

(1897) 04 CAL CK 0014
In the Calcutta High Court

Kishori Mohun Roy Chowdhry and Others	APPELLANT
Vs	
Nund Kumar Ghosal and Others	RESPONDENT

Date of Decision : 02-04-1897

Acts Referred:

Transfer of Property Act, 1882 — Section 106

Citation : (1897) ILR (Cal) 720

Hon'ble Judges : Knight, C.J.; Francis William Maclean, J; Banerjee, J

Bench : Full Bench

Judgement

Maclean, C.J.—There have been two or three points argued in this appeal, but the principal one is whether the plaintiffs are entitled to eject the defendants from certain land held by the latter under the kabuliyat set out at pages 25 and 26 of the paper-book. That question depends again upon whether adequate notice to quit was given by the plaintiffs to the defendants. All we have to decide, and all we intend to decide, is whether the notice was a good and sufficient notice so as to entitle the plaintiffs to recover possession of the property in question from the defendants. I do not propose to repeat the history and the facts of the case which are set out very fully in the judgment of the Court below, nor is it necessary, for the point is a very short one. It appears from the lease that the defendants became lessees of this property, for which they were to pay an annual rent of Rs. 5 by four instalments and take annual dakhilas for the same.

2. The first question is, what was the nature of the tenancy created by that document. In my opinion it was a tenancy reserving an annual rent. We do not decide whether the tenancy was or was not a permanent one. I say that because it has been suggested there may hereafter be a question as to that, and possible litigation in respect of it. Taking it then to be a tenancy with an annual rent reserved, in other words an annual tenancy (but not using that term so as to prejudice any question hereafter as to whether or not it is a permanent tenure), the question is whether the notice to quit was good and sufficient.

3. The defendants contend that they were entitled to six months' notice. Six months' notice admittedly was not given in this case.

4. In considering this question both Mr. Rill and Mr. Woodroffe agree that Section 106 of the Transfer of Property Act has no application to the case. That being so, what in a tenancy of this nature is a reasonable notice to which the tenant is entitled before he can be ejected? It is conceded by Mr. Bill that according to English law in the case of a similar tenancy there must be six months' notice expiring at the end of the year of the tenancy. Apparently there is no direct authority upon the point in the Indian Courts, though Mr. Woodroffe relied upon the case of *Rajendronath Mookhopadhyaya v. Bassider Ruhman* I. L. B. 2 Cal. 146. But, as pointed out by Mr. Hill, that case really does not cover the present case. It only lays down this: "That a raiyat whose tenancy can only be determined by a reasonable notice to quit, expiring at the end of the year, can claim to have a suit for ejectment brought against him by his landlord dismissed on the ground that he has received no such notice. "There being no authority to the contrary in this country we see no reason, nor has any reason been suggested, why the rule of English law should not be applicable to such a tenancy as the present in this country, and we think that six months' notice, terminating at the end of the year of the tenancy is the notice to which a tenant, under such a tenancy as that in this case is entitled. Though the ease does not come within Section 106 of the Transfer of Property Act, our view is consistent with the principle of that section in regard to tenancies in which a yearly rent is reserved.

5. In this case six months' notice not having been given the suit fails.

6. As we have intimated in the course of the argument, we do not think that we ought to allow the appellant to go into the question not raised in either of the Courts below, viz., whether the defendants having denied the plaintiffs' title, if in their written statement they did in fact deny it, which Mr. Woodroffe does not admit, the plaintiffs were bound to prove any notice to quit. That question is not now before us.

7. One other point---a subsidiary point---remains, and it is this: It is contended on behalf of the appellants that the plaintiffs are entitled to re-enter now, by reason of the fact that the defendants without their lessor's consent, have erected certain structures upon the land of a permanent nature, and he calls in aid Sub-section "B" of Section 108 of the Transfer of Property Act, but as pointed out by Mr. Woodroffe that section only applies in the absence of a contract to the contrary. But even if that were not so, on the face of the finding of the Lower Appellate Court, that the plaintiffs acquiesced in the erection of these structures, I do not think that that contention can successfully be raised. It was but faintly argued before us. Upon this point it may be mentioned that there is no condition of re-entry in the lease for breach of any covenant in it.

8. On these grounds I am of opinion that the appeal fails, and must be dismissed with costs.

Banerjee, J.

9. I also am of opinion that this appeal and plaintiffs' suit should be dismissed, and dismissed upon the sole ground that there has not been any notice to quit such as, upon any view of the case, was necessary. The tenancy was created by a kabuliyat, that is by an express contract, and it was admitted on both sides that the case was outside the scope of Section 106 of the Transfer of Property Act. Proceeding upon that assumption, and without determining, as it is unnecessary to determine, what the exact nature of the tenancy is, I think it must be at least held that the tenancy was one reserving a yearly rent, and the year of the tenancy commenced on the 14th day of Pous 1294.

10. Assuming that the tenancy is at all terminable by a notice to quit, the question is what ought the nature of the notice to be; and I think that the notice in such a case ought at least to be a six months' notice expiring with the year of the tenancy. Although Section 106 may not apply to the case, it shows that the Legislature in this country has not thought fit to depart from the rule of English law that a yearly tenancy can only be terminated by a six months' notice. Moreover, the rule that requires that a terminable tenancy from year to year should have as a condition for its determination a notice expiring with the year of the tenancy, is a rule that is founded upon a very good reason. It prevents dispute as to the apportionment of the rent.

For these reasons I think that the notice, if the tenancy is at all terminable by a notice to quit, ought to be a six months' notice expiring with the end of a year of the tenancy.

As the notice here does not satisfy this condition, the suit, I think, has been rightly dismissed.