(1971) 12 MP CK 0009

In the Madhya Pradesh High Court

Case No : Second Appeal No. 631 of 1967

Smt. Dhana Bai APPELLANT

Vs

Smt. Kewara Bai and Others RESPONDENT

Date of Decision : 22-12-1971

Acts Referred:
Registration Act, 1908 — Section 17(1), 19, 2(7)
Transfer of Property Act, 1882 — Section 106, 107

Citation : AIR 1972 MP 100 : (1972) JLJ 257 : (1972) 17 MPLJ 227

Hon'ble Judges : S.P. Bahrgava, J;A.P. Sen, J

Bench : Division Bench

Advocate : P.R. Padhye, for the Appellant; J.M. Sood, for the Respondent

Final Decision : Allowed

Judgement

A.P. Sen, J.

This appeal filed by the plaintiff-landlord is directed against a decree of the First Additional District Judge, Raipur, dated 12-4-1967 reversing the judgment of the First Civil Judge Class II, Raipur, dated 30-11-1965 and dismissing the plaintiff''s suit for ejectment, arrears of rent and damages. The appeal has been referred to , larger Bench by the Hon''ble the Chief Justice as the questions involved are of general importance.

The facts leading to the appeal may be shortly stated. The plaintiff sought ejectment of the defendants u/s 12(1)(a)(b) and (e) of the Madhya Pradesh Accommodation Control Act, 1961. The defendants contested her claim and pleaded * that the parties did not stand in the relation of landlord and tenant. Their plea was that the transaction embodied in the registered sale deed dated 28-6-1960(Ex. P-15) was, in reality, a mortgage by conditional sale. That plea has not prevailed in the Courts below, and it has been found that the transaction under which the plaintiff claims was an out-right sale coupled with an agreement for re-conveyance within two years and the defendants not having exercised the right of re-conveyance within the time stipulated therefor, the title of the plaintiff had become absolute. It may be stated that on 28-6-1960, contemporaneous with, the execution of the sale deed (Ex. P-15) by the defendants, the plaintiff executed an Ikrarnama (Exhibit D-1) embodying the terms of the agreement. Further, on that day, the plaintiff let out the house to the defendants for a period of two years on rent of Rs. 5/- per month, and in token of the contract of tenancy, the defendants executed a rent note (Ex. P-16).

The learned trial Judge decreed the plaintiff''s claim, but that decree has been reversed in appeal. On appeal, the learned Additional District Judge has non suited the plaintiff on the ground that the rent note (Ex. P-16) being for a period of more than one year, was inadmissible in evidence for want of registration u/s 49 of the Registration Act, and no oral evidence could be let in in proof of the contract of tenancy, such evidence being barred u/s 91 of the Evidence Act and, therefore, the alleged tenancy has not been proved.

Three questions arise for consideration in appeal:--

(1) Whether the rent note (Ex. P-16), although for a term exceeding one year, was not a lease within the meaning of Section 17(1)(d) and, therefore, did not require registration and was not inadmissible in evidence u/s 49 of the Registration Act?

(2) Whether, even if it required registration, the rent note was admissible under the proviso to Section 49 of the Registration Act for the collateral purpose of proving the nature of possession of the defendants?

(3) Whether in the absence of a registered instrument, there was a presumption u/s 106 of the Transfer of Property Act that the defendants were tenants from month to month?

Point No. 1:-- Section 4 of the Transfer of Property Act, 1882 makes enactments relating to contracts supplemental to the Registration Act. It reads as follows:

"Section 4 -- Enactments relating to contracts to be taken as part of Contract Act and supplemental to the Registration Act. The chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872. And Sections 54, paragraphs 2 and 3, 59, 107 and 123 shall be read as supplemental to the Indian Registration Act, 1908."

The effect of Section 4 of the Act was considered by the Supreme Court in Raghunath and Others Vs. Kedar Nath, . Their Lordships stated that the documents of which registration is necessary under the Transfer of Property Act but not under the Registration Act fall within the scope of Section 49 of the Registration Act. 1908, by the enactment of the Transfer of Property (Amendment) Supplementary Act, 1929, Section 107 of the Transfer of the Property Act reads:

"Section 107 -- Leases how made. A lease of Immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.

All other leases of Immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession,

Where a lease of Immovable property is made by a registered instrument, such instrument or, where there are more instruments than one, each, such instrument shall be executed by both the lessor and the lessee. ......".

Sections 2(7), 17(1)(d) and 49 of the Registration Act read:

"Section 2(7). ''Lease'' includes a counterpart. Kabuliyat, an undertaking to cultivate or occupy, and an agreement to lease.

Section 17(1)(d). -- Leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent.

Section 49. -- Effect of non-registration of documents required to be registered.

No document required by Section 17 or by any provision of the Transfer of Property Act, 1882, to be registered shall:--

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered.

Provided that an unregistered document affecting immovable property and required by this Act, or the Transfer of Property Act, 1882. to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as evidence of part performance of a contract for the purposes of Section 53A of the Transfer of Property Act, 1882, or as evidence of any collateral transaction not required to be effected by registered instrument."

The effect of reading Section 107 of the Transfer of Property Act, with Section 17(1)(d) of the Registration Act, is to make all leases of immovable property other than those from year to year or for any term exceeding one year or reserving a yearly rent, if made in writing, compulsorily registrable. u/s 2(7) of the Registration Act, a "lease" as defined, included a counterpart, Kabuliyat, an undertaking to cultivate or occupy. A rent note or Kabuliyat is merely an agreement executed by a tenant to take the tenancy. In itself it contains no agreement of the landlord on his part to lease the property. It is, therefore, not a lease within the meaning of Section 107 of the Transfer of Property Act. A lease, in the nature of things, must be a bilateral agreement. The jural relationship of landlord and tenant is brought into existence on transfer by the lessor and its acceptance by the lessee. See Mohan Lal v. Ganda Singh AIR 1943 Lah. 127 (FB.) Though a rent note or a kabuliyat does not create a "lease" for purposes of the Transfer of Property Act, it nevertheless falls within the definition of "lease" contained in Section 2(7) of the Registration Act, and where such rent note or kabuliyat is executed by the lessee from year to year, or for any term exceeding one year, or reserves a yearly rent, it requires registration u/s 17(1)(d) of the Registration Act and, therefore, would be inadmissible in evidence for want of registration.

In Tiruvenibai and Another Vs. Lilabai, their Lordships while dealing with an agreement of lease, stated as follows:--

"......... Section 17(1) of the Act deals with documents of which registration is compulsory. It is obvious that the documents falling under Clauses (a), (b), (c) and (e) of Sub-section (1) are all documents which create an immediate and present demise in, Immovable properties mentioned therein. The learned Attroney-General''s argument is that Clause (d) which deals with leases does not import any such limitation because it refers to leases of Immovable properties from year to year or any term exceeding one year or reserving a yearly rent; and the Act deliberately gives an inclusive definition of the term ''lease'' in Section 2(7). This argument, however, fails to take into account the relevant provisions of the Transfer of Property Act. Section 4 of the said Act provides that Section 54, paragraphs 2 and 3, 59. 107 and 123 shall be read as supplemental to the Indian Registration Act, 1908. Section 107 is material for our purpose. Under this Section a lease of Immovable property from year to year or for any term exceeding one year or reserving a yearly rent can be made only under a registered instrument. This section also lays down that where a lease of Immovable property is made by a registered instrument, such instrument, or, where there are more instruments than one, each instrument, shall be executed by both the lessor and the lessee. It would be noticed that if Section 107 has to be read as supplemental to the Act, the definition of the word ''lease'' prescribed by Section 105 would inevitably become relevant and material; and there is no doubt that u/s 105 a lease of Immovable property is a transfer of right to enjoy such property made in the manner specified in the said section. Therefore it would not be right to assume that leases mentioned in Clause (d) of Section 17, Sub-section (1), would cover cases of documents which do not involve a present and immediate transfer of lessees'' rights. It would thus be reasonable to hold that, like the instruments mentioned in Clauses (a), (b) and (c) of Section 17(1), leases are also instruments which transfer lessees'' rights in the property immediately and in praesenti ...."

Though a rent note or kabuliyat is not an instrument answering that description, it nonetheless requires registration as it falls within the definition of the term ''lease'' as defined in Section 2(7), and if it is executed for the period stated in Section 17(1)(d) of the Registration Act, it would require registration.

There appears to be a conflict between Sections 17(1)(d) and 49 of the Registration Act on one hand and Section 107 of the Transfer of Property Act on the other. Bose, J. granted leave under Clause 10 of the Letters Patent to reconcile these sections. The matter came before Grille, C.J. and Sen, J. in Rejendrasingh v. Hulasdas ILR (1944) Nag 704 = (AIR 1945 Nag. 69). and their Lordships stated as follows:--

"The Registration Act strikes at documents and not at transactions. The Registration Act enacts that a document of a particular character which affects immovable property and falls within the terms of Section 17 of the Registration Act shall be registered. The Registration Act does not direct what transactions should be reduced to writing. The Transfer of Property Act, on the other hand enacts what transactions have to be reduced to writing and registered ...."

A number of decisions of this Court have been placed before us. There appears to be a conflict of opinion on the question as to whether a rent note or a kabuliyat is a lease as defined in Section 105 of the Transfer of Property Act, and even if it was not a lease in that sense, it nonetheless requires registration u/s 17(1)(d) of the Registration Act. In AIR 1928 27 (Nagpur) , Macnair, A.J.C. held that a rent note or kabuliyat was clearly a lease as defined in Section 2(7) of the Registration Act, and where it was for one year or for more, it required registration. There, the rent note was for a period of more than one year. In AIR 1926 389 (Nagpur) , Kinkhede. A. J. C. took the view that a rent note or kabuliyat executed by the lessee in favour of the lessor is not a lease and, therefore, need not be registered u/s 107 of the Transfer of Property Act, and it was admissible for the collateral purpose of proving an admission of the lessee that he held the premises in question under a contract of tenancy. It is not clear from the decision whether the rent note was for a period less than one year. In Mt. Nasiban v. Mohammad Saved AIR 1936 Nag 174 Bose J. held that a rent note for a period of 11 months being unregistered cannot operate as a lease, because Section 107 of the Transfer of Property Act requires a registered document in every case except where the lease is by an oral agreement accompanied by delivery of possession and was, therefore, not compulsorily registrable u/s 17(1)(d) of the Registration Act, but by reason of Section 4 of the Transfer of Property Act, which states that Section 107 is to be read as supplemental to the Registration Act, the effect was to render the document inadmissible for want of registration. In AIR 1940 143 (Nagpur) , Gruer, J. struck a discordant note, and succinctly stated the law thus:

"......... The rent note is said to require registration u/s 107, Transfer of Property Act, and Section 17(1)(d), Registration Act. This depends on whether it amounts to a lease or not. It is executed by the lessee only, and is an agreement to take the houses on rent, i. e. it is a unilateral document -- a kabuliyat. As the lease is for six months it did not require to be made by a registered instrument u/s 107 but could be by oral agreement accompanied by delivery of possession. If the kabuliyat is to be looked upon as the lease then it of course would have to be registered and would require to be executed by both lessor and lessee. There is no other document executed by the lessor, and I do not see how one should be forced to look upon this kabuliyat as a lease invalid both for want of registration and for want of signature by both parties. It would be in compliance with the law to regard the lease as made by oral agreement and the acknowledgment of the lease (Kabuliyat) to be by this document, which then did not require registration at all. In AIR 1926 389 (Nagpur) such a kabuliyat or rent note was held not to require registration u/s 107, Transfer of Property Act, not being a lease granted by the lessor. This case does not appear to have been brought to the notice of Bose J. In deciding L.P.A. No. 17 of 1936. In fact it seems to have been assumed in that case without discussion that the rent note did amount to a lease. As the point was not discussed, I do not feel pressed by that decision."

He, however, made it clear that the rent note before him was neither from year to year, nor for any term exceeding one year, nor reserving a yearly rent. In Sagarmal Onkarji Vs. Jethmal Surajmal, , Newaskar, J. held that a unilateral document executed by the tenant is not effective as a lease by reason of Section 107 of the Transfer of Property Act and it would. therefore, require no registration. There Is nothing in the decision to indicate the period for which the rent note was executed. In Premchand v Gulal, 1959 MPLJ 45 Tare. J. held that a rent note does not require registration. In Babusingh v. Rambabu 1964 Jab LJ 175 S. B. Sen J. took the contrary view. In Dulichand v. Devidin, Second Appeal No. 346 of 1964, D/-6-9-1965 (Madh Pra) and in Nabi Bux v. Mangal, Second Appeal No. 54 of 1965, D/- 22-9-1965 (Madh Pra) Naik, J. has taken the view that where a rent note or a kabuliyat is for a term of one year or more, it requires registration and is, therefore, inadmissible u/s 49 of the Registration Act for want of registration. He was dealing with rent notes for a period exceeding one year.

For reasons already stated, the decisions holding that a rent note from year to year or for any term exceeding one year or reserving a yearly rent does not require registration u/s 17(1)(d) of the Registration Act, because it is not a lease within the meaning of Section 107 of the Transfer of Property Act, must be overruled as not laying down good law.

Point No. 2:-- The plaintiff is trying to use the unregistered rent note (Ex. p-16) to prove the transaction of lease, and not for any collateral purpose. The terms of a lease is not a collateral purpose. In Second Appeal No. 54 of 1965, D/- 22-9-1965 (Madh Pra) (Supra), Naik, J. stated as follows:

"It is settled law that the document compulsorily registrable, if unregistered, is inadmissible in evidence of a transaction affecting immovable property......."

X X X X X X ".........Collateral purpose is that which is by the side of or distinct from the main purpose. A term of a deed of lease being one of its main purposes, it could not be termed a collateral purpose within the meaning of the proviso to Section 49 of the Indian Registration Act"

We are in respectful agreement with that view. That was also the view taken by Shevde. J. in Karimullakhan v. Bhanu Pratapsingh ILR (1948) Naff 978 = (AIR 1949 Naff 265) and AIR 1949 218 (Nagpur) The answer to the second point must, therefore, be in the negative.

Point No. 3:-- Even In the absence of a registered instrument creating a lease, there is a presumption of a lease u/s 106 of the Transfer of Property Act. The tenancy in question was thus governed by Section 106 of the Transfer of Property Act, and as it was a lease of immovable property for residential purposes, it shall be deemed to be a lease from month to month terminable on the part of either lessor or lessee by fifteen days'' notice expiring with the end of a month of the tenancy. In Ram Kumar Das Vs. Jagadish Chandra Deb Dhabal Deb and Another, their Lordships of the Supreme Court, while dealing with a case where no valid and operative lease came into existence, stated that a tenancy could be fairly presumed, and as regards the duration of the tenancy they adverted to Section 106 of the Transfer of Property Act. and stated as follows:--

"The section lays down a rule of construction which is to be applied when there is no period agreed upon between the parties. In such cases the duration has to be determined by reference to the object or purpose for which the tenancy is created. The rule of construction embodied in this section applies not only to express leases of uncertain duration but also to leases implied by law which may be inferred from possession and acceptance of rent and other circumstances. It is conceded that in the case before us the tenancy was not for manufacturing or agricultural purposes. The object was to enable the lessee to build structures upon the land. In these circumstances, it could be regarded as a tenancy from month to month, unless there was a contract to the contrary........."

The tenancy created by Implication of law in favour of the defendants should, therefore, be held to be from month to month terminable on the part of either lessor or lessee by fifteen days'' notice expiring with the end of the month of the tenancy. Such a notice having been given, the tenancy was validly terminated.

The result, therefore. Is that appeal succeeds and is allowed. The judgment and decree of the learned Additional District Judge are set aside and the plaintiff''s suit for ejectment of the defendants, arrears of rent and damages at the rate of Rs. 5/- per month, is decreed with costs throughout. Counsel''s fee, as per schedule or certificate whichever is less.

