

(2007) 08 GAU CK 0068
In the Gauhati High Court

Manoj Roy and Others

APPELLANT

Vs

Gunendra Roy

RESPONDENT

Date of Decision : 10-08-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Contract Act, 1872 — Section 62
Transfer of Property Act, 1882 — Section 106, 111

Citation : AIR 2008 Guw 146

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.B. Misra, J.—The present second appeal u/s 100 of the CPC has been filed against the judgment dated 30-3-1998 and decree dated 3-4-1998 passed by the learned First Appellate Court (District Judge, North Tripura Kailashahar) in Title Appeal No. 5 of 1993 preferred by tenant Gunendra Roy (defendant/appellants against the order dated 6-3-1993 passed Title Suit No. 1, 7 of 1989 following the suit for eviction and, decree in favour of the land lord Sachindra Chandra Roy. Originally two sets of landlords (legal heirs of Sachindra Chandra Roy) and Harendra Kumar Roy filed the present Second Appeal however after the death of Harendra Kumar Roy as bachelor his name was deleted as per order dated 26-2-2002 of High Court passed in CM. Application No. 39 of 2002.

2. While admitting the present second appeal on 8-6-1998 preferred by the landlords the following two substantial questions of law were framed for adjudication:

(i) Whether after the Appellate Court was correct in Interpreting Clauses-A & G of Section 111 of the Transfer of Property Act with out looking to the expressed intention as contained in the lease deed dated 18-6-1984?

(ii) Whether Section 62 of the Contract Act was interpreted properly by the Appellate Court?

3. After hearing the learned Counsel for the parties and after going through the records, this Court has also framed 2 (two) substantial questions of law for adjudication, indicated as below:

(i) Whether two different sets of tenancy agreement could co-exist at a time between the landlords and the tenant with two different terms and conditions in respect of the same premise without any reference of first agreement and also its terms and conditions in subsequent second agreement?

(ii) Whether after the execution of second lease agreement of tenancy between the same two landlords and one tenant for the same premise on different terms and conditions, the life of earlier first lease agreement of tenancy between the two landlords and two tenants on prescribed terms and conditions would automatically come to an end

4. In order to adjudicate the present second appeal, it is necessary to give factual backgrounds of the case:

The (erstwhile) landlords/plaintiffs namely, Sachindra Chandra Roy and Harendra Kumar Roy, (two brothers now deceased) filed Title Suit No. 17 of 1989 in the Court of Civil Judge (Senior Division); Kailashahar, North Tripura for eviction of the tenant/defendant from the suit premises One landlord Harendra Kumar Roy died as bachelor and legal heir of Sachindra Chandra Roy were substituted after his death After death of the landlords the legal heirs were brought in. Admittedly, the plaintiffs/appellants herein were the owners of the suit premises which is a one storeyed building comprising two rooms on the eastern side. The tenant/defendant/opposite party herein was a tenant under them by a registered lease deed No. 1836 dated 1,8-6-1984 which was given effect from 1-6-1984. Rs. 1,500/- was paid by the tenant/defendant to the plaintiffs/appellants as advance and Rs. 4,800/- as security. It was stipulated that the monthly rent would be Rs. 250/- out of which Rs. 125/- would be adjusted against the advance money and the balance Rs. 125/- was to be paid every month in cash. The tenancy was only for one year, thereafter, it was to come to an end on 31-5-1985. The advance money of Rs. 1500/- was to be adjusted in twelve months as per the terms and the tenant/defendant/opposite-party was to hand over the vacant possession to the landlords. On expiry of the period of tenancy, the tenant did not vacate the suit premises and verbally requested the landlords/plaintiffs/appellants herein for allowing them two months" time more. Accordingly, time was allowed by the plaintiffs/landlords, but even after expiry of two months, the tenant did not hand over the vacant possession of the suit premises. On 13-5-1986 the landlords/plaintiffs issued notice u/s 106 of the T. P. Act to terminate the tenancy on the expiry of 3.1-5-1986 or alternatively; on the expiry of the month of tenancy beyond 15 days from the receipt of the notice There-after the suit was filed on 11-7-1986 for ejectment of the tenant/defendant/opposite, party herein.

5. The tenant/defendant/opposite party herein resisted the suit contending that the landlords/plaintiffs/appellants herein hen." suppressed material facts in the

plaint. The tenancy was admitted but was said to be created not from 18-6-1984 by the Deed Ext. 1 but from 12-4-1983 by the Deed marked as Ext. C. He and his brother Maniklal Roy paid Rs. 8000/- as advance to the landlords for construction of the suit premises on condition that after completion of the building two rooms would be leased to them for starting a medicine business under the name and style "Roy Medical Stores". Accordingly on 12-4-1993 the lease: deed (Ext. C) was executed and registered creating a permanent tenancy in their favour. The stipulation was that the rent would be Rs. 250/- per month out of which Rs. 125/- was to be paid in cash every month and the rest amount of Rs. 125/- would be adjusted against the advance money. The two brothers started the business, named and styled, as "Roy Medical Stores" and after some time one brother Maniklal Roy started a separate business in a separate building under the name and style "Ma Medical Stores". After expiry of one year, the landlord demanded more money by way of advance and security

6. Accordingly, the appellant tenant/"Gunendra Roy paid Rs. 1500/- as advance and Rs. 4800/- as security. A fresh agreement was executed on 18-6-1986 only for the purpose of embodying the payment of further money i.e. advance and security. No new tenancy was created by the second deed and that earlier tenancy was continuing. As the brother Maniklal Roy has closed his partnership and started a separate business, the tenant/defendant/opposite party herein only paid the entire amount of advance and security and also signed the fresh deed dated 18-6-1984. There was no intention to act upon the second deed and neither it was acted upon ever. The tenancy created by Ext. C on 12-4-1983 was permanent in nature and the condition was that so long they would pay rent, the landlords/appellants/plaintiff would allow to continue their business". There was no default on their part for paying the rent When the rent was not accepted by the landlords/appellants after the alleged expiry of the period of tenancy, therefore, the tenant had no alternative but to remit the rent by postal money order. As the tenancy was of permanent nature therefore the tenant/opposite party herein was not liable to be evicted.

7. On the materials available on record, learned Assistant District Judge, North Tripura, Kailashahar framed following issues:

- (i) Is the suit maintainable in its present form?
- (ii) Whether there existed the relationship of landlord and tenant in between the plaintiffs and the defendant in respect of the suit premises?
- (iii) Whether any valid notice has been served upon the defendant in respect of the suit premises?
- (iv) Whether the plaintiff is entitled to the decree as prayed for?
- (v) To what other relief the parties are entitled.

8. The learned trial Court, vide order listed 6-3-1993, decided all the issues in favour of the landlords/plaintiffs/appellants herein and has held that the suit was

maintainable and the tenant/defendant was a monthly, tenant because the rent was paid every month though the tenancy was for one year. The trial Court further held that the tenancy between the landlords/appellants and the tenant/opposite party was determined when one tenant Maniklal Roy separated from Gunendra Roy/tenant/opposite party herein and started a new business. Thus there was no existence of the tenancy created by the first agreement. The landlords/plaintiffs/appellants herein entered into a fresh agreement on 18-6-1984 by registered deed, which was given effect to from 1-6-1984. This created fresh tenancy as per provisions of Section 62 of the Contract Act. According to trial Court, the first contract has got no relation with the second one even though the part of the unadjusted advance of Rs. 8000/- of the first agreement was carried to the second agreement as advance and security. After the lease period, which expired on 31-5-1985 the tenant/defendant/opposite party herein was a tenant by holding over. As it was a monthly tenancy the notice issued u/s 106 of the T.P. Act was valid and so the tenant/defendant/opposite party herein was liable to be evicted

9. It was also observed by the learned trial Court that the tenancy was on the written agreement executed between the parties on 18-6-1984, the first agreement dated 12-4-1983 was between the landlords/plaintiffs/appellants herein (i.e. Sachindra Chandra Roy and Horendro Kumar Roy) on one side and the tenants (i.e. Gunendra Roy and Manik Lal Roy) on the other in second deed of agreement dated 18-6-1984, the agreement was between the two above landlords/plaintiffs/appellants on one side and one tenant Gunendra Roy on the other side. After departure of Manik Lal Roy, the partnership between the tenants (Gunendra Roy and Manik Roy) were dissolved as the new business was started by both the brothers. Only Gunendra Roy out of two earlier tenants/brothers desired to stay in the suit premises for which he entered into a new agreement and there was no necessity of physical handing over and taking over possession of the suit premises when the terms and conditions in respect of the second agreement were valid. It was also observed that the earlier first deed agreement dated 12-4-1983 was not concerned when the second deed of agreement became relevant in the case which indicates that the monthly tenancy was effective from 1-6-1984 for twelve months. The learned trial Court has also observed that a valid notice of eviction u/s 106 of T.P. Act was issued on the tenant/defendant/opposite party herein.

10. The First Appellate Court/District Judge in its order dated 30-3-1998 while allowing the Title Appeal No. 5 of 1993 preferred by the tenant/defendant/opposite party herein indicated that the trial Court did not frame some important issues necessary for disposal of the disputes between the parties however indicated that the trial Court should have framed as below:

(i) Whether the defendant was evitable tenant?

(ii) Whether, there was a bona fide need of the landlords to use the suit premises?

(iii) Whether the appellant made any default damaged the suit premises?

11. The learned Appellate Court has noted that deed Ext. C. created the first tenancy though the plaint is shockingly silent about this deed dated 12-4-1983, whereby, the tenancy was created and the same was executed and such deed was registered on 12-4-1983 and in that first deed dated 12-4-1983 Rs. 8000/- was shown to have received by the landlords as financial obligation and monthly rent of Rs. 250/- out of which Rs. 125/- was to be adjusted against advance of Rs 8000/- As such for such adjustment 64 months were required and the tenants were liable to be evicted from the premises only on the special need (specific need of the landlords)

12. It has also been noted by the learned Appellate Court that the tenancy was for one year and after the period of one year, the tenancy was to be renewed at the option of tenants for which a deed was to be executed and since in terms of first deed dated 12-4-1983 the advance could be for 64 months that indicates the tenancy was intended to be given permanent nature, so that all of a sudden tenant was not thrown away by giving a notice u/s 106 of T.P. Act. According to the First Appellate Court, the second agreement dated 18-6-1984 also indicates that the advance money of Rs. 1500/- was also accepted which was to be adjusted in 12 months @ Rs. 125/- per month and the first agreement is substantially different from second one and the tenancy for the premises created by Ext. C was a permanent tenancy and only on urgency of special need the landlords could terminate the tenancy in the manner described thereon.

13. The learned appellate Court observed in paragraph 8 of its judgment as below:

After the departure of Manik Lal Roy from the business the tenancy created by deed dated 12-4-1983 was determined. I find it difficult to agree with the trial Court on this issue. The question of tenancy and the business between the two brothers are totally separate issues. The two brothers had partnership business, but the tenancy was in individual capacity between the landlords on the one hand and the two brothers on the other. The partnership firm was not registered one. The business of the two brothers had nothing to do with the tenancy or the relationship of landlord and tenants between the parties. There is nothing in the pleadings that on separation of Maniklal Roy from the appellant the tenancy created by the first deed came to an end. In fact the plaint is totally silent about the tenancy which was created by the first deed. Maniklal Roy has been examined as D.W. 2. Nowhere he has stated that he surrendered the tenancy or intended to terminate the tenancy in any of the manners contemplated by Section 111 of the T.P. Act. He only stated that he started a separate business after closing the partnership business with his brother. The brother may have more than one business, but that does not mean when a brother starts a separate business the tenancy to the extent of his Share comes to an end.

14. The question of tenancy created by the first deed should not be confused or

overlapped with the question of starting a separate business by Manik Lal Roy. Anything relating to the business whether it is by bifurcation or trifurcation or starting a new one cannot change the nature and tenure of the Tenancy. No question was put to Manik Lal Roy about the determination of tenancy to the extent of his share. He only stated about his share in the business. But he has never said that he intended to terminate the tenancy by any of the method contemplated in Section 111 of the T.P. Act. I, therefore, find it difficult to agree with the trial Court that the tenancy created by the first deed was determined by reason of one of the tenants starting a separate business in a separate premises. On the other hand, P.W. 1 Harendra Kumar Roy stated in cross-examination that Gunendra Roy and Manik Lal Roy did not leave the suit premises. This shows that even though Manik Lal Roy started a separate business there was nothing express to determine the lease in any of the manner sanctioned by law."

15. Learned appellate Court has also observed that if no lease deed is executed after expiry of every year, it will not affect the tenancy, which is of permanent nature. And since the lease deed dated 12-4-1983 was of permanent in nature, non-renewal would not have terminated tenancy by efflux of time. The learned appellate Court has also observed as below:

It is a settled law that a lease of immovable property can be determined only in the manner specified in Section 111 of the T.P. Act. If we hold, the reasons discussed above, that the tenancy created by the first deed was of permanent nature and did not terminate after one year, the question is what should be the effect of the second deed on the tenancy created by the first deed. The first deed was in favour of the two tenants and there is no evidence to show that one of the tenants, Manik Lal Roy, withdrew this tenancy in favour of the landlords. He might have withdrawn from the business of his brother but did not withdraw from the tenancy. Neither in the pleadings nor in the deposition of Maniklal Roy there is anything about his withdrawing from tenancy. So, we can hold that the tenancy created by the first deed in favour of the two tenants did not terminate and was still in force when the second deed was born. The second deed (Ext. 1) was executed by only the appellant on the one side and the two landlords on the other. Whatever may be the terms and conditions therein, the act of the one tenant cannot destroy or materially affect the tenancy created in favour of the two tenants by a former deed. One of the tenants has got no right to obliterate or make substantial modifications of the tenancy created earlier in favour of the two tenants. The second deed has been explained by the appellant to be only a mere paper transaction when the demand of the landlords for further sum as advance and security was to be met. In order to incorporate the facts of payment of the additional amount of advance and security, the second deed was executed and registered. It was only a renewal deed for the continuation of the old tenancy and also to acknowledge the payment of additional advance and security. The other terms and conditions embodied therein were not intended to be acted upon.

The first deed has no relation with the second deed and that the second deed created a new tenancy. If the first tenancy is in operation in favour of the tenants a second tenancy cannot be created by one of the tenants and the second deed should be interpreted in harmonious manner to the extent it is consistent with the terms and conditions of tenancy contained in the first deed. All other terms and conditions of the second deed which are in conflict with those of the first deed cannot stand and should be regarded as repugnant and void. I, therefore, hold that the second deed did not create any fresh tenancy and it was to be interpreted as a deed of renewal and acknowledgment of the further payment of Rs. 1500/- as advance and Rs. 4800/- as security

16. The learned appellate Court has observed that notice of tenancy was not legal as the tenancy was to come to an end only on 1st June, 1986 and not on 31-5-1986. As such the notice was defective for the reason that it intended to terminate tenancy which was never created by second deed For this reason the notice is of no effect for the purpose of tenancy created by the first deed.

17. I have gone through the documents and the materials on record. I find that the first lease agreement about the tenancy dated 12-4-1983 was registered and executed between Sachindra Chandra Roy and Hirendra Kumar Roy i.e. two brothers/landlords/plaintiffs as well as two brothers/tenants i.e. Sri Gunendra Roy and Manik Lal Roy. Such lease deed was indicated specific terms and conditions. It was specifically indicated that the tenancy was for twelve months and rent of Rs. 250/- would be payable monthly, out of which Rs. 125/- would be adjusted against advance payment of Rs. 8000/- It was also indicated in the said lease deed that the tenancy could be terminable only on the emergence of a "special need of the landlords. However, the lease deed about tenancy was to be renewable at the option of the tenants after termination of the tenancy i.e. after twelve months. It is very pertinent to note that the second lease agreement dated 18-6-1984 was entered into between Sachindra Chandra Roy and Hirendra Kumar Roy, the two brothers landlords on one side and only one tenant, namely Gunendra Roy, the defendant/opposite party herein as tenant on the other side, where a monthly rent of Rs. 125/- was to be paid in the 1st week of every month of English Calendar year and the remaining Rs. 125/- was to be adjusted from the advance of Rs. 1,500/-. The other terms and conditions of the second lease dated 18-6-1984 were quite different from the first lease agreement dated 12-4-1983. It is also pertinent to note that in the second lease agreement dated 18-6-1984 no clause of eviction of the suit premises on the ground of "special need" was prescribed and the second lease deed agreement was not in sequence of first lease agreement dated 12-4-1983. Nothing was referred in the Second Lease agreement about the existence of earlier lease agreement. From the text of the second lease agreement dated 18-6-1984 it reveals that it is altogether a new lease deed on different terms and conditions. It has also not been mentioned in the second lease deed agreement dated 18-6-1984 that Gunendra Roy, i.e. the tenant of premises in question was ever authorized to enter this second lease deed agreement for and on behalf of former other co-tenant Manik

Lal Roy also.

18. From the testimony of Gunendra Roy, D-W, I it reveals that about one year after-younger brother Manik Lal Roy started separate business at a separate place. Their partnership was dissolved as Manik Lal Roy relinquished his all rights in the business of Gunendra Roy and in the suit rooms. The partnership deed as well as dissolution of partnership deed of Gunendra Roy and Manik Lal Roy have also been presented before the Court. During cross-examination Gunendra Chandra Roy has stated that the agreement deed dated 12-4-1983 was for only one year and it was also stipulated that if they would intend to possess these rooms they must enter into fresh agreement for one year In this context the partnership deed of both the tenants, namely, Gunendra Roy and Manik Lal Roy dated 25th February, 1983 has also been looked into along with the dissolution of partnership deed dated 30th May, 1994. It was specifically indicated in the dissolution deed as below:

3. That the drug business under the name and style "M/s. Roy Medical Stores" was agreed to be continued under the said name by the party of the first part as sole proprietor of the business on and from the date of the dissolution and the party of the second part shall have no right, title and interest, whatsoever therein.

6. That the party of the second part shall be at liberty to do drug business or any other business, but he shall not be allowed to do his business under the name and style M/s. Roy Medical Stores.

7. That each of the parties shall execute, sign or do any further document/ documents or things as the parties shall reasonably require for completely effectuating this agreement and each party shall bear his own cost An connection therewith.

19. The above contents of paragraphs 3, and 7 of the dissolution of partnership deed dated 30-5-1984 reveal that after the dissolution of business, place, right, title and interest in the earlier business of M/s. Roy Medical Stores was extinguished so far Manik Lal Roy is concerned and he was also not to run the business under the name and style of M/s. Roy Medical Stores and in view of the above indicated clause of dissolution of partnership deed both Gunendra Roy and Manik Lal Roy were to execute, sign or do any further document/documents or things as they shall requires for completely effectuating the dissolution agreement. The premises in question was taken jointly as tenants by Gunendra Roy and Manik Lal Roy as partners of M/s. Roy Medical Stores in reference to first lease deed agreement dated 12-4-1983 and their business partnership came to an end by virtue of dissolution of firm and the entire business place, firm's right, title and interest, whatsoever came to an end and thereafter Gunendra Roy as a tenant singly entered into a fresh second lease deed of agreement on 18-6-1984 on different terms and conditions. While entering into second lease agreement Gunendra Ray has not even mentioned that he was entering this second lease

deed in sequence of first lease deed agreement and for and on behalf of Manik Lal Roy also. In the second lease agreement nothing was mentioned that the said agreement was In continuity of foe earlier lease deed agreement dated 12-4-1983. Nothing was indicated that the advance earlier paid also to be realized by Gunendra Roy, as that, could have been in derogation of the dissolution deed dated 30-5-1984. It goes without saying that the second lease deed agreement dated 18-6-1984 was entered into and executed in the different facts and circumstances and in different context between the same two brothers landlords and a different new tenant which was one out of the two earlier tenants. The second lease deed agreement dated 18-6-1984, in absence of specific words mentioned, cannot be treated to be in continuity to the earlier lease deed agreement on 12-4-1983, which obviously came to an end after creation of second lease deed agreement dated 18-6-1984 drawn altogether between different parties on different terms and conditions.

The appellate Court has, however, failed to appreciate the lease deed agreement dated 12-4-1983 and the lease deed agreement dated 18-6-1984 correctly and had wrongly considered as if the premises was on permanent tenancy in reference to the earlier lease deed agreement dated 12-4-1983 among the parties.

The legal notice for eviction u/s 106 of the T.P. Act in reference to the second lease deed agreement dated 18-6-1984 was proper and it could not have been tested in terms of the lease deed agreement dated 12-4-1983 which was completely a different lease deed agreement, and which came to an end after the creation of new right of tenancy through the second new lease deed agreement dated 18-6-1984.

20. In my respectful submission, learned appellate Court proceeded erroneously. On wrong presumption of law, has given undue importance to the lease deed/ agreement dated 12-4-1983 which was not effective and not in existence or was not available to test the legality and validity of the legal notice and to adjudicate the matter of termination of tenancy of the said premises in question. In my respectful consideration, on the other hand, learned Assistant District Judge by its Judgment and order dated 6-3-1993 has appreciated the facts and law correctly whereas the findings and observations of the first appellate Court are erroneous not based on facts and is contrary to law.

21. In the facts and circumstances of the case, the two above questions are being dealt with and answered accordingly by saying that for the same premises, same landlords and tenants cannot enter into on two different sets or contrary sets of terms and conditions or cannot enter into simultaneously two sets of lease deed agreements at a time unless the former first lease deed agreement is superseded or annulled or cancelled and reference to that effect is mentioned in the subsequent second lease agreement. There should not be any ambiguity about the effect and existence of one set of lease deed agreement, whatsoever. More so, if any new agreement is entered into between the landlords on one side

and one or two tenant/(s) on the other side on different terms and conditions without any specific mention of earlier one, such subsequent lease deed/agreement shall also be a different one.

22. In any case in the present case in hand, The second lease deed agreement dated 18-6-1984 entered into between the same two landlords and one tenant only on different terms and conditions would certainly be a different lease deed/agreement, more so, when the tenant/opposite-party herein was party to earlier lease deed agreement and has not indicated about his authorization for entering into such second lease deed/agreement for and on behalf of other tenant, therefore, second subsequent lease deed/agreement dated 18-6-1984 shall be the only relevant lease deed agreement applicable for the premises. If the tenant/opposite party herein was so desirous he could have given specific indication in writing for inserting to that effect in such subsequent second lease deed/agreement about the continuity of the terms and conditions along with the existence of previous/earlier lease deed agreement. Therefore, I am of considered view that after execution of latest/subsequent lease deed/agreement dated 18-6-1984 the earlier lease deed agreement dated 12-4-1983 in the facts and circumstances has automatically come to an end.

23. Accordingly, the tenant/opposite party herein is to be evicted from the premises in question. The impugned order dated 30-3-1998 passed in Title Appeal No. 5 of 1993 being not legally sustainable is set aside and in view of the observations made above, the Regular Second Appeal is allowed. No order as to costs.