

(1951) 03 GUJ CK 0004

In the Gujarat High Court

Case No : Civil Revision Application No. 164 of 1950

Sundarji Ratanshi

APPELLANT

Vs

Gangubai Jeshinghbhai and Another

RESPONDENT

Date of Decision : 31-03-1951

Acts Referred:

Transfer of Property Act, 1882 — Section 103, 105, 106

Citation : (1951) 03 GUJ CK 0004

Hon'ble Judges : Shah, C.J

Bench : Single Bench

Advocate : M.G. Singroja, for the Appellant; C.R. Manir, for the Respondent

Judgement

Shah, C.J.—This revn. appln. is filed against the decree of the Dist. J., Central Saurashtra, reversing the decree of the Civil Judge, Junior

Division, Rajkot, & awarding to the opponent 1 possession of half of the leased premises & fixing the standard rent of the remaining half at Rs. 9

p.m. Opponent 1 Gangubai let out the suit premises, which consist of a house in street No. 4, Jayraj Plot at Rajkot to the appct. Sundarji Ratanshi

& his brother Mohanlal Ratanshi, opponent 2, on a monthly rental of Rs. 25. She herself is living with her son in a small room hired on a monthly

rental of Rs. 5 since the last ten or twelve years. She gave a notice to the defts. on 8-3-1949 calling upon them to quit & deliver possession of the

house by 31-3-1949 alleging that they had put the property to a different use, viz. that they had put up a "Bhathi" (furnace) for washing clothes in

part of the premises & had thereby damaged the building & further that she required half of the building reasonably & bona fide for her own

occupation. The defts having failed to vacate, she brought the suit to recover possession of half the premises consisting of a room adjoining the

kitchen, the kitchen itself, half the "Osri" & one small room. The learned Civil Judge dismissed the suit holding that although the pltf. required the

premises reasonably & bona fide for her own occupation, the hardship to be caused to the def?. was greater than the one to be caused to the pltf.

He fixed the standard rent at Rs. 18 & found that the notice to quit had not been proved. The learned Dist. J. on appeal upheld the trial Ct."s

findings as to the standard rent & that the pltf. required the suit premises reasonably & bona fide for her own occupation. He, however, found that

the hardship to the pltf. was greater than the one to the def., & that a valid notice had been given & on these findings he decreed possession of the

suit premises.

2. The learned Dist. J."s findings of facts are conclusive & cannot be challenged in revn. & indeed they have not been challenged. The lower

appellate Ct."s decree has been disputed on the sole ground that the notice to quit & deliver possession was invalid inasmuch as it did not conform

to the requirements of Section 106, T.P. Act. Now the T.P. Act was applied to the Saurashtra State on 1-5-1949, while this suit for eviction was

filed on 1-4-1919, so that this suit was not governed by the T.P. Act as applied to the Saurashtra State. However, there was the Rent Control Act

of the former Rajkot State & prior to the appln. of the Bombay Rent Control Act on 20.12-1948, the parties were governed by the Rajkot State

Rent Control Act, Section 8 of the said Act required that the notice to determine the tenancy was to be given in accordance with Section 103,

T.P. Act, & the notice in this case, therefore, did require to conform to the requirements of that section. u/s 106, in the absence of a contract to the

contrary, a lease of Immovable property for any purpose other than agricultural or manufacturing purpose is to be deemed to be a lease from

month to month, terminable, on the part of either lesser or lessee, by fifteen days"" notice expiring with the end of a month of the tenancy, so that in

the case of a monthly tenancy, such as the one here, the tenancy can be determined by a fifteen days" notice which must expire with the end of the

month of the tenancy. The lease here which is from month to month contains a stipulation in Clause 9 thereof that the tenancy could be determined

by one month"s notice on either side & so far as the period of the notice is concerned, there is thus a contract to the contrary. Mr. Maniar"s

contention, however, is that as there is a contract to the contrary in the lease, the provision of Section 106 which requires the giving of fifteen days"

notice expiring with the end of a month of the tenancy will not apply & the rights of the parties will be governed by the contract itself. In substance

the contention is that once there is a contract to the contrary, whatever may be its import, the case is taken out of the purview of Section 106

altogether, & the lease will be determined in accordance with the terms of that contract alone. Reliance has been placed for this view on *Ram Nath*

v. Badri Nath A.I.R 1928 Lab. 348. The landlord was there required to give two months" notice for eviction under a lease dated 9-10-1923. He

gave a notice on 21-1-1924 asking the tenant to vacate the house within two months from the date of the receipt of the, notice. It was held

following an earlier decision of the Punjab H.C. in *Rure Khan v. Gulam Mohammad* AIR 1924 Lah. 613, that the notice given by the landlord was

not invalid though it did not expire with the end of a month of the tenancy. A similar, view was taken in *Saik Kasam v. Haji Yusuf* AIR 1924 Nag.

220. There the lease provided for a month's notice to be given before the lessee could be asked to vacate. It was contended that the contract

modified the rule in Section 106 only as regards the length of the notice & not as regards the provision that the notice should expire with the end of

the month of the tenancy, but the contention was repelled & it was held that the provision was an indivisible part of a single rule embodied in

Section 106 & the rule must be applicable or inapplicable as a whole where there is a contract to the contrary & that a contract for a month's

notice without any specification of the time when the notice was to expire was a contract to the contrary of the rule in Section 106.

3. In my judgment this interpretation of Section 106 is not correct. The section prescribes two separate & independent conditions for validly

terminating a monthly lease, first that the notice is to be a fifteen day's notice & secondly that it is to expire with the end of a month of the tenancy,

& in order that these should cease to apply the contract to the contrary must specifically provide for them both. If the contract contains a stipulation

only as to the period of the notice it modifies the provisions of Section 106 to that extent but does not affect the other requirement of the section,

viz., that the notice is to expire with the end of a month of the tenancy, & this latter requirement has to be complied with in order that the lease can

be validly terminated. This view finds support from the The Utility Articles Manufacturing Company Vs. The Raja Bahadur Motilal Bombay Mills

Ltd., . There also the contract of the tenancy provided for a month's clear notice to be given by the pltf. to the deft. It was contended that in view

of the said contract the appln. of Section 106 was excluded, & that the contract alone must be looked at for determining what notice the defts.

were entitled to. Chagla J., as he then was, did not accept the contention & held that the provisions of Section 105 were modified by the contract

to the extent to which the contract went, viz., that instead of fifteen days' notice which a monthly tenant is entitled to u/s 106, the tenant under a

contract was entitled to a month's notice, but that did not dispense with the other requirement, viz., that the notice was to expire with the end of a

month of the tenancy. This view was upheld in appeal by Beaumont C.J. & Kania, J., as they then were, & they held that the rule in Section 106

was no doubt subject to a contract to the contrary, but a provision that either side will give one month's clear notice to determine the tenancy does

not affect the rule that the notice must expire with the end of the month of the tenancy. Agreeing with this view I hold that the stipulation for one

month's notice contained in the lease Ex. 13 is a contract to the contrary only in so far as the period of the notice is concerned, but it does not

dispense with the other requirement of Section 106 that the notice is to expire with the end of the month of the tenancy. The notice here no doubt

gives nearly one month & twenty day's time to the defts. to vacate, but it does not expire with the end of the month of the tenancy. Therefore the

notice is invalid & it does not determine the tenancy, with the consequence that the plif. is not entitled to recover possession & the decree of the

learned Dist. J, is illegal. Accordingly I allow this revn. appln., set aside the decree of the Dist. C. & dismiss the suit with costs throughout.