
(1919) 03 CAL CK 0057
In the Calcutta High Court

Maharaj Bahadur Singh

APPELLANT

Vs

Makhan Chandra Ghosh and Another

RESPONDENT

Date of Decision : 26-03-1919

Acts Referred:

Bengal Tenancy Act, 1885 — Section 155(1)
Conveyancing and Law of Property Act, — Section 11

Citation : AIR 1919 Cal 590 : 51 Ind. Cas. 385

Hon'ble Judges : Beachcroft, J; Asutosh Mookerjee, J

Bench : Division Bench

Judgement

1. This is an appeal by the plaintiff in a suit for ejectment of the defendants from a tenancy on the ground that they have used the land in a manner which renders it unfit for the purposes of the tenancy. The Courts below have dismissed the suit on the ground that the notice alleged to have been served on the defendants did not fulfil the requirements of Section 155 (1) of the Bengal Tenancy Act.

2. Section 155 provides that a suit for the ejectment of a tenant on the ground of misuse of land or breach of covenant shall not be entertained, unless the landlord has served, in the prescribed manner, a notice on the tenant, specifying the particular misuse or breach complained of and where the misuse or breach is capable of remedy, requiring the tenant to remedy the same, and, in any case, to pay reasonable compensation for the misuse or breach, and the tenant has failed to comply within a reasonable time With that request. In the case of Pershad Singh v. Bam Pertab Roy 22 C. 77; 11 Ind. Dec. (N.S.) 54 it was ruled that the expression "in any case" means "in every case," and that a notice not containing a requisition to the tenant to pay compensation is inefficient to support a suit for ejectment brought under the Section. In that suit, the notice given did not require the tenant to pay compensation nor did the plaint include a claim FOR compensation. In the case OF Boidya Nath Panday v. Ghisu Mandal 30 C. 1063 it was ruled that the notice served was not vitiated, merely because the compensation was demanded in the alternative. It was observed that the Section did not require that the notice must call upon the tenant, not only to pay

compensation to the landlord for the misuse complained of, but also some additional compensation over and above the amount required to remedy the misuse of which the tenant had been guilty. As was pointed out by the learned Judges, a claim for damages in the alternative is in favour of the tenant, who is, as explained in *Harok Singh v. Kirat Narain Singh* 4 Ind. Cas. 734; 10 C.L.J. 595 liable to be compelled to remedy the misuse where it is physically possible so to remedy it. In the present case, the notice intimates to the tenants that they should, within one month from date of service, restore the land to its original condition, and that if they failed to do so, a suit would be brought against them for ejectment and for recovery of Rs. 200 as damages. In our opinion, a notice so framed does not fulfil the requirements of Section 155; there is no claim for compensation, either in addition or as an alternative to a demand on the tenant to remedy the misuse or breach. Reliance has been placed by the appellant upon decisions on Section 11 of the Conveyancing and Law of Property Act, 1881, on which, as pointed out in *Pershad Singh v. Ram Pertab Roy* 22 C. 77; 11 Ind. Dec. (N.S.) 54, Section 155 of the Bengal Tenancy Act is substantially based. NO useful purpose would, however, be served by an exhaustive review of these decisions, none of which really assists the contention of the appellant. The case of *North London Land Co. v. Jacques* (1884) 32 W.R. 283 ; 49 L.T. 659 ; 48 J.P. 505 shows that when an ex parte order for ejectment has been obtained without service of a valid notice, the defendant is entitled to be relieved against forfeiture. But Bacon, V.C., appears to have maintained the view that the notice was bad because it did not claim compensation: *Jacques v. Harrison* (1884) 12 Q.B.D. 136 on appeal (1884) 12 Q.B.D. 16; 53 L.J.Q.B. 137; 50 L.T. 246; 32 W.R. 471 *Greenfield v. Hanson* (1886) 2 T.L.R. 876. The case of *Lock v. Pearce* (1893) 2 Ch. 271; 62 L.J. Ch. 582; 2 R. 403; 68 L.T. 569; 41 W.R. 369 which disapproved the dictum of Bacon, V.C., appears to be an authority for the proposition that a notice requiring the lessee to remedy a breach of covenant may, in certain circumstances, be good, even though it does not require payment of compensation in money. Lord Esher, M.R., interpreted the Section to mean that the breach must be remedied if it can be and there must be compensation besides that, if there is anything for which to compensate. Lindley, L.J., said: "Supposing the lessor does not want compensation, is the notice to be held bad, because he does not ask for it? There is no sense in that." Kay, L.J., agreed in this opinion. A similar view had been adopted by Fry, L.J., in *Skinner's Co. v. Knight* ((1891) 2 Q.B. 542 AT P. 544; 60 L.J.Q.B. 629; 65 L.T. 240; 40 W.R. 57; 56 J.P. 36 where, in giving the written judgment of himself and Lord Halsbury and Lord Esher, he interpreted the Section as follows: "The Section creates some difficulty, because it seems to contemplate compensation as payment in every case of a breach, and because it uses, not the familiar word damages" for a breach, but "compensation." But it is evident that many cases may occur in which, where the breach has been perfectly made good and no expense or loss incurred, there may be nothing for which to make compensation, and we are, therefore, of opinion that, notwithstanding the general terms of the notice required by the Statute, the lessee is bound to make compensation, not

absolutely in every case, but only where there is something to compensate." See also *Pannell v. City of London Breuery Co.* (1900) 1 CH. 496; 69 L.J. CH. 244; 82 L.T. 53; 48 W.R. 264; 16 T.L.R. 152 where it is pointed out that in *Lock v. Pearce* (1893) 2 CH. 271; 62 L.J. CH. 582; 2 R. 403; 68 L.T. 569; 41 W.R. 369 the notice did include a claim for damages, though the demand was for payment of something which the lessee was not liable to pay. But whatever divergence of opinion may be traceable in these decisions, the case before us is reasonably free from difficulties. Here, compensation could have been demanded for the misuse and has been claimed in this suit though not mentioned in the notice. To stretch the language of the Section so as to take this case out of its purview would plainly be to abrogate it altogether. No doubt, as observed by Lord Parmoor in *Fax v. Jolly* (1916) 1 A.C. 1 AT P.22; 84 L.J.K.B. 1927, 113 L.T. 1025 ; 59 S.J. 665 ; 31 T.L.R. 579 a notice does not become insufficient, because it is open to criticism on a meticulous examination of some of the phrases employed. But here the objection to the validity of the notice goes to the root of the matter.

3. We hold accordingly that the decree of the District Judge must be confirmed and the appeal dismissed with costs.