
(1962) 01 CAL CK 0024
In the Calcutta High Court
Case No : A.F.A.D. No. 980 of 1956

Lal Behari Sasmal

APPELLANT

Vs

Kanak Kanti Roy

RESPONDENT

Date of Decision : 16-01-1962

Acts Referred:

Transfer of Property Act, 1882 — Section 107, 53A

Citation : AIR 1962 Cal 502

Hon'ble Judges : Bijayesh Mukherji, J

Bench : Single Bench

Advocate : Lala Hemanta Kumar and Rebati Nath Sarkar, for the Appellant;
Bhutnath Chatterjee and Hiran Kumar Roy, for the Respondent

Final Decision : Allowed

Judgement

1. This is an appeal by the defendant in a suit for ejectment and recovery of arrears of rent instituted in the Court of the Munsif at Uluberia on January 5, 1955.

2. The appellant gets into the premises in controversy here by virtue Of an unregistered Patta, Ext. A, executed by Bhupati Nath Roy on behalf of his minor son Kanak Kanjti Roy, the plaintiff in the trial Court and respondent to this appeal. At the trial, Kanak Kanti was no longer of non-age. To be exact, he was 32. Be that as it may, the Patta stipulates inter alia that the appellant is given the premises for 25 years from the 1st Falgun 1346 B. S. corresponding to mid-February, 1940, on a monthly rental of Rs. 3-8-0 with the right to make it habitable by repairs and additions of rooms at his own expense. More, for the aforesaid period of 23 years, the appellant will have the right to remain there undisturbed by the grantor or his successors in interest. The date of the Patta is Magh 12, 1346 B. S. corresponding to January 26, 1940. Twenty-five years from mid-February 1940, expire on or about mid-February 1965.

3. By his judgment and decree dated July 25, 1955, the learned Munsif

disallowed the prayer for eviction and decreed the suit only for arrears of rent amounting to Rs. 56/-. So he did holding inter alia that as the lease had not yet run out, no eviction could be made. On appeal, the learned District Judge, Howrah, by his judgment and decree dated May 2, 1956, decreed the Suit for eviction as well holding among other things that Section 53-A of the Transfer of Property Act (hereinafter referred to as the Act) was not available to the appellant and that he could not, therefore, claim protection from eviction for the life of the Patta: a period of 25 years from mid-February, 1940. Hence this second appeal by the tenant defendant.

4. Mr. Lala Hemanta Kumar, the learned Advocate for the appellant, addresses me on one and only one point: Section 53-A of the Act saves the appellant from eviction, Mr. Bhutnath Chatterjee, the learned Advocate for the Respondent, contends that it does not.

5. One way of looking at the problem--and that is the way the learned District Judge looks at it--is that the Patta executed only by the grantor offends against the third paragraph of Section 107 of the Act and cannot, therefore, be elevated to the height of a lease. Thus the Patta failing as a lease, and fail it must, the parties to such a document are relegated to what is known as "implied" or "presumed" tenancy (see Ram Kumar Das Vs. Jagadish Chandra Deb Dhabal Deb and Another, , as explained by P. N. Mookerjee, J., in Indramoni Dasi v. Sm. Snehalata Dutt 59 Cal WN 1150.) Indeed the materials On record are such as show admitted payment and receipt of rent. More, the appellant goes into possession of the premises in controversy here, causes repairs to be made and a verandah to be built (as is the evidence of even the respondent's second witness Amulya Chandra Rana) and has been putting up there for a little less than 14 years when the suit was instituted by the respondent on January 5, 1955. Facts as these are caught by the deeming provisions contained in the first paragraph of Section 106 of the Act. By virtue thereof, such a presumed or implied lease of immovable property shall be deemed to be a lease from month to month terminable by a fifteen days" notice expiring with the end of the month of the tenancy. It has been so terminated. Hence the appellant has got to go.

6. Such a process is right as far as it goes. But in the context of facts here, it does not go far enough. The respondent through his guardian and father contracts to transfer to the appellant for consideration the premises in controversy here by a writing signed by him. The Patta though not a lease is surely a writing within the meaning of Section 53-A of the Act. Indeed if language has any meaning, it cannot be short of that. From such a writing the terms necessary to constitute a transfer can be ascertained with reasonable certainty. The appellant in part performance of the contract has taken possession of the subject of the contract: the disputed premises here. He has been performing his part of the contract. On these premises, the respondent, the transferor is debarred from enforcing against the appellant, the transferee, any right other than the right expressly provided by the terms of the contract. And it

is expressly provided that the appellant shall remain in the premises in controversy here undisturbed by the respondent till mid-February, 1955. Thus, as a matter of words, Section 53-A of the Act does come to the aid of the appellant.

7. The learned Munsif does not consider this aspect. The learned District Judge does, but only to negative the appellant's plea of being benefited by Section 53-A of the Act. Indramoni Dasi's case 59 WN 1150 which the learned appellate Judge cites and Mr. Bhutnath Chatterjee relies upon turns on a "unilateral Kabuliyat, Ext. 4. executed by the lessee alone" a writing though, it is not executed by the transferor. Hence, Section 53-A of the Act could not come to be considered even, it did not fall for consideration either in the Supreme Court decision in Ram Kumar Das Vs. Jagadish Chandra Deb Dhabal Deb and Another, also turning on a Kabuliyat which of course cannot attract Section 53-A. It did come up for active consideration in Ram Protap Kayan Vs. The National Petroleum Co. Ltd., , though in a different context. Ram Protap Kayan and the petroleum Company executed an agreement on March 31, 1934, by which the Petroleum Company provided Ram Protap with a suitable shed and godown at a monthly rent of Rs. 50/-. It was further stipulated that Ram Protap would remain in possession for five years on the expiry of which he would return vacant possession to the Petroleum Company. This he did not do. Result: a suit by the petroleum Company for eviction of Ram Protap who raised the defence of Section 53-A of the Act as a plea in bar. On these facts, P. N. Mitra, J., (with whom R. C. Mitter, J, agrees) observes at page 63 of the report (Cal WN) : (at pp. 26-27 of AIR):

"In form the section imposes a bar on the transferor when the conditions mentioned in the section have been fulfilled. It debars him from enforcing against the transferee, any right in respect of the property other than a right expressly provided by the terms of the contract. He is not allowed to take advantage of the fact that the contract, though required to be registered, has not been registered, or where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed by law. And in order to obviate any difficulty about proof of the contract or of the instrument of transfer for want of registration, supplementary legislation was enacted amending Section 49 of the Indian Registration Act.

So far as the transferee is concerned, the section confers a right on him to the extent that it imposes a bar on the transferor. But this is only a right to protect his possession against any challenge to it by the latter contrary to the tenor of the contract or the instrument of transfer:"

8. So far then about the transferee's right. This is just the right the appellant before me has, though the learned District Judge denies him that right Only because the Patta cannot be treated as a lease u/s 107 of the Act. The passage quoted above disposes of the contention raised on behalf of the respondent that the patta is not receivable as proof of the contract.

9. Then, to complete the narration about Ram Protap's case, follow the observations on the transferor's right at page 64 of the report (CWN) : (at p. 27 of AIR) :

"When the section says that the transferor shall be debarred from enforcing any right against the property other than a right expressly provided by the terms of the contract, by plain implication it sanctions the enforcement of a right which has been so provided. And there is obvious justice in this, for if the transferor is to be held to his bargain with the transferee in respect of the property, it is only just that he should be given liberty to enforce his contractual rights against the latter in respect of it. It may be said that this is not the conferment of a right but the saving of an existing right. But whether it is the one or the other, it secures the result of enabling the transferor to enforce his contractual rights against the transferee, in respect of the property."

10. When mid-February, 1965 comes, the appellant will have to quit. If I am now holding the respondent to his bargain that he must not disturb the appellant before the expiry of 25 years In mid-February, 1965, the appellant by parity of reasoning must then be held to his bargain that he shall not remain in the premises a day beyond the expiry of 25 years from Falgun 1, 1346 B. S. corresponding to mid-February 1940. For all I see, nothing like any notice will be required even. The bargain receives effect. So does Section 53-A of the Act. That being so, there is hardly any room for "presumed" or "implied" tenancy here. The bargain taken as a whole and Section 53-A of the Act cover the whole field.

11. To put it another way, a presumed or implied lease for a term of 25 years which the parties had intended on January 26, 1940, the date of the execution of the patta, is out of the question. The reason is plain. A lease of Immovable property for any term exceeding one year can be made only by a registered instrument. The first paragraph of Section 107 of the Act prescribes so. Section 106 does not negate Section 107 but only supplements it. A registered instrument must be there in any event. Say, such an instrument reveals a lease for agricultural or manufacturing purpose but not its duration. Then Section 106 comes into action. And the lease has to be deemed as a lease from year to year terminable by a six months' notice expiring on the end of the year of the tenancy.

12. A "presumed" or "implied" monthly tenancy cannot rear its head either. The whole of the bargain in the light of Section 53-A of the Act which applies here very much will work itself out here leaving scope for no tenancy by implication or by legal fiction, in plain language the bargain tells the appellant : "Do and pay as you have agreed. Stay here till mid-February 1955 and then walk out". The bargain tells the respondent too : "Do not disturb the appellant till mid-February, 1955. Do not, because on your own admission you cannot. You are estopped by the terms of your own contract." Where then is the scope for a tenancy, "implied" or "presumed"?

13. The case of Hadu Maharana Vs. Ramdulal Ghosh, , Mr. Lala Hemanta Kumar

cites also Supports the conclusion I have come to. In that case, the lessee is inducted into the land demised in pursuance of a Patta and a Kabuliyat, registered documents both. But the Patta is executed by the landlord and not by the tenant and the Kabuliyat by the tenant and not by the landlord. Section 107, third paragraph, of the Act is in breach again, even if the patta and the Kabuliyat are read together. Still it is held that having been put in possession, the lessee can take the benefit of Section 53-A of the Act. So can the appellant before me.

14. The learned District Judge has, therefore, committed an error of law in depriving the appellant of the protection Section 53-A of the Act affords him.

15. In the result, the appeal succeeds and is allowed with costs. The judgment and decree of the learned District Judge be set aside and those of the learned Munsif restored.

16. Leave to appeal under Clause 15 of the Letters patent has been asked for. It is allowed.