

(1960) 02 CAL CK 0027
In the Calcutta High Court
Case No : A.F.O.D. No. 358 of 1958

Murlidhar Garodia

APPELLANT

Vs

Purushottamlal Jain
 Purushottamlal Jain Vs Murlidhar
Garodia

RESPONDENT

Date of Decision : 22-02-1960

Acts Referred:

Transfer of Property Act, 1882 — Section 106, 110
West Bengal Premises Tenancy Act, 1956 — Section 13(6), 2

Citation : AIR 1961 Cal 175 : (1961) 1 CALLT 328

Hon'ble Judges : Renupada Mukherjee, J;K.C. Sen, J

Bench : Division Bench

Advocate : Hemanta Kumar, Basanta Kumar Lal, G.N. Chandra and Sailendra Nath Roy, for the Appellant;

Final Decision : Dismissed

Judgement

Renupada Mukherjee, J.—The defendant of the trial court, Murlidhar Garodia, is appellant in this appeal. Respondent Purushottam Lal Jain instituted a suit against the-appellant for evicting him from an almirah shop on the ground floor of premises No. 194/198 Cross Street, Calcutta. A notice to quit is said to have been served upon the appellant requiring him to vacate the disputed shop after the expiry of 1st February, 1958. The suit was instituted: under the West Bengal Premises Tenancy Act, 1956 on the ground that the tenant was a statutory defaulter and had forfeited his claim to protection by reason of defaults committed by him in payment of rent.

2. Various defences were taken by the tenant in his written-statement. We need not refer to all of them in this appeal. The trial court overruled the objections taken by the tenant defendant in his writ ten-statement and decreed the suit of the plaintiff. So the tenant has preferred this appeal.

3. The only point pressed on behalf of the appellant by Mr. Lala in this appeal is that the notice served upon the appellant was not a valid or sufficient notice. This

contention arises in the following way.

4. A notice by registered post was served upon the appellant requiring him to vacate the disputed almirah shop on the expiry of the 1st day of February, 1958. It is not disputed that clear one-month's notice was given to the appellant as required by the West Bengal Premises Tenancy Act, 1956. The only contention put forth by Mr. Lala was that the tenancy ran from the first day of each English calendar month upto the last day of that month and so the notice by which the tenant was required to vacate the shop on the expiry of the 1st day of February, 1958, was not a legal or valid notice. In order to understand whether there is any substance in this contention of Mr. Lala we shall have to examine a registered lease which was admittedly executed by both the parties. This lease was marked Exhibit (1) in the trial court. The lease shows that the appellant was inducted in the disputed almirah shop at a monthly rent of Rs. 20/-. The lease was to commence from the 1st of July, 1955, and the term of the lease was limited to a period of two years from that date. Clause (e) of the lease is material for our purpose. It provides that the tenant shall unconditionally vacate the demised premises and give over vacant and peaceful possession of the said premises to the lessor "just with the expiry of the said lease-period of two years certain".

5. Mr. Lala contended that this period of two years should be taken to have expired with end of June, 1957, and the anniversary of the date of the commencement of the lease should not be taken into account in deciding the question of the date of the termination of the lease. In support of this contention Mr. Lala drew our attention to some other portions of the lease where it has been stipulated that the monthly rent of Rs. 20/- would be payable, month by month, on the 1st day of every succeeding English calendar month. From this provision of the lease Mr. Lala contended that it was the intention of the parties that the lease would come to an end with the expiry of an English calendar month and the term of the lease would not enure to any period beyond the expiry of the last date of a particular month. After having carefully considered this argument of Mr. Lala and after having considered the various terms of the lease, we are unable to accept this construction of the lease regarding the date of its termination. In our opinion, a lease of the present description falls within the second paragraph of Section 110 of the Transfer of Property Act which provides that "where the time so limited is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences". In this case, the time limited by the lease was a period of two years. There was no express agreement to the effect that in computing the period of two years the anniversary of the date of the commencement of the lease should not be taken into account. It is true that there was a provision in the lease that monthly rent shall be paid, month by month, by the 1st day of every succeeding English calendar month. But this provision relates merely to the mode of payment of rent. In our opinion, this case falls within the authority of a Privy Council decision reported in AIR 1932

279 (Privy Council) . In the Privy Council case also there was a provision for payment of monthly rent before the 7th day of the month succeeding the month for which it was due. It was held by their Lordships of the Judicial Committee that this was an agreement expressly excluding Section 110 because it had nothing to do with fixing the period covered by the term. Following the above decision we hold that the lease in the present case terminated on the expiry of 1st July, 1957, and not one day earlier as was contended by Mr. Lala.

6. Mr. Lala submitted in the next place that even assuming that the term of the lease had expired on the expiry of 1-7-1957, there is nothing to show that the appellant continued to be in possession on the same terms and conditions as before. Mr. Lala further argued that the finding of the court below that there was a "holding over" within the meaning of Section 116 of the Transfer of Property Act, is wrong. In our opinion, the trial judge was wrong in holding that the tenant was holding over on the expiry of the term, because there was no acceptance of rent from the appellant and there is no material to show that immediately after the expiry of the term of the lease the landlord had assented to the tenant's continuing in possession. We hold that the finding of the trial court that this was a case of "holding over" by the tenant is wrong. But such a finding would not materially assist the appellant. Section 2(h) of the West Bengal Premises Tenancy Act, defines a tenant. The definition is given below.

"(h) "tenant" includes any person by whom or on whose account or behalf, the rent of any premises is, or but for a special contract would be, payable and also any person continuing in possession after the termination of his tenancy but shall not include any person against whom any decree or order for eviction has been made by a Court of competent jurisdiction".

7. The definition clearly includes a person as a tenant whose term has expired but who continues in possession. The definition does not make the assent of the landlord necessary. This being so and the present suit being governed by the West Bengal Premises Tenancy Act, 1956, we must hold that after the expiry of the term of the registered lease on the expiry of 1-7-1957, the appellant who continued in possession of the disputed almirah shop, remained a tenant under the respondent.

8. Mr. Lala further contended on behalf of the appellant that even if the appellant was continuing in possession of the disputed almirah shop as a tenant after the efflux of the period of the lease there is no material to show under what terms he was continuing in possession as a tenant and in the absence of these terms the court should not hold that his tenancy ran as a monthly tenancy from 2nd July, 1957. We are not prepared to accept this argument of Mr. Lala. If the appellant continued as a statutory tenant after the termination of the period of his lease, it would be only proper and reasonable to hold that he did so under the same terms and conditions as before. If these were changed, it was for the tenant to show what changes were made. In the absence of any material to show that there were any such changes, we must hold that the appellant continued to

remain in possession of the disputed shop at a monthly rent of Rs. 20/- and that the monthly tenancy ran from the second day of a particular month till the end of the 1st day of the succeeding month.

9. This being the legal position we hold that the notice served upon the tenant was a valid and proper notice.

10. In the above connexion Mr. Lala raised a further contention before us that besides the notice which was served upon the appellant u/s 13 (6) of the West Bengal Premises Tenancy Act, 1956, a notice for termination of the tenancy under the Transfer of Property Act should also have been served and as that was not done, the respondent is not entitled to get possession of the disputed premises. In our opinion, this argument of Mr. Lala cannot be accepted. A notice under Sub-section (6) of Section 13 of the West Bengal Premises Tenancy Act, 1956, has taken the place of a notice u/s 106 of the Transfer of Property Act and where a case is governed by the former Act, only one notice under that Act is required to be served upon the tenant for getting khas possession of the premises.

11. All the contentions urged by Mr. Lala in favour of the appellant regarding the invalidity or insufficiency of the notice having failed, this appeal is dismissed with costs to the respondent.

12. Time is allowed to the appellant till 1st July, 1960, to vacate the disputed shop room. In the meantime, he must go on depositing monthly rent in the trial court within the time allowed by law, failing which) the decree shall be executable forthwith.

K.C. Sen, J.:

13. I agree.