

(1981) 12 CAL CK 0025
In the Calcutta High Court
Case No : A.F.O.D. No. 524 of 1973

Thakuruddin Ramjash, a firm

APPELLANT

Vs

Sourendra Nath Mukherjee

RESPONDENT

Date of Decision : 01-12-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1, 11
Transfer of Property Act, 1882 — Section 111, 116

Citation : AIR 1982 Cal 133 : 86 CWN 230

Hon'ble Judges : Banerjee, J;B.N. Maitra, J

Bench : Division Bench

Advocate : S.B. Bakshi, for the Appellant; S.N. Mukherjee and S.P. Roy Chowdhury, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Maitra, J.—The plaintiff has alleged that on the basis of a deed of lease executed by the defendant and also by the plaintiff and his brother, Rabindra Nath Mukherjee, as well on the 7th Sept., 1949, the disputed land was leased out to the defendant for 15 years expiring with the 31st Dec., 1964. The condition was that after the expiry of the period of the lease, the defendant would deliver vacant possession of the suit land after removing the structures standing on the land at his own cost, failing which the structures would belong to the lessors. Then on the 16th Aug., 1962, a partition was effected between the plaintiff and his brother, Rabindra Nath Mukherjee, and the disputed property was exclusively allotted to his share. Though the defendant's tenancy was determined by efflux of time on the expiry of 31st Dec., 1964, he did not vacate the property. Though he was not entitled to any notice, still a notice to quit was served on the defendant, The defendant did not vacate. Hence this suit for recovery of khas possession.

2. The defendant has filed a written statement alleging, inter alia, that the suit is not maintainable in law. He is a "thika" tenant regarding the disputed property

because the structures on the property had been constructed by him. There was a holding over of the tenancy with effect from the 1st Jan., 1965.

3. The learned Judge of the City Civil Court accepted the plaintiff's version, decreed the suit and directed the defendant to remove the structures. Hence this appeal by the defendant.

4. It has been contended on behalf of the appellant that previously a suit was filed by alleging that the lease had been determined, but that suit was withdrawn. There is no new cause of action for filing this suit because the lease in question had already been determined when the previous title suit for ejectment was filed. So, on that score, the suit is not maintainable in law. Moreover, the corporation taxes were paid by the defendant-appellant, from the 1st of Jan., 1965, and hence, there was holding over within the meaning of the provisions of Section 116 of the T. P. Act. The structures do not belong to the landlord. The schedule to the plaint clearly shows that the plaintiff also has asked for recovery of khas possession regarding the disputed land along with the structures. There is no prayer for declaration of title regarding the structures. So, the suit is bad on that score as well.

5. According to the provisions of Section 111(a) of the T, P. Act, a lease of immovable property determines by the efflux of time limited thereby. Here, the lease executed in the defendant's favour regarding the disputed land along with the structures was for a period of 15 years expiring with the 31st Dec., 1964, That period is over. It is true that the previous suit was filed and there was no decision in that case. Hence, simply because the previous suit was filed, there cannot be any question of res judicata. In the case of Vallabh Das Vs. Madan Lal and Others, , it has been stated that mere identity of some issues will not do. The cause of action and relief claimed in the second suit must be the same as the first one. The cause of action of the first suit was the alleged determination of the lease. But a new cause of action arose after the determination of the lease on 31-12-1964 by efflux of time, within the meaning of Clause (a) of Section 111 of the T. P. Act. The first contention advanced on behalf of the appellant is overruled.

6. Then about the holding over. In this respect, the cases of Kai Khurshroo v. Bai Jerbai in AIR 1949 FC 124 decided by Ganga Dutt Murarka Vs. Kartik Chandra Das and Others, and of Bhawanji Lakhamshi and Others Vs. Himatlal Jamnadas Dani and Others, may be cited. It has been stated that mere holding over after expiration of the term of the lease does not create a tenancy of any kind. Mere acceptance of an amount equivalent to rent by a landlord cannot be regarded as evidence of a new agreement.

7. According to the provisions of lease executed on 7-9-1949, the corporation taxes were payable by defendant. There was no intention to create a new agreement or a new lease and the landlord did not assent to his continuing in possession, within the meaning of the provisions of Section 116 of the T. P, Act.

We hold that there was no holding over by the defendant and there was no new tenancy in his favour, as alleged.

8. Now about the structures. It is true that the plaintiff asked for recovery of khas possession of the land as well as of the structures standing thereon. No prayer for any declaration was made regarding the structures, The learned Judge passed a decree that the defendant must remove the structures within two months. This direction is correct. Unless the structures are removed by the defendant, the plaintiff is legally entitled to remove the same, Hence, this contention also will fail,

9. The appeal is, therefore, dismissed.

10. There will be no order as to costs.

Banerjee, J.

11. I agree.