

(1974) 10 KL CK 0002
In the High Court Of Kerala
Case No : Second Appeal No. 955 of 1974

Neelakantan Sreedharan

APPELLANT

Vs

Subba Bhakthan Narayana Bhakthan

RESPONDENT

Date of Decision : 30-10-1974

Acts Referred:

Transfer of Property Act, 1882 — Section 107, 108

Citation : AIR 1976 Ker 47

Hon'ble Judges : G. Viswanatha Iyer, J

Bench : Single Bench

Advocate : P. Krishna Moorthy and P.C. Chacko, for the Appellant; S. Narayanan Poti and S. Sankarasubban, for the Respondent

Final Decision : Dismissed

Judgement

G. Viswanatha Iyer, J.—In this second appeal by the defendant two questions arise for determination, The defendant-appellant urges that there has not been a valid termination of the tenancy as required u/s 106 of the Transfer of Property Act for the landlord to recover possession, and secondly he claims value of improvements before eviction, Certain shop rooms and a portico belonging to the plaintiff were let out to the defendant. The rent agreed upon was Re. 1/- per day. Alleging default in the payment of rent after 28-9-1987 the plaintiff filed O. S. No. 587/68 for eviction of the defendant and for recovery of arrears of rent. In that suit the latter relief alone was granted as the court was of the view that there was no proper termination of tenancy. Thereafter the plaintiff issued a registered notice on 5-1-1970 demanding surrender of the building with arrears of rent by 10-2-1970. The defendant did not comply with that notice and so the plaintiff filed the present suit. The defendant admitted the tenancy and pleaded that the amount of arrears claimed by the plaintiff is not due and also contended that there has not been a valid termination of tenancy. There was a further claim for value of improvements. The learned Munsif found that there was no arrears of rent, held that there was a valid termination of the tenancy, found that the

defendant is not entitled to any value of improvements and consequently decreed the suit for eviction. On appeal this decree was confirmed and hence this second appeal.

2. In the plaint the plaintiff alleged that the defendant took the property on rent and executed a rent deed on 10-2-1959. In Ext. A-2 notice issued by him he required the defendant to vacate the building on 10-2-1970. Defendant admits the receipt of the notice, but contends that that will not constitute a valid termination of the tenancy. In what way the notice is invalid is not stated in the written statement. At the time of the argument in the trial Court a contention was taken that the rent deed executed by him does not create a valid lease in view of Section 107 of the Transfer of Property Act and the rent deed is not admissible in evidence to prove the tenancy. The learned Munsif was of the view that the execution of a lease deed by both the lessor and the lessee as required in the third paragraph of Section 107 is necessary only if the rent deed is compulsorily registrable. The rent deed is only for a period of six months and hence the Munsif took the view that the instrument need not be registered. This view was not accepted by the learned Judge. He found that Ext. A-1 rent deed being unregistered and not executed by the lessor and the lessee is invalid and cannot be made use of for the purpose of finding out the date of the commencement of the tenancy even. Having taken that view he put the burden on the defendant to show the date of the commencement of the tenancy and as he has failed to establish that, the notice Ext. A-2 was held to be sufficient to terminate the tenancy. The conclusion arrived at by the learned Judge regarding the inadmissibility of the rent deed to prove the date of commencement of the tenancy is incorrect. The rent deed is executed by the lessee alone. It is also not registered and therefore it is inadmissible to prove the creation of a lease by an instrument. But, it is admissible to prove the creation of a lease by oral agreement accompanied by delivery of possession as mentioned in Section 107 of the Transfer of Property Act. The rent deed can be relied on to establish the jural relationship between the parties. It contains an admission or an acknowledgment by the defendant who is sought to be made liable that he is a tenant and that is the best evidence that one can possibly have as to the oral agreement of a lease. It is well known that documents relating to sales, leases and mortgages come into existence only after agreements arrived at between the parties to these transactions. The lessor and lessee generally agree to the terms of the tenancy beforehand and then reduce to writing what has been agreed upon. In such cases oral agreement of lease can be spelt out of the rent deed executed by the lessee and there can be no bar that would prevent a court from looking into such a document for this purpose. A similar question arose for consideration in *Mohan Lal v. Ganda Singh* AIR 1943 Lah 127 (FB), At page 128 it has been observed thus:--

"The amended Section 107, T. P. Act, deals with the modes how a tenancy can be created so exhaustively that there is now no scope for the argument that a lease could be created in any manner other than what has been specified in that

section. But, if kabuliyat is not, in accordance with the view taken in AIR 1039 Lah 423, a lease within the meaning of Section 107, T. P. Act, and the definition of that word in the Registration Act cannot be, as held in that case, applied to such a document, (and I respectfully agree with the view taken in that case on these points) is there any reason why--in cases where registration is not necessary--it should be omitted to be taken into consideration and why an oral agreement of lease not spelt out of it as long as the other condition in regard to delivery of possession is found to have been complied with? There seems to be no justification, in my opinion, for the view that a document like a kabuliyat cannot be looked at for that purpose. It contains an admission or an acknowledgment by the person attempted to be made liable and should be the very best evidence that one can possibly have as to the oral agreement of lease particularly when it is well known that these documents usually come into existence only after agreements between lessors and lessees are arrived at and the terms of the tenancy are settled. In such cases oral agreements of lease could be easily spelt out of such kabuliyats and I do not know of any bar that could prevent a Court from looking into such a document for this purpose." I respectfully agree with the reasoning and the conclusion stated therein. So, this document Ext. A-1 is admissible to prove the oral agreement. As to the other condition regarding delivery of possession, it is not necessary that delivery of possession must be physical at the time of the agreement. The delivery of constructive possession is quite sufficient. In this case the lessee was already in possession. The earlier arrangement was for him to pay Rs. 15/- per month. Under the fresh agreement he agreed to pay Rs. 30/- and continued in possession, This amounts to a delivery of constructive possession sufficient for the purpose of Section 107, in this view it is possible to look into Ext. A-1 to find out the date of the commencement of the tenancy. Tenancy commenced from 10-6-1959. Notice Ext. A-2 required him to surrender by 10-2-1970 which will be the end of the month of the tenancy. Therefore, Ext. A-2 constitutes a valid termination of the tenancy and the tenancy terminated on 10-2-1970. The decree for eviction has only to be confirmed.

3. One other contention relates to the value of improvements. The learned Judge rightly negatived the claim relying on Section 108 of the Transfer of Property Act, The learned counsel referred to Kerala Act 29 of 1958 and claimed that he is entitled to value of improvements. That Act applies only to improvements effected on land which is leased out or which is in the possession of another under any other arrangement referred to in that Act. Improvements in shop rooms or other buildings do not come under the provisions of that " Act. A similar question arose for decision in Kottayi Chathukutty Vs. Changanatha Parkum Thottathil Kunhappan and Another, . In that case the corresponding provision under Act 1 of 1900 was considered by the Madras High Court and the claim for improvements in a shop room was negatived on the ground that the Act will not apply respectfully agree with the decision in that case and following that I hold that the defendant is not entitled to any value of improvements.

4. In the result, the second appeal fails. It is dismissed with costs.