

(1956) 08 AHC CK 0030
In the Allahabad High Court
Case No : Second Appeal No. 881 of 1951

Lala Fateh Chand

APPELLANT

Vs

Mst. Radha Rani and Others

RESPONDENT

Date of Decision : 08-08-1956

Acts Referred:

Registration Act, 1908 — Section 49
Transfer of Property Act, 1882 — Section 106, 107, 116
Uttar Pradesh General Clauses Act, 1904 — Section 6

Citation : (1956) 26 AWR 711

Hon'ble Judges : R.N. Gurtu, J

Bench : Single Bench

Advocate : B. Dayal, for the Appellant; G. Kumar, for the Respondent

Final Decision : Allowed

Judgement

R.N. Gurtu, J.—This is a landlord's appeal in a suit for ejectment from a house.

2. The learned Munsif decreed the suit for recovery of possession and granted pendentlite and future mesne profits. Upon appeal the court below modified the judgment and decree passed by the trial court by setting aside the decree for ejectment.

3. The landlord has preferred this appeal and submits that the finding of the court below that the permission by the District Magistrate was invalid and also the finding that the notice issued did not terminate on the last day of Defendant's tenancy was incorrect.

4. It was admitted before me that the Defendant in this case did not deny that he was a tenant. It was also admitted that this was a lease for manufacturing purposes. It was also admitted that the original period of the Defendant's lease had expired and the Defendant was holding over u/s 116 of the Transfer of Property Act.

5. Learned Counsel for the landlord-Appellant however argued that although this

was a lease for manufacturing purposes six months" notice was not necessary in this case but only one months" notice was necessary and the court below erred in holding that six months" notice was necessary.

6. Leaned counsel for the Appellant argues that in the lease under which the Defendant obtained possession it was clearly stipulated that the Defendant could be ejected upon one month's notice and this term was binding on the Defendant even though this was otherwise a lease for manufacturing purposes.

7. Learned Counsel for the Respondent urges that the lease is inadmissible in evidence inasmuch as it was for one year and the total amount of rent reserved was more than rupees fifty, and it should have been therefore registered. He urges that by a notification published in the U.P. Gazette dated 21-6-1905 u/s 107 of the Transfer of Property Act only leases in which the total amount of the rent reserved is below Rs. 50 can be made by an unregistered writing. According to the learned Counsel all other lease if in writing have to be registered. In view of the language of Section 107 of the Transfer of Property Act and the notification above referred to, it would appear that the objection of the learned Counsel for the Respondent is correct and that the lease being an unregistered one is inadmissible in evidence except for collateral purposes as provided in Section 49 of the Registration Act.

8. The position at present is that the tenant is holding over. In other words, he is a tenant u/s 116 of the T.P. Act by virtue of the fact that the landlord has received rent from him. The present position of the tenant is not that he is a tenant directly under the lease because the period of lease has expired. In such circumstances I think that the term of the expired lease which provides that the tenant can be ejected upon one month's notice can be looked at because looking at that term in connection with the holding over would be looking at the lease for merely a collateral purpose; the collateral purpose being to find out whether it is to be a one month's notice or a six month's notice to quit to determine the holding over.

9. What a collateral purpose is cannot be precisely defined. It must vary with the circumstances of each case. Lease which were not registered but were required to be registered and were therefore inadmissible for a purpose other than a collateral one have been looked at in reported cases in order to ascertain the nature of the possession of the tenant, the date from which the tenancy began and for determining the period of tenancy and for finding out what the rent reserved was. Since the courts have treated all these purposes as collateral, I would have been prepared even to go so far as to hold that it would be a collateral purpose to look at a term like the present one in this lease even in a case where the tenant was still holding under the unexpired lease and not merely holding over u/s 116 of the T.P. Act as here. In this case the tenant has admitted the tenancy and has admitted the rent reserved and is holding over beyond the period of the lease. In my view, therefore, it is permissible to look at the expired lease to find out whether the normal period of notice had been agreed to be cut

down under it for to do so would, in my view, he looking at the lease merely for a collateral purpose in connection with the determination of the holding over. In view of what I have said, I must hold that the tenant was liable to ejectment as the lease provided for one month's notice and the tenant had more than one month's notice in this case.

10. Moreover, as it is admitted that the rent was payable by the month it could be inferred that the normal period of six month's notice had been by implication agreed to be cut down to the period that is required to terminate a tenancy which is from month to month. In a case like the present one an agreement to the contrary can be implied. See Section 106 of the Transfer of Property Act and the case reported in *Radha Ballabh v. Bahore Ram Chand* 1953 A.L.J. 304. In this view also therefore the notice in this case was a perfectly valid notice.

11. Dealing with the question whether the permission by the District Magistrate was a good permission, it has been pointed out that the permission was obtained and granted while Ordinance III of 1946 was in force. It is true that that Ordinance has been repealed by Section 18 of the U.P. Rent Control and Eviction Act (Act III of 1947) but by Section 1 Sub-section (3) of the same Act that Act is deemed to come into force on 1-10-46. In other words, the Act commences on the same day as the ordinance commenced. Moreover, Section 18 is not only a repealing, but a saving clause also and Sub-section (2) of Section 18 enacts that

The provisions of the Ordinance shall be so read and construed as if they were amended by this Act in such manner as not to be inconsistent with the provisions of this Act.

12. It seems to me, therefore, that the net result of the provisions is that the permission obtained from the District Magistrate while Ordinance III of 1946 was in force must be deemed to be permission obtained under this very Act. Moreover, having regard to Section 6 of the U.P. General Clauses Act the repeal of an Ordinance should not affect the validity and the force of the permission duly granted while the ordinance was in force. I would further like to point out that Section 3 of Act III of 1947 does not indicate that the permission should have been obtained under the Act itself. The words are subject to any order passed under Sub-section (3) no suit shall without the permission of the District Magistrate be filed in any Civil Court etc. Therefore, in my view it is enough that there is a permission existing from the District Magistrate at the time when the suit is filed.

13. Accordingly I partly allow this appeal, set aside the decree of the court below so far as ejectment is concerned and decree the Plaintiff's suit for ejectment also. Costs of the trial court and the court below will be in favour of the Plaintiff. Costs in this Court will be on parties.

14. Learned Counsel for the Respondents says that in view of the difficulties of obtaining alternative accommodation, the decree now passed may not be made executable for a period of one year. In my view one year's time is too long and

four month's time will be sufficient. I order that the decree so far as it relates to ejectment will not be executable till 15-2-1957.

15. Leave to file a Special Appeal is asked for and is refused.