

(1970) 03 GAU CK 0009
In the Gauhati High Court
Case No : Second Appeal No. 148 of 1965

Nisaddar Ali Majumdar and Others

APPELLANT

Vs

Kona Mia and Others

RESPONDENT

Date of Decision : 31-03-1970

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22
Transfer of Property Act, 1882 — Section 110

Citation : AIR 1971 Guw 116

Hon'ble Judges : P.K. Goswami, C.J

Bench : Single Bench

Advocate : D.K. Sarma, M.H. Choudhury and J.N. Sarma, for the Appellant;
N.M. Dam and B.K. Das, for the Respondent

Final Decision : Allowed

Judgement

P.K. Goswami, C.J.—This second appeal is directed against the judgment and decree of the learned Subordinate Judge No. 2, Silchar reversing those earlier of the learned Munsiff.

2. That was a suit for khas possession of about 2 Kathas 10 Lechas of land, which the Defendant No. 1 was occupying by holding a tea-stall on a bazar site which it was. The land appertains to It. S. Patta No. 107 and Dag No. 178. The Plaintiffs served a notice dated 23-2-61 (Ext. 1) which was received by the Defendant on 28-2-61. The notice demanded vacant possession by the end of 30th Chaitra, corresponding to 13-4-61. The tenancy is said to be according to Bengali Calendar year and a monthly tenancy.

3. The learned Munsiff decreed the suit. He held that that the notice was valid and the service was proper. He further repelled the contention of the Defendant that there was a splitting up of tenancy to make the suit non-maintainable in the form it was laid. The learned Sub- ordinate Judge, however, did not consider the question of splitting up of tenancy" but dismissed the suit on the ground that the notice was invalid and hence this second appeal.

4. Mr. Dam, the learned Counsel for the Respondents, strenuously contends that the suit is clearly not maintainable as the Plaintiff has not brought the suit for eviction of the Defendant from the entire tenancy which related to two pattas - R. S. Patta No. 107 and R. S. Patta No. 109 - which was really the original tenancy under which the Defendant came to occupy the Plaintiff's land. Mr. Dam further contends that although the learned Subordinate Judge has not dealt with this point in terms of Order 41, Rule 22 on the Code of Civil Procedure, he can support the decree of the learned Subordinate Judge on a point which was not decided in his favour or even by relying on some other ground. I have allowed Mr. Dam to raise that point before me. Unfortunately, however, Mr. Dam is up against his own pleading in the case. In the written statement while mentioning the real facts at paragraph 11, the Defendant has clearly stated that the Plaintiffs had sold the land in R. S. Patta No. 109 to one Jiyauddin Mia whom the Defendant owned up as a landlord" and made payments of rent to him. If this is the position, the learned Munsiff was clearly right in holding that the question of splitting up of tenancy would not arise. The land from which the Plaintiffs are now trying to evict the Defendant is clearly a small piece of land covered by R. S. Patta No. 107 and there is no question of splitting up of tenancy so far as this part of the land is concerned, the land in R. S. Patta No. 109 having already been transferred to Jiyauddin under whom the Defendant himself admits to hold his new tenancy. The first contention of Mr. Dam, therefore, fails.

5. Regarding the invalidity of the notice, Mr. Sarma, the learned Counsel for the Appellants, contends that the learned Subordinate Judge was wrong in holding that the notice was bad in view of the provisions of Section 110 of the Transfer of Property Act. The notice was as earlier stated, given on 23-2-1961 and served on 28-2-61 demanding vacant possession by 13-4-61, corresponding to 30th Chait. There was no written lease in this case. That is a short answer to the objection by Mr. Dam on the score of Section 110 of the Transfer of Property Act. We have held in several decisions of this Court that Section 110 is not attracted to an oral lease. Since this matter has been again argued, it is well to look at Section 110 once again:

110. Exclusion of day on which term commences. Where the time limited by a lease of immovable property is expressed as commencing from a particular day, in computing that time such day shall be excluded. Where no day of commencement is named, the time so limited begins from the making the lease.

* * *

It is clear from the very wording of Section 110 that oral lease is not attracted. It must apply to a periodic lease and the period must be specified in a written document. If authorities are necessary at hand, I may refer to a decision in Letters Patent Appeal No. 2 of 1964 (Assam) Premsookh Hiralal v. Bajranglal Agarwalla dated 6-8-1965 where a Division Bench of this Court held to the following effect:

Having regard to the language employed in the section, we are clearly of opinion that this section has no application unless the above conditions are fulfilled, and which would only be possible when the lease is a written lease.

Sitting with Hon^{ble} Pathak, J. in Second Appeal No. 124 of 1964, disposed of on-4-2-69 = (Reported in Must. Dudmera Bibi and Others Vs. Hari Bhakta Seal and Others,), I held to the same effect that Section 110 of the Transfer of Property Act is attracted only in the case of a written lease. If Section 110 is not applicable, Mr. Dam fairly concedes that he cannot question the validity of the notice. The second contention of Mr. Dam also had no force and the submission which is made by Mr. Sarma is well founded.

6. The appeal is accordingly allowed but in the circumstances of the case, there will be no order as to costs throughout. Mr. Dam prays that in view of the coming monsoon the Defendants may be allowed some time to vacate the land. Mr. Sarma does not oppose this prayer. The Defendants are allowed time till 31st of October, 1970 for vacating the land.