
(1961) 10 GUJ CK 0002
In the Gujarat High Court
Case No : Second Appeal No. 587 of 1961

Gulabchand Zaverchand Mehta	Vs	APPELLANT
(Patel) Kurji Bhagwanji Kalaria		RESPONDENT

Date of Decision : 11-10-1961

Acts Referred:

Transfer of Property Act, 1882 — Section 106

Citation : AIR 1962 Guj 229 : (1962) 3 GLR 113

Hon'ble Judges : P.N. Bhagwati, J

Bench : Single Bench

Advocate : S.M. Shah, for the Appellant; M.U. Shah, for the Respondent

Final Decision : Dismissed

Judgement

P.N. Bhagwati, J.—This Second Appeal raises a short question regarding the validity of the notice to quit given by the plaintiff to the defendant. It is an admitted fact that the tenancy of the defendant was from month to month according to the English calendar month. The plaintiff gave to the defendant a notice dated 7th October 1959 calling upon him to quit the premises which were in his possession as a tenant of the plaintiff. The material portion of the notice was, when translated in the following terms:

"Whereupon by this notice you are finally informed:

On receipt of this notice, on 30-11-59 (being) the end of the month of your tenancy or it you want to consider (the month of tenancy) according to your rent note then [in] the month expiring on 15-11-1959 or on that day on which you consider the month of tenancy ends, you will vacate the aforesaid, premises which you hold as my client's tenant and hand over its possession to my client".

2. The defendant failed to hand over possession of the premises to the plaintiff and the plaintiff, therefore, filed a suit against the defendant on 8th April 1960 to recover possession of the premises from the defendant. The ground on which possession of the premises was sought by the plaintiff was that he required the

premises bona fide and reasonably for his own use and occupation. Various contentions were raised by the defendant in his written statement, one of which was that the notice to quit given by the plaintiff to the defendant was not a valid notice.

The learned trial Judge, after hearing the parties, came to the conclusion that the notice to quit was a valid notice which effectively terminated the tenancy of the defendant and that the premises were bona fide and reasonably, required by the plaintiff for his own use and occupation but that greater hardship would be caused to the defendant by passing a decree for possession of the entire premises than what would be caused to the plaintiff by refusing to pass a decree. The learned trial Judge was, however, satisfied that no hardship would be caused either to the plaintiff or to the defendant by passing a decree in respect of one half of the premises. The learned trial Judge accordingly passed a decree awarding possession of one half of the premises to the plaintiff, it appears that both the plaintiff and defendant were aggrieved by the decree passed by the learned trial Judge and they, therefore, filed appeals against the same. The appeals were disposed of by the learned Assistant Judge, Condal, who, agreeing with the learned trial Judge, dismissed both the appeals. The defendant thereupon filed the present Second Appeal in this Court and the plaintiff filed Cross-objections in the present) appeal.

3. The only contention urged by Mr. S.M. Shah, learned advocate, appearing on behalf of the defendant was as regards the validity of the notice to quit given by the plaintiff to the defendant., Mr. S.M. Shah contended that the notice to quit did not put an end to the relationship of landlord and tenant at a certain and definite time which expired with the month of the tenancy but sought to terminate the tenancy of the defendant on three alternative dates. This, argued Mr. S.M. Shah, vitiated the notice to quit and the notice to quit did not, therefore, have the effect of terminating the tenancy of the defendant. Now Mr. S.M. Shah is right in his contention that though no particular form of words is necessary, the notice to quit must determine the existing tenancy at a certain time. It is well established that a notice to quit being a unilateral act in exercise of a contractual right to put an end to an existing relation of landlord and tenant, must conform strictly to the requirement of law. A notice to quit is, as observed by Lord Greene, M.R., in *Hankey v. Clavering* (1943) 2 All ER 311, a document of a technical nature, technical for this reason, that if it is in a proper form it has of its own force without any assent by the recipient the effect of bringing the tenancy to an end. It is not a consensual document; it is a document which must on its face and on a fair and reasonable construction do what the law says that it must do Section 106 of the Transfer of Property Act requires that in the case of a tenancy from month to month, a notice, to quit must give at least fifteen days" notice and must expire with the end of the month of the tenancy. It is not in dispute that the notice to quit in the present case gave fifteen days" clear notice to the defendant but the only question is whether it can be said that the notice to quit expired at a certain and definite time which was the end of the month of the

tenancy. The argument of Mr. S. M. Shah was that there were three alternative dates mentioned in the notice to quit on which the notice to quit expired and the notice to Suit, therefore, suffered from the fault of vagueness and uncertainty and could not be said to expire with the month of the tenancy. This argument is, in my Opinion, fallacious for reasons which I will immediately state. Before, however, I do so, I must refer to the well-known rule of construction that a notice to quit though if may not be strictly accurate or consistent in the statements embodied in it may still be good and effective in law, the test of sufficiency would be satisfied if the notice to quit conveys to the tenant that his tenancy would be [determined at a certain and definite time expiring with the month of the tenancy and the Court must construe the notice to quit not with 5 view to finding faults in it which would render it defective but must construe it *ut res magis valeat quam pereat*

4. Bearing these general principles in mind, I must determine the question whether the notice to quit given by the plaintiff to the defendant in the present case was so vague and uncertain as regards the time when the tenancy was sought to be terminated that it could be said that the notice to quit did not expire with the month of the tenancy. The question is solely one of interpretation. What upon its fair and reasonable construction, did the notice to quit mean and convey to the defendant? Did the notice to quit leave the defendant in any doubt as regards the date when the tenancy was sought to be terminated by the plaintiff? Could it be said On a fair and reasonable construction of the notice to quit that it sought to terminate the tenancy of the defendant on three alternative dates? Or did the notice to quit "terminate the tenancy of the defendant on 30th November 1959 and at the same time gave an option to the defendant to deliver up possession at some earlier date of his own choosing? I am clear that the latter is the correct construction of the notice to quit. By [the notice to quit the plaintiff terminated the tenancy of the defendant on 30th, November 1959 which was according to the plaintiff as the notice to quit itself states, the last date of the month of the tenancy. The plaintiff, however, gave an option to the defendant to determine the tenancy at an earlier point of time either on 15th November 1959 or on any other date and in effect stated that if the defendant chose to do so the plaintiff would accept such determination. The plaintiff made to the defendant an offer to accept from him a determination of the relationship of landlord and tenant on any earlier date of the defendant's choice on which the defendant should give up in fact possession of the premises. So far as the plaintiff was concerned, he determined the tenancy on 30th November 1959. That was a date certain and it was the last day of the month of the tenancy. The notice to quit, therefore, expired with the month of the tenancy. The two other dates suggested by the plaintiff were not the alternative dates 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 than 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. This, in my opinion, did not have the effect of invalidating the notice to quit. I must, therefore, reject the contention of Mr. S. M. Shah that the notice to quit given by the plaintiff to the defendant was invalid. In this view of the matter, the appeal of the defendant must fail.

5. Mr. S. M. Shah at the close of the arguments applied to me that in any event some time should be granted to the defendant "to vacate the half portion of the premises awarded to the plaintiff under the decree of the learned Assistant Judge. Having regard to the facts and circumstances of the case, I think I should accede to this request of Mr. S. M. Shah. I, therefore, dismiss the appeal and confirm the decree passed by the learned Assistant Judge with this modification that the defendant shall vacate the half portion of the premises awarded to the plaintiff on or before 31st January 1962. So far as the Cross-objections are concerned, Mr. M. U. Shah, learned advocate appearing on behalf of the plaintiff, did not press the same and the Cross-objections must, therefore, be dismissed. There will be no order as to costs of the appeal and the Cross-objections.