

(2000) 02 AHC CK 0060
In the Allahabad High Court
Case No : C.M.W.P. No. 49495 of 1999

Punjab National Bank

APPELLANT

Vs

VIII Additional District Judge, Ghaziabad and other

RESPONDENT

Date of Decision : 16-02-2000

Acts Referred:

Registration Act, 1908 — Section 49

Transfer of Property Act, 1882 — Section 106, 107, 53A

Citation : (2000) 2 AWC 1199

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : K.L. Grover, for the Appellant;

Judgement

Sudhir Narain, J.—This writ petition is directed against the judgment of the Judge. Small Causes Court dated 4.5.1996 decreeing the suit for recovery of arrears of rent ejectment and damages against the petitioner and the order of the revisional court dated 23.5.1996 dismissing the revision against the said judgment.

2. Briefly stated the facts are that the petitioner is tenant of respondent No. 3 in the basement of Building No. 140 constructed on Plot No. 5. Navyug Market. Ghaziabad on monthly rent of Rs. 1.822. The petitioner and respondent No. 3 executed a lease deed on 1.7.1985 whereby it was agreed that the lease will be for a period of 11 months with an option for continuing the lease for a further period of 11 months and maximum upto five years on the same terms and conditions. The lease deed was signed by both the parties. Before expiry of 11 months, respondent. No. 3 wrote a letter on 3.3.1986 that he is agreed to let out the building already in possession of the Bank for a period of 5 years with option to enhance the period of lease for the period of next five years.

3. Respondent No. 3 sent notice dated 3.7.1990 to the petitioner terminating its tenancy and asking it to hand over the possession. The petitioner did not comply with the notice. Respondent No. 3 filed S.C.C. Suit No. 65 of 1990 for eviction

with the allegations that the building in question was constructed in the beginning of year 1985 and the City Board, Ghaziabad, assessed it with effect from 1.7.1985 and, therefore, provisions of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction] Act. 1972 (in short the Act) were not applicable. The petitioner contested the suit. It was stated that the building is old and the provisions of the Act were applicable. It also took the plea that the suit was barred by principle of estoppel as respondent No. 3 had agreed to let out for five years which had not expired on the date of filing of the suit. The trial court decreed the suit on the finding that the building in question was constructed in the year 1985 and the provisions of the Act were not applicable. The lease was for a period of 11 months and as it was not a registered document, the lease cannot be taken for the period of five years. The suit was accordingly decreed. The judgment has been affirmed in revision.

4. Sri K.L. Grover, learned counsel for the petitioner, urged that the parties had executed a lease deed on 1.7.1985 whereby respondent No. 3 agreed to let out for 11 months with an option for continuing the lease for a further period of 11 months with maximum period up to five years. The plaintiff, before expiry of 11 months, exercised the option to extend the period of lease for five years and, therefore, he is estopped from terminating the tenancy of the petitioner. He has placed reliance upon the decision AIR 1935 154 (Privy Council) where the Privy Council emphasised that conduct of a party is relevant to charge him personally liable for losses occurrence to other party by his conduct.

5. In Abdul Shakur and Others Vs. Kotwaleshwar Prasad and Others, , it was clarified that the estoppel by conduct relates to the act prior to the litigation. An agreement to lease entered into between the parties can be given effect to in accordance with Section 107 of the Transfer of Property Act which provides that a lease of immovable" property from year to year or for any term exceeding one year or reserving an yearly rent can be made only by a registered instrument. Other leases of Immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession. The parties herein executed an agreement for lease on 1.7.1985. It was only for a period of 11 months. It was not registered document. Clause 2(1) of the agreement provided that the period of lease can be extended for a period of 11 months and maximum up to 5 years. It was an option given to the parties to extend the period of lease. The lease for five years. however, could be made only by a registered deed as contemplated u/s 107 of the Transfer of Property Act.

6. In Ram Swarup Jain Vs. Sri Janki Devi Bhagat Trust, , where the lease was for manufacturing purpose for a period of 12 months, it was held that the document being unregistered was inadmissible in evidence and the term in the agreement that the tenancy can be terminated by giving 15 days" notice was not enforceable. In Zarif Ahmed and another v. Satish Kumar and another 1983 (1) ARC 776 it was held that a lease deed for duration of more than a year, if it is not registered, will be inadmissible in evidence in view of Section 49 of the

Indian Registration Act. The petitioner is claiming that the period of lease was extended for a period of five years. The terms of an unregistered lease deed cannot be enforced. The principle of estoppel is not applicable against the statute. In *Arshad Ali Khan Vs. State of Uttar Pradesh*, , the Court repelled the contention that the principle of estoppel and acquiescence is applicable by reference to the terms of the deed on the ground that such principle is in contravention of the provisions of Section 49 of the Indian Registration Act.

7. In *Waman Shrinivas Kini Vs. Ratilal Bhagwandas and Co.*, , where the tenant had sub-let the accommodation, the landlord filed a suit for eviction on the ground of sub-letting, it was contended by the tenant that it was permitted by the landlord to sub-let in. The Supreme Court repelled the contention holding that the plea of waiver on the basis of agreement contrary to the provisions of the Act cannot be raised because as a result of giving effect to that plea, the Court would be enforcing an illegal agreement in contravention of the statutory provisions based on public policy and quoted with approval the following passage of (he decision in *Surajmull Nagoremull v. Triton Insurance Co. Ltd.*,

"No Court can enforce as valid that which competent enactments have declared shall not be valid, nor in obedience to such an enactment a thing from which a Court can be dispensed with by the consent of the parties, or by a failure to plead or to argue the point at the outset : *Nixon v. Albion Marine Insurance Co.* (1867) 2 Ex. 338. The enactment is prohibitory. It is not confined to affording a party a protection of which he may avail himself or not as he pleases. It is not framed solely for the protection of the revenue and to be enforced solely at the instance of the revenue officials, nor is the prohibition limited to cases for which a penalty is exigible."

8. In the instant case, extending the lease for a further period of five years in terms of the deed dated 1.7.1985 would be contrary to the provisions of Section 49 of the Registration Act. The principle of estoppel and waiver, in these circumstances. shall not be applicable.

9. The next submission of the learned counsel for the petitioner is that even if the lease deed is not registered but there is an agreement in writing, the petitioner is entitled to continue in occupation of the property u/s 53A of the Transfer of Property Act which provides that where any person contracts to transfer for consideration any immovable property by writing, signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with a reasonable certainty and the transferee has in part performance of the contract taken possession of the property or any part thereof or the transferee being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract and the transferee has performed or is willing to perform his part of the contract then his rights will not be affected. He has placed reliance upon the decision *Ramkrishna Singh Vs. Mahadei Haluai and Another*, , wherein it was held that where- from the facts and circumstances it can be reasonably inferred that

there was a completed contract of lease between the parties, the lease document though invalid as a lease on account of not being signed by the lessee, is sufficient for the purpose of attracting the provisions of Section 53A of the Transfer of Property Act. This decision does not lay down that the transferee will continue in possession for fixed period as given in the agreement. The lease can be determined in accordance with Section 106 of the Transfer of Property Act. If the lease is for agricultural or manufacturing purposes. It shall be deemed to be lease from year to year terminable on the part of either the lessor or lessee by six months" notice and a lease for immovable property for any other purpose shall be deemed to be from month to month terminable on the part of either lessor or lessee by 15 days" notice expiring on the end of month of the tenancy. It has been found that the notice was served upon the petitioner and his tenancy has been terminated.

10. I do not find any merit in the writ petition. It is accordingly dismissed.