
(1955) 01 CAL CK 0015
In the Calcutta High Court
Case No : Letters Patent Appeal No. 1 of 1954

Surya Kumar Manji and Others	Vs	APPELLANT
Trilochan Nath and Others		RESPONDENT

Date of Decision : 11-01-1955

Acts Referred:

Transfer of Property Act, 1882 — Section 106, 107

Citation : AIR 1955 Cal 495 : 59 CWN 526 : (1956) 2 ILR (Cal) 622

Hon'ble Judges : K.C. Das Gupta, J;Guha, J

Bench : Division Bench

Advocate : Rishindra Nath Sarkar and Sarya Charan Pain, for the Appellant;Apurbadhan Mukherji, Chandra N. Laik and Dwijendra N. Das, for the Respondent

Final Decision : Allowed

Judgement

K.C. Das Gupta, J.—This appeal is against the decision of our learned brother Renupada Mukherjee, J. allowing an appeal directed against an appellate decree. The respondents before us brought a suit for ejectment of the present appellants on the allegation that the defendant Kalipada Mullik was a tenant of a tank described in the schedule, his right being thika non-permanent" and the tenancy being for rearing and catching fishes.

It was averred that the tenancy was terminated by a proper notice to quit, but the appellants had not given up possession. There were several defences raised; but the only defence with which we are at present concerned is that the notice served was not valid or sufficient in law. The trial Court held that the tenancy was one from year to year and could be terminated by six months" notice and so the notice was insufficient.

It held, in the alternative, that even if the tenancy was regarded to be a monthly tenancy requiring fifteen days" notice, there was no valid notice as the plaintiffs have failed to show on what date the tenancy started. In appeal the learned

Subordinate Judge held that the tenancy was from month to month and that fifteen days" notice would be sufficient but he also agreed with the trial Court that the plaintiffs had failed to prove sufficiency of notice as they have not proved by evidence the date of the commencement of the lease.

2. Renupada Mukherjee J. has agreed with the trial Court that the tenancy was one from month to month and fifteen days" notice would be sufficient. He has however, relied on two facts for a conclusion that the notice was sufficient. The first is that the notice that was served was appended to the plaint and thus there was, by implication, a statement by the plaintiffs that the tenancy was from month to month according to Bengali calendar month. The other fact on which Mukherjee J. has relied is that "the tenant did not traverse in his Written Statement the right of the plaintiffs to determine the tenancy with effect from the last day of the Bengali month."

On these facts he has held that

"it can be safely presumed that the tenancy which has been found to be a monthly tenancy by the lower appellate Court runs from the first day to the last day of the Bengali month and there is absolutely no material to show that the month of the tenancy should be calculated in a different manner."

Before us Mr. Sarkar made an attempt to show that the trial Court was right in its view that the tenancy was a yearly tenancy so that six months" notice will be required to determine it. We are, however, of opinion, on the authority of the decision of the Supreme Court in -- Ram Kumar Das Vs. Jagadish Chandra Deb Dhabal Deb and Another, (A), that as, though a yearly rent is said to have been reserved, there was no registered document as is required in such a case u/s 107, T. P. Act, it must be held that, though the intention may have been to create a lease from year to year, that intention "was not expressed in proper legal form" and so it cannot be given effect to and that the Courts must proceed on the basis that there was no valid agreement between the parties and consequently the rights of parties will be regulated by the law as provided in Section 106, T. P. Act as if no agreement existed at all.

We, therefore, agree with Mukherjee, J. that the tenancy in this case clearly not being for agricultural or manufacturing purposes, must be held to be one from month to month and terminable by a fifteen days" notice expiring with the end of the month of the tenancy. With great respect to Mukherjee, J., however, we are unable to agree that the fact of the defendant not denying in the written statement the right of the plaintiffs to determine the tenancy with effect from the last day of a Bengali month can justify a conclusion that the tenancy runs from the first day to the last day of a Bengali month.

It has to be noticed that in the plaint itself no case was made that the tenancy runs from the first day to the last day of a Bengali month. If that case had been made in the plaint, the omission of the defendant to traverse the same would have justified a conclusion that he admitted that fact. The plaint in this case,

however, did not make any statement as regards the commencement or the termination of the month of the tenancy.

Even if the notice that had been served which was later marked as Exhibit 1 was appended to the plaint,--a fact which is disputed--it will not be reasonable to hold that that amounted to a statement in the plaint that the tenancy was from the first day to the last day of a Bengali month. When, in these circumstances, the defendant challenged the validity and the sufficiency of the notice, the onus lay heavily on the plaintiffs to show that the notice was valid and sufficient and for that purpose to show the date of the commencement of the tenancy.

3. This onus could have been discharged by the plaintiffs by adducing evidence as regards the date on which the tenancy commenced. No such evidence was given, the only statement which can be considered in some way connected with the case being, as has been rightly pointed out by the learned Subordinate Judge, the statement of one plaintiff that he gave settlement in Baisakh.

But Baisakh may be the first day of Baisakh or the last day of Baisakh or any other day in the month. If the case was that the tenancy commenced on the 1st of Baisakh, there should have been evidence to show that the tenancy did commence from the 1st of Baisakh. It is not permissible for the Court to fill up the lacuna of evidence in a matter of this nature by surmising that when the plaintiff in his evidence stated "Baisakh", he meant the 1st of Baisakh.

4. We have, therefore, come to the conclusion that the decision of Mukherjee J. that there was a valid and sufficient notice determining the tenancy is erroneous, based on a misconception of the presumption to be drawn from the omission of the defendant to traverse in his Written Statement a story,--not made in the plaint, that the tenancy was from the first day or the month to the last day of a Bengali month.

5. I would, therefore, allow the appeal, set aside the judgment and decree passed by this Court in S. A. 159 of 1948 and restore the judgment and decree passed by the learned Subordinate Judge. The appellants before us will get their costs of the Letters Patent Appeal and of the Second Appeal.

Guha, J.

6. I agree.