to 5) and appointed two executors, viz., her Advocate one Late Sri Narasimha Aiyangar and S B. Chitnis (the original plaintiff). Sri Narasimha Aiyangar passed away after few years during the life time of Smt. Lakshmi Bai Ramji Patangay. After the death of Smt. Lakshmi Bai Ramji Patangay, S.B. Chitnis got the registered Will Deed dated 28-6-1970 probated vide Certificate of Probate dated 11-4-1985 in OP No.179 of 1984 on the file of the Chief Judge, City Small Causes Court, Hyderabad. S.B. Chitnis made repeated request to the defendant to vacate the suit property as the same is required for personal occupation and business of the beneficiaries under the Will. Although the defendant promised to vacate, it did not vacate. On 3-8-1996 S.B. Chitnis got issued a legal notice u/s 306 of Transfer of Property Act terminating the tenancy of the defendant. The defendant having received the said notice got issued a reply notice dated 2-10-1986 through his Advocate claiming life long tenancy under the registered lease deed dated 13-2-1980. The claim of the defendant is untenable and the suit premise was never leased to the defendant for life. The defendant is liable to pay compensatory mesne profits for the month of September, 1986 at the rate of Rs.5,000/- and future compensatory, mesne profits at the rate of Rs.5,000/- from October, 1986 till the delivery of the vacant possession of the suit schedule property and the plaintiff is also entitled to decree for Rs.550/- towards legal charges and the cost of the suit.

3. The defendant contested the suit by filing written statement. The material averments in the written statement are :

The Court has no jurisdiction to entertain the suit as the plaint schedule property is governed by the provisions of Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. The plaint filed by the plaintiff is not in accordance with Order VII Rule 14 CPC. The probate was obtained behind the back of the

defendant. Therefore, it was not valid and not binding on the defendant. The Will dated, 28-6-1970 executed by Late Smt Lakshmi Bai Ramji Patangay could not have been the last Will; she had appointed her legal advisor Late Sri Narasimha Aiyangar and S.B. Chitnis as executors under the Will and Sri Narasimha Aiyangar died during the life-time of Smt. Lakshmi Bai Ramji Patangay and she lived eight years after the death of Narasimha Aiyangar, therefore it is probable that Smt. Lakshmi Bai Ramji Patangay might have executed fresh Will or a Codicil appointing some other person as executor in place of Late Sri Narasimha Aiyangar, it is not stated in the Will that in the event of death of either of the two executors, the survivor would be the sole executor and in the absence of such recitals, S.B. Chitnis is not entitled to act as executor and obtain probate. It is provided in the para (7) of the Will dated 28-6-1970 that till the last son of Sharada Malve attains the majority, the suit schedule property should be let on rents and net rents should be distributed equally among sons of Sharada Malve and the said property should be shared equally by the legatees under the Will. The plaintiff has no right to evict the defendant from the suit schedule property on the ground that it is required for personal occupation and business of the beneficiaries under the Will, and the beneficiaries under the Will do not require the suit schedule property. The notice issued u/s 106 of Transfer of Property Act is not valid as it is not in accordance with the provisions of the said Section. The plaintiff is not entitled to terminate the tenancy of the defendant as the original owner of the suit schedule property late Sri Ramji Patangay who was a staunch Congressman and disciple of Late Swamy Ramananda Theertha, was the president of the defendant society and therefore Late Ramji Patangay decided that defendant society should be housed in the suit schedule property as long as the society exists. On the basis of the pleadings of the parties, the learned Trial Judge framed the following issues:

- i. Whether the provisions of Andhra Pradesh Buildings (Lease, Rent & Eviction) Control Act of 1960 applied to the schedule property if so this Court has jurisdiction to entertain the suit?
- ii. Whether the plaint is liable to be rejected for non-compliance of Order 7 Rule 14 CPC?
- iii. Whether Will dated 28-6-1970 was the last Will and testament of late Lakshmi Bai Patangay? and whether the plaintiff is entitled to obtain probate as executor appointed under the said Will?
- iv. Whether the probate obtained by the plaintiff in OP No.179 of 1984 is valid and binding on the defendant?
- v. Whether the plaintiff is entitled to evict the defendant from the suit schedule property in the reasons mentioned in the plaint?
- vi. Whether the tenancy of the defendant was validly terminated by the notice dated 3-8-1986?

vii. Whether the defendant is entitled to occupy the plaint schedule property as long as the defendant's Society exists?

viii. Whether there is any cause of action for the suit?

ix. Whether the plaintiff is entitled for the recovery of mesne profits at the rate of Rs.5,000/- per month from the defendant?

x. To what relief?

4. On behalf of the plaintiff, the 3rd plaintiff and one Kiran Chitnis who is the son of S.B. Chitnis are examined as PWs 1 and 2 respectively and Exs.A1 to A16 are marked. On behalf of the defendant M/s. A.R. Mohan Rao who is a Clerk in the defendant's society, and Anjaiah who is also an employee of the defendant society are examined as DW1 and DW2 respectively, and Exs.B1 to B4 are marked.

5. The learned Trial Judge on appreciation of the evidence, oral and documentary, answered the issues (i) to (viii) in favour of the plaintiffs and against the defendant. On issue No. (i), the learned Trial Judge, found that there is no evidence to prove that the suit property would fetch Rs.5,000/-per month and therefore he held that the plaintiffs are not entitled for future mesne profits at the rate of Rs.5,000/- per month as claimed by them in the plaint, but they are entitled only at the rate of Rs.3,000/- per month. Accordingly, the learned Trial Judge decreed the suit for eviction of the defendant, granting four months time to the defendant to vacate the suit premises, and granted future mesne profits at the rate of Rs.3,000/- per month in favour of the plaintiffs from First October, 1986 till the delivery of vacant physical possession of the suit property with costs. Hence this appeal and the cross objections.

6. Sri T. Veerabhadraiah, the learned senior Counsel for the appellant did not press into service the grounds taken in the Memorandum of Appeal assailing the correctness and the validity of the findings recorded by the learned Trial Judge on issues (i), (ii) and (vii). Although the learned senior Counsel mentioned the grounds taken in the Memorandum of Appeal assailing the findings recorded by the learned Trial Judge on issues (iii) and (iv), he understandably and quite fairly advanced no argument against the findings recorded by the learned Trial Judge on issues (iii) and (iv) in view of the law laid down by the Supreme Court in Smt. Rukmani Devi and Others Vs. Narendra Lal Gupta, . The learned senior Counsel placed only two points for determination of the Court. They are: (i) that the original plaintiff S.B. Chitnis, the executor under the Will dated 28-6-1970 executed by Smt. Lakshmi Bai Ramji Patangay was not entitled to evict the defendant from the suit schedule property on the ground that the suit schedule property is required for the bona fide use and occupation of the beneficiaries under the Will. Magnifying this contention, the argument of the learned senior Counsel runs like this:

In para (7) of the Will, it is categorically stated that till the last son of Sow.

Sharada Malve attains majority, the premise shall be let on rent and the net rents shall be distributed equally among the sons of Sow. Sharada Malve and thereafter the premise shall be shared equally by the sons of Sow. Sharada Malve as well as Sow. Sharada Malve and her husband in equal shares, and in the instant case, the suit was instituted on 14-10-1986 and as on that day, the last son of Sow. Sharada Malve (Plaintiff No.5) was minor, he being only 14 or 15 years old, S.B. Chitnis being the executor of the Will was bound by the terms of the Will and therefore he could not have validly instituted the suit for eviction of the defendant when one of the sons of Smt. Sow. Sharada Malve was minor; and (ii) that the quit notice dated 3-8-1986 (Ex.A5) issued by S.B. Chitnis purported to be u/s 106 of Transfer of Property Act is not in conformity with the mandatory provisions of the said Section and therefore is invalid and consequently the suit filed by S.B. Chitnis ought to have been dismissed only on that ground. Elaborating this contention, the learned senior Counsel would point out that though the landlord has given clear 15 days time to vacate the premises, the time so granted did not expire with the end of August, 1986; the tenancy in question being a monthly tenancy, issuance of the 15 days notice expiring with the end of a month of tenancy was a must and in the instant case, the tenant was called upon to vacate and hand over the vacant possession of the premises before 30th August, 1986, that is to say, before the expiry of the tenancy on 31-8-1986. In support of this contention, the learned senior Counsel would place reliance on the decision of the Supreme Court in Dattohpant Gopalvarao Devakate Vs. Vithalrao Maruthirao Janagaval, .

7. On the other hand Sri C.R. Pratap Reddy, the learned Counsel for the plaintiffs would point out that the plea now taken by the defendant in the appeal that the 5th plaintiff was minor on the date of institution of the suit, is not taken in the written statement nor in the evidence adduced by the defendant, and at any rate, this plea is technical in nature and on that ground it cannot be said that the institution of the suit itself is incompetent. Adverting to the contention of the learned Counsel for the defendant against the quit notice, the learned Counsel would point out that in the quit notice dated 3-8-1986, in para (2), the tenancy was determined within the meaning of Section 106 of Transfer of Property Act and the defendant was called upon to vacate and handover the vacant possession of the suit premises by the end of August, 1986 and therefore solely on the basis of a clerical and typographical mistake crept in para 3 of the notice relating to the date before which the defendant should vacate the suit property, it cannot be held that the quit notice suffers from fatal error vitiating the institution of the suit itself. The learned Counsel for the plaintiffs arguing in support of the cross-objection would contend that the Court below is not justified in awarding the future mesne profits only at the rate of Rs.3,000/- and it ought to have awarded future mesne profits at the rate of Rs.5,000/- per month as prayed for in the plaint.

8. Having heard the arguments of the learned Counsel, the following three points fall for determination:

I. Whether the suit OS No.1227 of 1986 is not maintainable in view of the recital in para (7) of the Will dated 28-6-1970 executed by late Smt. Lakshmi Bai Ramji Patangay?

II. Whether the quit notice Ex.A5 dated 3-8-1986 is valid and in conformity with the provisions of Section 106 of Transfer of Property Act?

III. Whether the plaintiffs are entitled to future mesne profits at the rate of Rs.5,000/- per month from 1st October, 1986 till the delivery of vacant physical possession of the suit schedule premises?

9. If the appeal filed by the defendant has to be allowed, consideration of the claim of the plaintiffs for enhanced rate of future mesne profits will not arise.

Point No.1: The plea that the last son of Sow. Sharada Bai Malve viz., Ashish Malve was a minor on the date of institution of the suit is not taken in the written statement filed by the defendant. This fact is also not spoken to by DW1 or DW2 in their evidence. The question whether Ashish Malve (Plaintiff No.5) was a minor on the date of institution of the suit or not is a question of fact. In the Memorandum of Appeal also, no specific ground is taken contending that the plaintiff No.5 was a minor on the date of institution of the suit. In para (13) of the Memorandum of Appeal, it is only contended that the Court below failed to see that in para (7) of the Will, it is stated that till the last son of Sharada Bai Malve attains majority, the suit property should be let out on rent and the net rent should be distributed equally among the sons of the said Sharada Malve. When this is the state of affairs, the argument advanced by the learned Counsel for the appellant that the suit instituted by the original plaintiff is not maintainable for the reason that the 5th plaintiff was a minor on the date of institution of the suit is untenable and cannot be permitted to be raised in the appeal. This argument is built up on the basis of the disclosure made in IA No.379 of 1995. The age of the 5th plaintiff was stated to be 24 years and therefore his age on the date of institution of the suit i.e., 14-10-1986 must be 14 or 15 years. It is not the case of the defendant that when it filed the written statement, it was not aware of the age of the 5th plaintiff. Secondly, even assuming that the defendant came to know about the age of the 5th plaintiff when IA No.379 of 1995 was filed to bring the legal representatives of the deceased - original plaintiff, in the year 1995, the defendant did not take any steps to take this plea by amending the written statement. Therefore, there was no scope for the Court below to frame any issue on the question whether the 5th plaintiff was a minor or not on the date of institution of the suit. As already pointed out supra, no specific ground on the said plea is taken in the Memorandum of this appeal also. Therefore the defendant is not entitled to raise this factual plea for the first time. Alternatively, even assuming that the 5th plaintiff was a minor on the date of institution of the suit, that fact itself would not disable the executor to institute the suit for ejection of the tenant from the suit schedule premises. In para (7) of the Will itself, it is stated that if in the opinion of the executors, it is expedient or beneficial, the suit schedule premise

may be sold and the net sale proceeds be distributed among the beneficiaries under the Will. Therefore the submission of the learned Counsel for the plaintiffs that the recitals in para (7) of the Will should be read as a whole and harmoniously and if it is so read, it cannot be said the executor lacked competence to file the suit for eviction, is well founded. Be that as it may, from the recitals of para (7) of the Will, the defendant cannot claim that the suit schedule premise should be let out to it only. Such a right of the defendant cannot be inferred from the recitals in para (7) of the Will. Therefore, I do not find any force in the first contention of the learned Counsel for the defendant and the same is rejected.

Point No.II: Section 106 of Transfer of Property Act reads :

Section 106: Duration of certain leases in absence of written-contract of local usage:

In the absence of a contract or local law or usage to the contrary, 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 lessor or lessee, by six months "notice expiring with the end of a year of the tenancy; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor lessee, by fifteen days" notice expiring with the end of a month of the tenancy.

Every notice under this Section must be in writing, signed by or on behalf of the person giving it, and neither be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants, at his residence or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property".

This section provides, inter alia, that every notice under this Section must be in writing, signed by, or on behalf of the person giving it. The test to determine the authority for giving notice is whether the notice is such that the tenant may act upon it with safety or, in other words, that it is a notice which is binding on the landlord. A notice calling upon the tenant to vacate the leased premises would always amount to a notice terminating the tenancy. Whether the lessor has given a notice expressing an intention that the lease will stand terminated or he by the notice calls upon the lessee to quit, the legal consequences of both would be that lease would stand determined. The provisions of Section 106 lay down the manner in which such a notice is to be served and fixes the time before which it has to be given.

The quit notice Ex.A5 dated 3-8-1996 reads:

"To

The Bhagyanagar Khadi Samithi represented by its Secretary Sri A. Vasudeva Rao, with its office at 4-4-266, Sultan Bazar, Hyderabad, A.P.

Sir,

I am concerned for my client Sri S.B. Chitnis, the Executor appointed by late Lakshmi Bai Patangay wife of late Ramji Patangay and partner of M/s. Dry Ice Depot, Sultan Bazar, Hyderabad, and under his instructions, I address you as follows:

1. That it is represented on placing the relevant records before me, that you are the tenant occupying the building premises Municipal No.4-4-266, Sultan Bazar, Hyderabad, on a monthly rent of Rs.3000/-(exclusive of property tax, electricity and water charges) under a rental agreement dated 13-2-1980, but that lease actually commenced from 1-8-1978 for a period of 5 years only. The said lease expired on 31-7-1983. Thereafter you did not get the lease renewed for extended and were continuing in the said premises as tenant holding over paying the same monthly rents. Meanwhile Smt. Lakshmi Bai Patangay died on 15-4-1984, thereafter her "Will" was got probated and my client continued as executor of the said "Will". You have been paying the monthly rents to my client and every time my client is insisting on you to vacate the said premises, and accepting the rents without prejudice to the right to evict the tenant, as the agreed lease period had already expired.

2. That it is further represented before me, that the said leased premises is required for the business purpose for the beneficiaries under the Will namely Sri Balasaheb Malve and his family members. Thus there is a bona fide requirement for the said premises. Besides this, the period of lease also as stated earlier, had expired by 31-7-1983 and there was no fresh lease in your favour thereafter. You are continuing as tenancy holding over, if you have, any rights as tenant, are hereby determined within the meaning of Section 106 of Transfer of Property Act and you are requested to vacate and hand over the vacant possession of the said leased premises No.4-4-266, Sultan Bazar, Hyderabad by the end of August 1986 to my client.

3. It is therefore, my client hereby determines the tenancy of the said leased premises within the meaning of Section 106 of Transfer of Property Act and requests you to vacate the said premises by 30th August 1986 and hand over the vacant possession to my client, failing which my client will take up appropriate proceeding in the Court of law and evict you from the said premises and recover possession thereof, for which you shall be held liable for all costs and consequences thereof charges of this notice re Rs.550.00 which include in costs.

Sd/- Advocate

As could be seen from paragraph (2) of the quit notice Ex.A5, the landlord while determining the tenancy within the meaning of Section 106 of Transfer of Property Act called upon the defendant - tenant to vacate and hand over the vacant possession of the suit schedule premise by the end of August, 1986, If the notice were to stop at that stage, even according to the learned Counsel for the defendant, his client would not have any valid ground to assail the validity of

the quit notice. But the learned Counsel would contend that in paragraph (3) of the quit notice, the tenant -defendant was called upon to vacate the suit schedule premises by 30-8-1986 and as if that is not enough, PW1 in his evidence also stated that the plaintiff issued a legal notice dated 3-8-1986, to vacate the premises and hand over the possession by 30-8-1986 and therefore it should be held that the landlord wanted to terminate the tenancy with effect from 30-8-1986, and such termination is impermissible having regard to the mandatory provisions of Section 106 of Transfer of Property Act. In support of this contention the learned Counsel for the defendant placed reliance on the decision of the Supreme Court in *Dattonpant Gopalvarao Devakarf v. Vithal Rao Marutirao* (supra). The facts of this case can be distinguished from the facts of the case decided by the Supreme Court. In the case decided by the Supreme Court, the quit notice purported to terminate the tenancy by 8-12-1968 treating the month of tenancy as commencing from 9th day of a month and ending on the 8th day of the month following. But the Supreme Court found as a matter of fact that the end of the month of the tenancy was the 9th day and not the 8th day. In that view of the matter, the Court held that the quit notice was invalid. In this case, as could be seen from the quit notice, the landlord while determining the tenancy directed the tenant to vacate the premises by the end of August, 1986, that is to say, on or before 31-8-1986. What is done by the landlord in paragraph (2) of the quit notice fully satisfies the mandatory provisions of Section 106 of Transfer of Property Act. If that is so, can it be proper and just to hold that the quit notice is invalid only on the basis of an obvious clerical or typographical error crept in para (3) of the notice.

10. It is now well settled that a liberal construction is put upon a notice to quit in order that it should not be defeated by inaccuracies either in the description of the premises or name of the tenant or the date of the expiry of the notice; and that the test of its sufficiency is not what its contents would mean to a stranger ignorant of all the facts and circumstances touching the premises to which the notice purports to refer, but what they would mean to tenants presumably conversant with all those facts and circumstances and mistakes, if any, should not be construed with desire to find faults, but they should be construed liberally. A notice to quit must be construed broadly not with a desire to find faults with it which would render it defective, but it must be construed *ut res magis valeat quam pereat*. From the language used in the quit notice, it must be endeavoured to ascertain the intention of the parties and the effect thereof. It should be conjointly read not with an intention to split up a straw or in a hypercritical manner or by pedagogic pedanticism or overrefined subtlety but it must be construed in a common sense way, as stated by Lord Justice Kindley L.J. in *Sidfrotham v. Holland*, (1895) 1 QB 378. The Supreme Court while construing the language used in a quit notice in *Bhagabandas Agarwalla Vs. Bhagwandas Kanu and Others*, was pleased to observe:

"4.Now, here the notice to quit required the respondents to vacate the premises "within the month of October 1962" and intimated, to them that

otherwise they would be "treated as trespassers from 1st November" in respect of the premises. The question is: What is the meaning and effect of the words "within the month of October 1962" in the context in which they are used in the notice to quit? Do these words mean that the tenancy of the respondents was sought to be terminated at a date earlier than the expiration of the month of October 1962 and they were required to vacate the premises before such expiration? We do not think so. When the notice to quit required the respondents to vacate "within the month of October 1962", what it meant was that the respondents could vacate at any time within the month of October 1962 but not later than the expiration of that month, the last moment upto which the respondents could, according to the notice to quit, lawfully, continue to remain in possession of the premises was the midnight of 31st October, 1962. We fail to see any difference between a notice asking a tenant to vacate "within the month of October 1962" and a notice requiring a tenant to vacate latest by the midnight of 31st October, 1962, because in both cases, the tenant would be entitled to occupy the premises upto the expiration of 31st October, 1962 but not beyond it...."

A notice must be read in the context of the facts of each particular case having regard to the situation of the parties to whom it is addressed.

11. The notice to quit in the present case must be judged for its validity in the light of the well recognised principles of interpretation. All the essentials of a valid quit notice are contained in para (2) of the quit notice i.e., it called upon the tenant to quit and deliver possession and it also prescribed a time within which the possession had to be surrendered. In *Alphonso Pinto v. Thukru Hengsu*, 1954 (2) Madras Law Journal 445, dealing with the question whether the notice to quit contained the essential features of such notice, i.e., it called upon the tenant to quit and deliver possession and also prescribed a time within which the tenant should hand over possession, the Court held that so long as there was no defect in respect of those particulars and the period of notice was reasonable, it could not be said that the notice was invalid because the particulars as regards the tenancy were not accurately set out. In *Gulabchand Zaverchand Mehta Vs. (Patel) Kurji Bhagwanji Kalaria*, , where the notice to quit gave 15 clear days time to the defendant to quit the premises and mentioned two earlier dates on which the defendant, if he so chose, could determine the tenancy and it was argued on behalf of the defendant that the notice was vague and uncertain and, therefore invalid, the Court held that so far as the landlord was concerned, he determined the tenancy on 30-11-1959, which was a certain date, the last date of the month of tenancy, and, therefore, the notice to quit expired with the month of tenancy, and that two other dates suggested by the plaintiffs were not the alternative days on which the plaintiff sought to terminate the tenancy of the defendant so as to render the date of termination of the tenancy, vague and uncertain, but they merely represented the dates, earlier in point of time within the actual date of termination of the tenancy at which the plaintiff was prepared to accept the determination of the tenancy if the defendant so desired, and that

did not have effect of invalidating the notice to quit. I am in respectable agreement with the view taken by the Gujarat High Court. In the instant case, when the defendant - tenant received the quit notice, he was quite aware that the monthly tenancy commenced on 1st August, 1986 and that it would come to an end on the mid-night of 31st August, 1986 and in para (2) of the quit notice, he was in clear terms asked to vacate the premises by the end of August 1986 and the quit notice was issued "within the meaning of Section 106 of Transfer of Property Act", thereby meaning as required under the provisions of Section 106 of Transfer of Property Act, and if these are the clear, unambiguous recitals in para (2) of the quit notice, could it be said that the notice is invalid merely because by oversight or inadvertence or due to clerical or typographical mistake, the date 30th August, is mentioned in para (3) of the quit notice? If the quit notice is read as a whole, any ordinary prudent man will understand that the landlord has determined the tenancy and the tenant is required to vacate the suit scheduled premises by the end of August, 1986 and the mention of the date 30th August, 1986 in para (3) of the quit notice is an accidental slip or typographical error. After necessary reflection on the point, I am of the considered opinion that if the Court were to hold that the quit notice is invalid solely on the basis of the date 30th August, 1986, stated in para (3) of the quit notice, that would amount to the Court deciding the issue on hypertechnical and hypercritical manner, and such decision-making process is disapproved by the Supreme Court in *Bhagabandas Agarwalla v. Bhagwandas Kanu and others* (supra 4 cited). In *G.K. Krishnan Vs. Meenakshikutty Amma*, , the Court held that, where in the notice to quit, by obvious mistake, the tenant is called upon to surrender the property on a past date, the mistake cannot be made use of by the tenant to defeat the rightful claim of the landlord to eject the tenant. In the context of this case and particularly having regard to what is stated in para (2) of the quit notice, the mention of the date 30th August, 1986, in para (3) by mistake or inadvertence itself does not vitiate the validity of the quit notice. Litigants in Law Courts should win or lose on substantial questions and not on technical tortures, and the Courts certainly cannot be abettors. "To maintain the integrity of law, the Court must suit the action to the word, the word to the action". This is a case where such a course is necessary.

Point No.III: There is no merit in the contention of the plaintiffs that the Court below ought to have awarded the future compensatory mesne profits at the rate of Rs.5,000/- per month. The P\1 in his evidence has simply stated that the plaintiffs are entitled to Rs.5,000/- per month apart from regular rent towards mesne profits. The PW1 does not even state that in the open market the suit schedule premises could fetch monthly rent of Rs.5,000/-. There is absolutely no evidence, oral or documentary, to prove the claim of the plaintiffs for future compensatory mesne profits at the rate of Rs.5,000/- per month. In that view of the matter, the Court below is justified in not granting the future compensatory mesne profits at the rate of Rs.5,000/- per month.

12. In the result and for the foregoing reasons, both the appeal CCCANo.77 of

1997 and Cross Objection in CCCANo.77 of 1997 are dismissed. In the facts and circumstances of the case, the parties are directed to bear their own costs in the appeal and cross objection.

S.R. Nayak, J.

After pronouncing the judgment, Sri T. Veerabhadrayya, learned senior Counsel appearing for the appellant prays to grant some reasonable time to vacate and handover the vacant possession of the suit schedule premises.

Having heard the learned Counsel on both sides, the appellant is granted six months time to vacate and deliver vacant possession of the suit schedule premises to the plaintiffs, subject to the defendant paying agreed monthly rent regularly.