

(1964) 02 KL CK 0015

In the High Court Of Kerala

Case No : Second Appeal No. 173 of 1960

Mayankanakath Muthamodkutty Haji

APPELLANT

Vs

Edasseri Moideenkutty

RESPONDENT

Date of Decision : 03-02-1964

Acts Referred:

Transfer of Property Act, 1882 — Section 106

Citation : AIR 1965 Ker 174

Hon'ble Judges : Mathew P. Muricken, J

Bench : Single Bench

Advocate : K. Kuttikrishna Menon, for the Appellant; T.N. Subramania Iyer, for the Respondent

Judgement

K.K. Mathew, J.—This is an appeal by the plaintiff from a decree in a suit for recovery of possession or a building mentioned in the plaint schedule with arrears of rent on the basis of a registered coolcharthu, Ext. A 1, executed by the defendant in favour of the plaintiff. The plaintiff issued a notice on 28-10-1957 terminating the lease from 14-11-1957 and demanding surrender of possession of the building. The defendant raised two contentions but the only contention with which I am now concerned is the one raised by him as regards the validity of the notice to quit. His other contention was that the registered coolcharthu on which the suit was based was not valid and binding on him and that he was holding the building and property under an oral tenancy on an agreement to pay Rs. 20/- and 5 paras of paddy per year.

2. The trial court found that the defendant was holding the property and the building under the oral tenancy set up by him, that Ext. A 1 coolcharthu was not binding on him, and that the notice to quit was invalid and dismissed the suit. The lower appellate court came to the conclusion that the defendant was holding the building under the registered coolcharthu Ext. A 1 and that the notice issued by the plaintiff to the defendant was defective in that It did not give 15 days" clear notice for the determination of the tenancy as required by Section 106 of

the Transfer of Property Act, It therefore confirmed the decree of the trial court,

3. Mr. Kuttikrishna Menon, appearing for the appellant, argued that the decrees of the courts below were wrong in any view on the ground that the plaintiff was entitled to recover the arrears of rent claimed in the plaint, and therefore that claim ought to have been decreed. I think the courts below were wrong in negating the claim of the plaintiff for arrears of rent claimed in the plaint. I therefore pass a decree in favour of the plaintiff for the arrears of rent claimed in the plaint with interest at 5 per cent, per annum from the date of the suit upto the date of the realisation of the amount.

4. As regards the second question whether the plaintiff was entitled to recover possession of the property and the building, Mr. Kuttikrishna Menon argued that no notice to quit was necessary as the defendant had denied the particular tenancy set up and proved in the case. In support of this position he relied upon the statement of law In Woodfall on Landlord and Tenant, 26th Edn., page 1012,

"For a notice to quit is only requisite where a tenancy is admitted on both sides, and if a defendant denies the tenancy there can be necessity to end that which he says has no existence."

This is a quotation from the Judgment of Best C. J., in Doe d. Calvertv. Frowd, (1828) 4 Bing. 557. IN Woodfall's book this statement occurs under the heading "Disclaimer by Tenant from year to year". The passage which precedes the quotation is as follows:

"A disclaimer by a tenant from year to year of the title of his landlord, or of the person for the time being entitled to the immediate reversion as assignee, etc., of the landlord, will operate as a waiver by the tenant of the usual notice to quit, and will in effect determine the tenancy at the election of the landlord....."

It was argued that as the particular tenancy set up in the plaint was denied in the reply notice Ext. A 4, Issued by the defendant, the defendant was not entitled to be served with notice to quit, I do not think that the argument is sound. The observation of Best C. J., occurs in a case where the tenant had denied the title of the landlord and therefore the observation of the learned Judge was at best only obiter. No decision has been placed before me which would warrant the proposition that if the tenant were to set up a different tenancy, than the one alleged in the plaint and fail to prove it, the plaintiff need not give a notice to quit and determine the particular tenancy pleaded by him in the plaint. In this case the defendant has not denied the landlord's title. He has only set up the contention that he was holding the property and the building under a tenancy, the terms of which were different from that set up in the plaint. In such a case, I think, if the landlord wants to recover possession of the property, he must have given the requisite notice to quit and determined the tenancy set up by him notwithstanding the contention of the defendant that he was in possession under a different tenancy, I think that the courts below were right in their conclusions.

8. In the result, the decree of the court below la modified to the extent indicated above, but is confirmed in all other respects. There will be no order as to costs,
6. Leave to appeal granted.