

(1998) 02 MAD CK 0106

In the Madras High Court

Case No : Second Appeal No. 1878 of 1984

S.S.K.S. Baskaran (died) and 4 others

APPELLANT

Vs

N.Thirugnanasundaram Pillai

RESPONDENT

Date of Decision : 26-02-1998

Acts Referred:

Evidence Act, 1872 — Section 91

Transfer of Property Act, 1882 — Section 106, 107, 11

Citation : (1998) 1 CTC 517

Hon'ble Judges : Raju, J

Bench : Single Bench

Advocate : Mr. P. Senthurpandian for Mr. N. Sridhar, for the Appellant; Mr. K. Balachandran for Mr. N. Maninarayanan, for the Respondent

Final Decision : Dismissed

Judgement

1. The plaintiff in O.S.No.399 of 1981 on the file of the Court of District Munsif, Thirumangalam, who is no more and whose legal representatives

are pursuing this appeal, had filed the above appeal against the judgment and decree in A.S.No.202 of 1983, where under the learned first

appellate Judge has chosen to reverse the judgment and decree passed by the learned trial Judge and dismissed the suit filed for a decree to direct

the defendant to vacate and hand over possession of the suit property after removing all the superstructures therein within the time stipulated and

for a mandatory injunction also for the removal of the superstructures put up by him.

2. The plaintiff is the owner of the suit property and even according to the averments in the plaint, it has been admittedly let out to the defendant for

the purpose of running a saw-mill. The plaintiff claimed that the tenancy is as per. the English calendar month, the monthly rent being Rs. 125 to be

paid on or before the 5th of every succeeding English month. The liability is on the defendant to bear the electricity charges. It appears that

incorporating all the terms agreed to between the parties, a rent agreement was executed on 14.3.1978 and the plaintiff also agreed to put up a

shed for the defendant and for that purpose received a sum of Rs. 3,000 as advance from the defendant. Since within the time agreed, he could not

put up the shed, the defendant himself put up a shed and commenced running the saw-mill and from the monthly rental, a sum of Rs. 1,000 has

been adjusted to make up the sum of Rs. 3,000. It is also stated in the plaint that it was agreed to have the saw-mill for a period of five years and

after that, it can be further renewed for another five years. But, it appears that the defendant did not execute second rental agreement, though,

despite objections, for more than ten years, he has been in enjoyment of the mill as a tenant. Contending that the tenancy is over by efflux of time

also, apart from urging that the defendant was not regular in the payment of rent from the inception of the tenancy and that the plaintiff also requires

the property for his own use for putting up a paddy boiling plant, the suit came to be filed for the relief noticed supra. It preceded by the issue of a

lawyer's notice dated 31.7.1980 marked as Ex.A-5 terminating the tenancy by the end of August, 1980 and calling upon him to hand over vacant

possession on 1.9.1980. But, the defendant on receipt of notice, sent a reply dated 19.8.1980 disputing the claim of the plaintiff and declining to

vacate and deliver vacant possession.

3. The defendant filed a written statement contending that the plaint allegations were false and baseless, that admittedly a lease deed was executed

on 14.3.1968, but it was not acted upon, but superseded by another oral agreement, whereby the defendant himself put up a superstructure for

manufacturing purpose at his own cost and having regard to such investment, the arrangement was that the lease was to be a permanent one, with

an option to purchase the property at his convenience and as a matter of fact, a structure put up at a cost of Rs. 30,000 and the advance of Rs.

3,000 was left to be adjusted towards sale price to be ultimately fixed by the plaintiff. A plea was also raised that the suit notice issued on

31.7.1980 was not in accordance with law and cannot be the basis for a suit for ejectment. An additional written statement also was said to have

been filed disputing the right of the plaintiff to claim mandatory injunction and pleading estoppel against the plaintiff to make such a claim. A reply

was also said to have been filed reiterating the earlier stand and denying the claim in the written statement.

4. On the above claims and counter claims, the suit came to be tried and both parties adduced oral and documentary evidence. The learned trial

Judge was of the view that the plea of subsequent oral lease remains unsubstantiated and liable to be rejected, that inasmuch as the eviction is

sought for on the ground of efflux of time, no notice is required u/s 11(a) of the Transfer of Property Act, 1882 (hereinafter referred to as "the

Act") and that the relationship between the parties was not a smooth tenancy relationship and the notice issued is valid and therefore, the suit has to

be, and has been decreed. As for the form and sufficiency as also the validity of the notice, the learned trial Judge was of the view that though the

lease was for the purpose of running a saw-mill, which may be one for manufacturing purpose, there could be a contract to the contrary at the

option of the parties to have a monthly tenancy as envisaged u/s 106 of the Act and therefore, the notice dated 31.7.1980 is in accordance with

law and satisfied the requirements of Section 106 of the Act.

5. Aggrieved, the defendant filed an appeal in A.S.No.202 of 1983. The learned first appellate Judge, after considering the materials on record,

came to the conclusion that having regard to the admitted position that the lease was for the purpose of saw-mill, and as such for manufacturing

purpose, the notice of termination should have given six month's time and since it was not so given, the notice itself was illegal and consequently,

the suit filed has to be dismissed. On that view, the appeal came to be allowed. Hence, the above Second Appeal by the plaintiff.

6. At the time of admission of the appeal, it was considered by the learned admission Judge that the substantial question of law which arises for

consideration is as to whether the notice issued on 31.7.1980 and marked as Ex.A-5 conforms to the requirements of Section 106 of the Act and

is valid. Mr.Senthurpandian, learned counsel appearing for the appellants, while placing strong reliance upon the decision in Jagat Taran Berry Vs.

Sardar Sant Singh, , contended that in the absence of there being an registered lease deed as in the case on hand, the lease could not be treated as

an yearly lease, notwithstanding the fact that it was for manufacturing purpose and therefore, there is no need for issuing any six months' notice of

termination and the notice issued in this case treating it as monthly tenancy is quite in accordance with law. The decision relied upon by the

appellant's counsel is the one rendered by a learned single Judge of Delhi High Court, whereunder the learned single Judge of the Delhi High Court

has chosen to apply the provisions laid down in Sati Prasanna Mukherjee and Others Vs. Md. Fazel, and Kishan Lal Vs. Lal Ram Chander, and

chosen to differ from the decisions in Krishna Das Nandy Vs. Bidhan Chandra Roy, , Balwant Singh and Others Vs. L. Murari Lal, ; Steuart and

Co. Ltd. Vs. C. Mackertich, ; Kali Kumar Sen v. Haridas Roy AIR 1969 Nag. 134 and also Bastacolla Colliery Co. Ltd. Vs. Bandhu Beldar and

Another, etc. noticed in paragraph 10 of the decision of the said learned single Judge. On that view, the learned single Judge held in paragraphs 18

and 19 as follows:

Under S. 107 the parties have an option. They can negotiate a lease of a duration mentioned in the first paragraph. If they decide upon such a

lease, they must execute a registered instrument. Alternatively, they can decide to have a lease for a shorter period. In that event they can create

the lease with or without executing a registered instrument. Whenever a lease is created without a registered instrument the inevitable conclusion

must be that the parties have, so to speak, opted out of the first paragraph. They have negated any intention of creating a lease of the duration

therein mentioned. Or, to put it in positive form, they have agreed upon a lease of a duration coming within the second paragraph. This is, or must

be deemed to be a conscious decision on their part. It is, therefore, indicative of a contract between them. That contract is that the lease will not be

of a duration mentioned in the first paragraph of S. 107. Such a contract will always be a contract "to the contrary" envisaged by the opening words

of S. 106. The Supreme Court has said that a "contract to the contrary" can be implied, and need not be express. So, from the single fact that a

registered instrument is not executed, one can, and should, immediately deduce a contract to create a lease of the kind that can be created without

such an instrument. Thus, if the lease is for "agricultural or manufacturing purposes" and there is no registered instrument, that fact itself is

conclusive to establish a "contract to the contrary". Considering that it was always open to the parties to execute a registered instrument but they

chose not to do so, this inference accords with their intention, "whether actual or ascribed.

On this line of reasoning, there never can be a conflict between S. 106 and S. 107. For, whenever according to S. 106 a lease is deemed to exist

which could only be created by registered instrument according to S. 107, the non-existence of a "registered instrument will of itself invoke the

opening words of S. 106 by implying a contract to the contrary. Thus, the two sections become fully reconciled.

6. Per contra Mr. Balachandran, learned counsel for the respondent-defendant, while vehemently contending that the reasons assigned by the

learned first appellate Judge are more in conformity with the position of law on the subject, placed reliance upon the decision in J.A.P. Mirande v.

Datha Naik AIR.1971 Mys. 365 and also contended that the decision of the learned first appellate Judge does not call for any interference in this

case.

7. I have carefully considered the submissions of the learned counsel appearing on either side. It is seen that yet another learned single Judge of the

Delhi High Court has followed the earlier decision in Jagat Taran Berry Vs. Sardar Sant Singh, , in Harish Chand v. Ram Chander, AIR 1985

NOC. 123. In the decision in Mirande's case AIR. 1971 Mys. 365 the learned single Judge-of the Mysore High Court has taken the view

following the line of cases as the one in Krishna Das Nandy Vs. Bidhan Chandra Roy, , in coming to the conclusion that in respect of a tenant who

was carrying on bakery business and subsequently installed a saw-mill in the premises, the lease must be held to be one for a manufacturing

purpose and notice for terminating such lease must be of six months" duration and not of fifteen days" duration.

8. In Adit Prasad Vs. Chhaganlal and Another, , a Division Bench of the Patna High Court had an occasion to deal with the question as the one

arising in this case as to the consequences of a tenancy under an unregistered document. That was a case, wherein in an unregistered document,

the lease for a term of three years on monthly rent for residential purpose was entered into. It was held by the learned Judges of the Division Bench

that such a lease deed is inadmissible in evidence to prove the tenancy and oral evidence stood precluded by Section 91 of the Evidence Act and

consequently, the duration of tenancy has to be determined in accordance with Section 106 of the Transfer of Property Act. The Division Bench

seems to have applied the principles laid down in this regard by the decision of the Apex Court in Ram Kumar Das Vs. Jagadish Chandra Deb

Dhabal Deb and Another, .

9. The stand taken for the appellants in this case, as noticed earlier, is based on the decision in Jagat Taran Berry Vs. Sardar Sant Singh, , which, if

it is considered to have laid down the correct principle and acceptable to me, the substantial question raised in this appeal will have to be

necessarily answered in favour of the appellants and if it is found that the principles laid down in the other decisions, which have been noticed even

by a learned single Judge of the Delhi High Court and dissented from, are taken to lay down the correct principles of law, the substantial question

of law formulated in this case has to be answered in favour of the respondent-defendant. Section 106 of the Act reads as follows:

In the absence of a contract or local law or usage to the contrary a lease of immovable property for agricultural or manufacturing purposes shall

be deemed to be lease from year ""to year, terminable, on the part of either lessor or lessee, by six month"s notice expiring with the end of a year of

the tenancy; and a lease of Immovable property for any other purpose 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.

Every notice under this Section must be in writing signed by or on behalf of the person giving it, and either be sent by post to the party who is

intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such

tender or delivery is not practicable) affixed to a conspicuous part of the property.

Section 107 on which strong reliance has been placed by the learned single Judge of the Delhi High Court reads thus:

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 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 lessee;

Provided that the State Government may, from time to time, by notification in the Official Gazette, direct that lease of Immovable property, other

than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by

unregistered instrument or by oral agreement without delivery of possession.

10. A careful reading of the above referred two provisions of the Act would go to show that they have different and distinct roles to play and one

cannot be made subject to the other or read into by dovetailing one provision within the other. Whereas Section 107 of the Act provides the

manner in which a lease of Immovable property for a particular duration, if made, has to be made, Section 106 stipulates the duration of certain

categories of lease depending upon the purpose of the lease, thereby virtually deeming a duration in the absence of a contract or a local law to the

usage, is contrary. Viewed thus, I am of the opinion that there is no scope for any conflict arising between Sections 106 and 107 of the Act, or the

need arising equally for reconciliation. It is well laid proposition that a document, which is required to be put in writing and registered compulsorily,

if not so made, is void altogether. At the same time, if the tenant is put in possession under such an unregistered lease deed or even in the absence

of any lease deed at all, and the landlord, in substance, recognised the right of the tenant, by acceptance of rent, to be in possession as such a

tenant, in which case inevitably the presumption of lease in terms of Section 106 would arise. It is one thing to state that a lease of the nature

envisaged u/s 107 of the Act has to be by a registered instrument, failing which the transaction has to be considered to be of a lease from month to

month and another thing as to the applicability of Section 106 of the Act by virtue of the deeming provisions contained therein. A careful, proper

and dispassionate reading of Section 106 would indicate that the stipulation therein for terminating certain kinds of lease by six months' notice

expiring with the end of the year of the tenancy, has not been made because of

the lease being one from year to year but mostly due to the factum of the object of the lease being either for agricultural or for manufacturing purpose. In substance, the situation of termination of lease by six months" notice expiring with the end of the year of the tenancy would arise not only in cases where the parties themselves agree the lease to be from year to year, but also in respect of a factum of lease where there was no written document in terms of Section 107 of the Act, but otherwise in the absence of a specific contract to the contrary. This is made obvious from the latter part of Section 106 of the Act, when it stipulates that "a lease of Immovable property for any other purpose shall be deemed to be a lease from month to month.....", wherein emphasis is given on the purpose of lease and not with reference to either the lease not being in accordance with Section 107 or on account being of a deemed one on month to month basis. There is nothing in section 106 to indicate specifically (or) by necessary implication that the said provision applies (or) gets attracted only in respect of leases executed strictly in conformity with Section 107 of the Act. Conversely, only a lease in accordance with Section 107 which appears to be a contract to the contrary can go outside the purview of Section 106.

11. For the reasons stated above, in my view, the decision of the learned single Judge of Delhi High Court in Jagat Taran Berry Vs. Sardar Sant Singh, , followed subsequently in Harish Chand's case, AIR. 1985 NOC. 123 (both) cannot be considered to lay down the correct position of law and on the contrary, the principles laid down in the other catena and series of decisions noticed by the very learned Judge and which have been differenced from, appear to me to lay down the real and correct principles of law as also in keeping with the scheme underlying and the language of Sec 106 and 107 of T.P. Act. and more acceptable to me, and I prefer to follow the ratio laid down in these line of cases, rather than the one taken by the learned single Judge, of the Delhi High Court. With respect, I differ from the view taken by the learned Judges of the Delhi High Court in this regard. Therefore, the substantial question of law formulated in this case, in my view, has to be answered in favour of the respondent-defendant holding that the notice of termination issued and marked as Ex.A-5 is not in accordance with the provisions contained in

Section 106 of the Act and therefore, not legal so as to entitle the plaintiff on that basis to institute a suit for ejectment, all the more so, in view of the very admissions in the plaint itself of the purpose of the lease to be one for running a saw-mill in the demised land. Consequently, there is no error in the view taken by the learned first appellate Judge to warrant interference in this second appeal. The second appeal, therefore, fails and shall stand dismissed. There will be no order as to costs. Obviously, the dismissal of this appeal does not preclude the appellants from proceeding afresh in accordance with law.