
(1958) 09 RAJ CK 0004
In the Rajasthan High Court
Case No : Second Appeal No. 13 of 1958

Chauthmal

APPELLANT

Vs

Sardarmal and Others

RESPONDENT

Date of Decision : 24-09-1958

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 5
Transfer of Property Act, 1882 — Section 106, 107, 111, 111(1)

Citation : AIR 1959 Raj 24 : (1959) RLW 162

Hon'ble Judges : Jagat Narayan, J

Bench : Single Bench

Advocate : Sumerchand, for the Appellant; Hukumchand, for the Respondent

Final Decision : Dismissed

Judgement

Jagat Narayan, J.—This is a defendant's second appeal in a suit for ejectment which was decreed by both the courts below.

2. Sardarmal plaintiff No. 1, his son Harak-chand plaintiff No. 2 and his grandson Kajendralal plaintiff No. 3 were the owners of a vacant plot of land which they leased to the defendant for a period of 5 years on an annual rent of Rs. 100/- with effect from 31-10-51. A registered qabuliat was executed by the defendant in their favour on 15-11-51, the relevant portion of which for purposes of this case runs as follows:

"I have taken the land from you on rent for Rs. 100/- annually. I shall pay the rent from year to year. The term of the lease is 5 years. On the expiry of 5 years I shall vacate the premises when demanded by you. In the event of your wishing to construct on the land or to sell it I shall vacate it even before the expiry of the term of 5 years."

3. Plaintiffs Nos. 1 to 3 agreed to sell the above land on 13-2-55 to Shri Oswal Sang of Bali which is represented by plaintiffs Nos. 4 to 8. It was alleged in para 4 of the plaint that the defendant was required to vacate the land by means of

notice dated 14-7-55. A registered sale-deed of the land was executed in favour of the Sang on 15-9-55. The sale consideration was Rs. 8,000/-. A sum of Rs. 4000/- was paid to the plaintiffs Nos. 1 to 3 by the Sang.

The balance of the sale consideration was to be paid after delivery of possession by plaintiffs Nos. 1 to 3 to the Sang. On 17-9-55 plaintiff No. 1 informed the defendant of the sale and asked him to vacate the land within three days of the receipt of the notice and to deliver possession either to plaintiffs Nos. 1 to 3 or to plaintiffs Nos. 4 to 8 on their behalf. The defendant did not vacate the land in spite of the receipt of this notice. The present suit was consequently instituted on 21-10-55 for his ejectment.

4. The defendant admitted that he had taken the land in suit from the plaintiffs Nos. 1 to 3 on lease. He admitted the terms of the lease pleaded in para 3 of the plaint. He also admitted having executed the registered qabuliat referred to in the plaint in respect of the land. As regards the allegation made in para 4 of the plaint the reply of the defendant was that he had no knowledge either of the agreement of sale or of the execution of the sale-deed and "therefore he was not admitting that para of the plaint".

The allegation about the notice requiring the defendant to vacate the plot of land alleged to have been given on 14-7-55 was not specifically or im-pliedly denied. The receipt of notice dated 17-9-55 was admitted but it was asserted that no reply was sent to it as it was not in accordance with law and as reasonable time had not been given to the defendant to vacate the land. In para 2 of the additional pleas it was pleaded that as no date of the determination of the lease was mentioned in the plaint the plaintiffs had no cause of action to bring the suit.

In para 4 it was pleaded that the plaintiffs had not served any notice in accordance with the Transfer of Property Act so that they were not entitled to get the house vacated.

5. The following issues were framed by the trial court so far as the matter of ejectment is concerned:

(1) Have plaintiffs Nos. 1 to 3 sold the land in suit to the remaining plaintiffs?

(2) Did the tenancy determine by the above sale or by notice dated 17-9-55 and are the plaintiffs entitled to possession?

6. Both the issues were decided in favour of the plaintiffs. It was held that the case fell under Clause (b) to Section 111, Transfer of Property Act as the term of the tenancy was limited conditionally amongst other things on the happening of some event one of which was the sale of the leased property by the lessors and the tenancy came to an end when the sale took place and not notice was necessary to terminate it. The suit was accordingly decreed.

7. Against the above decree the defendant filed an appeal. The only point urged before the lower appellate court was that the notice to quit served on the

defendant was not a valid notice u/s 106 of the Transfer of Property Act. It was held that Section 111(b) was applicable to the case and no notice to quit was necessary. The appeal was accordingly dismissed.

8. The first contention put forward on behalf of the defendant is that the case docs not fall under Clause (b) of Section 111, but that it falls under Clause (g) (1). A single judge decision of the Calcutta High Court in *In re In Re: Srinath Zamindary (In Liqdn.)*, was cited. It was an application on behalf of one of the lessors for an order that the liquidator do give possession to the lessors of the demised land. The lease was granted on 17th July, 1928 to the company which had gone into liquidation and contained, among other things, the following clause :

"In case the company goes into liquidation voluntarily or otherwise, this lease shall cease to be operative and the company shall forthwith make over possession Of the abad to the proprietors."

9. The question was whether the lease had come to an end. The learned Judge referred to Clauses (b) and (g) of Section 11 of the Transfer of Property Act as well as to the English Common Law of Landlord and Tenant and came to the conclusion that Clause (g) was applicable and not Clause (b). He appears to have been mainly influenced in coming to this conclusion by the English Common Law and the decision in *General Share and Trust Co. v. Wet-ley Brick and Pottery Co.* (1882) 20 Ch D 260 in which the facts were similar to the facts of the case before the learned Judge. With all respect I am unable to agree that the case was covered by Clause (g) and did not fall under Clause (b).

10. So far as the English Common Law of Landlord and Tenant is concerned the following are the recognised modes of determination of the ten-ancy as given in Hill and Redmant's Law of Landlord and Tenant (Eleventh Edition) (page 415):--

- (1) by efflux of time,
- (2) under a power at a period short of the full term,
- (3) by merger,
- (4) by surrender,
- (5) disclaimer,
- (6) forfeiture,
- (7) in the case of a tenancy from year to year or other periodic tenancy or a lease for a term deter-minable on death or marriage by a notice to quit.

According to Section 111 of the Transfer of Property Act a lease of immovable property determines --

- (a) by efflux of the time limited thereby :

(b) where such time is limited conditionally on the happening of some event -- by the happening of such event:

(c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event--by the happening of such event:

(d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right:

(e) by express surrender; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them :

(f) by implied surrender :

(g) by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that on breach thereof the lessor may re-enter: or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself: or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event; and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease.

Cases falling under Clause (b) of Section 111 have to be treated under the English Common Law as falling in one of the modes 1 to 7 referred to above. There is no mode exactly corresponding to Clause (b). Under the English Common Law the term "forfeiture" has a wider connotation. Under the Indian Law this term is confined to the following three cases : --

(1) In case the lessee breaks an express condition which provides that on breach thereof the lessor may re-enter :

(2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself;

(3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event;

11. Unless a case falls under one of these clauses it cannot be treated as a case of forfeiture under the Indian Law. In the present case sub-clauses (2) and (3) of Clause (g) are admittedly inapplicable. What we have to see therefore is whether it can be said that it is a case falling under sub-clause (1). It is obvious that it cannot be said in the present case that the lessee has broken any express condition.

Nor could it be said in the Calcutta case (A), if I may say so with all respect, that the lessee broke any express condition of the lease. The lease terminated there because there was an express term in it that it would cease to be operative in case the company went into liquidation voluntarily or otherwise, and the company actually went into liquidation. That is to say the lease was to determine

on the happening of an event and it came to an end by the happening of that event.

12. The reasoning given in the Calcutta case (A) with reference to the Indian Law is this.

"In forfeiture "the term created by the instrument" is defeated on the happening of a particular event or the doing of a particular act -- that is our Sub-clause (g)."

With all respect the only case in which the term is defeated on the happening of a particular event under Clause (g) is restricted to that given under sub-clause (3) namely the adjudication of the lessee as an insolvent. All other cases in which the term is defeated on the happening of a particular event would in my opinion fall under Clause (b). Clause (g) in my opinion is only applicable to the cases specifically mentioned in the three sub-clauses of it.

13. Another reasoning given by the learned Judge in holding that Clause (b) was not applicable to the case before him was that the term was for 99 years and there was a condition in the lease that on the happening of a particular event the term created by the instrument would be defeated. With all respect in my opinion no such distinction can be drawn under the Indian Law. Cases in which the term itself is limited conditionally on the happening of some event and cases in which the term is defeated under a condition in the lease on the happening of an event would all fall under Clause (b) if they do not fall under Clause (g) (1).

If the term is defeated on account of a default on the part of the lessee then alone the case can come under clause (g) (1). If however the term is defeated by the happening of a particular event then it is a case in which time is limited conditionally on the happening of some event within the meaning of clause (b).

14. In the present case the term of the lease was for 5 years. On the expiry of the term of 5 years the lessor was entitled to eject the lessee merely by making a demand. There was however a condition that the lessee would quit even before the expiry of the term of 5 years if the lessor wanted to make constructions on the land or to sell it. In other words the term of the lease was limited conditionally on the happening of some event. The case therefore, fell under Clause (b) to section 111 and no notice either under Sub-clause (g) or under Sub-clause (h) was necessary.

15. Next it was argued that u/s 107 Transfer of Property Act a lease of immovable property for a term exceeding one year could only be made by an instrument executed by both the lessor and the lessee and as the instrument in this case was only executed by the lessee the lease is invalid and the terms contained in the qabuliat are not binding on the lessee. Further it was argued that the consequence was that it would only be deemed to be a lease from month to month (in view of Section 106 of the Transfer of Property Act, not being a lease for agricultural or manufacturing purposes), and it was terminable by 15 days" notice expiring with the end of a month of the tenancy.

Reliance was placed on Ram Kumar Das Vs. Jagadish Chandra Deb Dhabal Deb and Another, In that case the courts below had proceeded on the view that a registered instrument signed by the landlord was necessary to create a valid lease for 10 years and that view was not questioned before their lordships and they expressed no opinion on the point. In the present case the defendant specifically admitted in his pleadings that the lease was for 5 years with this condition that if the lessors wanted to make constructions on the land or wanted to sell it before the expiry of the period of 5 years the lessee would vacate it.

This admission of the defendant contained in his written statement is binding on him in the present suit, and as only this condition of the lease is relevant for the purposes of the present appeal it is unnecessary to go into the question as to whether the lease for 5 years was valid or invalid.

16. Apart from the above admission made in the written statement there is a string of decisions of the Allahabad High Court laying down that the terms of a contract entered into between the lessor and the lessee contained in a qabuliat executed by the lessee alone are binding on the latter. They have been referred to in Maqbool Ahmad and Others Vs. Debi and Others, which was followed in Kajodmal v. Baluram RLW 1955 117 .

No Court has taken a contrary view. The terms of the qabuliat executed by the defendant are accordingly binding on him. These terms contained a contract to the contrary within the meaning of Section 106 of the Transfer of Property Act inasmuch as the defendant agreed to vacate the land in case the plaintiffs wanted to make constructions on it or wanted to sell it, and the implication on a reading of the entire document is that he agreed to do so without notice.

17. Lastly it was argued that even assuming that the defendant was bound by the terms of the lease on a proper construction of it a demand was necessary before instituting the suit and it had not been proved that any demand was made by the lessors before instituting the suit. The receipt of notice dated 17th September, 1955 was admitted by the defendant, but it was contended on his behalf that since it proceeded from plaintiff No. 1 who was no longer the owner of the property it was ineffectual.

As for the earlier notice dated 14-7-55 referred to in para 4 of the plaint it was argued that the plaintiffs had not proved it.

18. Assuming that in the event of the lessor wanting to make constructions on the land or to sell it a demand for vacating the land on his part was necessary in order to entitle him to maintain a suit for ejectment, that demand has been sufficiently proved inasmuch it, was specifically pleaded in para 4 of the plaint that the defendant was asked to vacate the land by means of notice dated 14-7-55 and there is no denial of this allegation either expressly or by implication in the written statement. The decision in Rameshwar v. Rameshwar ILR (1954) Raj 570 has no application to the present case, as all that was needed here was that the lessor should make a demand for the vacation of the land.

It was pleaded in the plaint that such a demand was made on 14-7-55. This allegation will be deemed to have been admitted by the defendant in view of Order 8 Rule 5, C. P. C. The production of a true copy of the notice was not necessary in view of this admission.

I accordingly hold that a demand was made for the vacation of the land on 14-7-55 by plaintiff No. 1 who was then the lessor of the property.

19. I accordingly find that there is no force in this appeal, which is hereby dismissed with costs.