
(1987) 10 KL CK 0009
In the High Court Of Kerala
Case No : S. A. No. 395 of 1987

Vasudevan Nair

APPELLANT

Vs

Kuruppaswamy Udayar

RESPONDENT

Date of Decision : 08-10-1987

Acts Referred:

Contract Act, 1872 — Section 188, 237
Transfer of Property Act, 1882 — Section 106

Citation : (1987) KLJ 1406

Hon'ble Judges : K. Sukumaran, J

Bench : Single Bench

Advocate : V. Ckithambaresh and A.M Shaffique, for the Appellant;
K.Balachandran and Ajith Narayanan, for the Respondent

Final Decision : Dismissed

Judgement

K. Sukumaran J.

1. The contours of counsel's authority-in the context of a quit notice under the Transfer of Property Act, 1882 - come to be sketched and delineated in this second appeal. That, naturally, is an important and difficult work. Principles of agency, professional position of counsel in its historic background, and a broader perspective of the inter-relation-between counsel and client - all arise for consideration in that context. It was pointed out that as for this court there is no decision on this point Perhaps this justified the some-what elaborate arguments in the case. Counsel for the respondent, Shri Ajith Narayan, displayed considerable enthusiasm supplemented by energetic industry in ably presenting before the court many strands of thought as are available from the decisions of the Courts in India and in England.

Relevant facts

2. A tenant confronted with the decree for eviction made by the courts below has come up in appeal. As is the common feature in many thousand cases of that

nature, the contention urged centers round the validity or otherwise of the notice to quit. The appellant has no other crutch such as the protection either under the Land Reforms Legislation or under the Rent Control Legislation. He has naturally to lean on, and heavily too, on this lone contention.

3. The tenancy as found by the courts below had commenced on 1-12-1966. The disruption in the relationship between the parties started sometime in 1973. The plaintiff set the ball moving by issuing a notice (Ext. A1) on 14-11-1973 through counsel. Thereunder, arrears of rent and surrender of the building were demanded. Termination of the tenancy was attempted by that notice. The reply came through counsel for the defendant on 29-11-1973. There was dispute regarding the default of rent. There was an admission about the defaulted payment of rent for the two months, October and November, 1973. Counsel for the defendant sent that amount by money order. This is evidenced by Ext. A3. The rent remitted by counsel and Ext. A3 M.O. coupon specifically refers to the reply notice of counsel for the defendant where mention is made about the remittance of the defaulted rent by money order. Counsel appearing for the defendant sent a notice (Ext. A4) to the plaintiff on 5-3-1980, seeking repair to the building which, according to him, was badly required. The willingness on the part of the tenant to effect the repairs himself and to adjust the expenses from the rent was also indicated therein. The reply thereto by the plaintiffs counsel was Ext. A5 sent on 11-3-1980. It was sent to counsel for the defendant and was in reply to Ext. A4. The liability to effect the repairs was repudiated. The termination of the tenancy effective from the mid night of 31-3-1980 was intimated therein.

4. The suit was filed on 12-9-1982, demanding arrears of rent and the eviction of the tenant from the premises. The material contention regarding notice was in para 12 of the plaint. The termination of tenancy by notice Ext. A5 and the receipt of notice by counsel for defendant on 12-3-1980 are averred there. The answer is in paragraphs 12 and 13 of the written statement. It specifically refers to the quit notice as mentioned in paragraph 12 of the plaint. There is no contention that it had not reached the defendant. The only contention was the ineffectiveness of that notice to terminate the tenancy.

5. The plaintiff gave evidence wherein he proved the notices and replies referred to above. The trial court observed

.....naturally the last day expiring or ending with the end of month of tenancy should be last day of the month. So Ext. A5 which terminated the tenancy as on 31-3-1980 is proper. In Ext. A5 there is 15 day's clear notice also. So it is sufficient notice.

The defendant, in his evidence did not even formally state about the absence of notice or its insufficiency. Before the trial court, no contention about the mode or manner of service of notice was raised.

6. In appeal, however, a new contention was Urged

That Ext. A5 had not been served on the defendant and consequently there was no valid notice on the defendant personally.

The lower appellate court adverted to Exts. A2 to A5 and observed:

From Ext. A2 to A5, A4, it can be seen that the Advocate was acting as the agent of the principal defendant in respect of the matter and the defendant had authorised the advocate to do whatever necessary for the defendant in respect of the months.

The statutory provision u/s 106 of the Transfer of Property Act, 1882, and the judicial decisions explaining its scope in the context of similar contentions was thereafter discussed by that Court. Its conclusion was couched in the following sentences:

I find that Ext. A5 notice issued to defendant's counsel also amount to sufficient notice since the counsel is acting as the agent of the principal, defendant. The purpose of the notice is to make the person concerned aware of the purport of the content of such notice. By no stretch of imagination it can be said that the defendant is not aware of the contents of the notice through his pleader. Therefore I find that Ext. A5 notice is valid and tenancy is terminated accordingly.

7. The correctness of the conclusion as reached by the court below is canvassed in second appeal. The left-over contention about the sufficiency of the notice was not permitted to be raised in the second appeal, it not having been urged before the appellate court. There is no merit in it either. Counsel's Authority:

8. Exts. A2 and A3 would furnish a background about the extensive authority conferred on and exercised by counsel on behalf of the defendant. It was not confined to single act or a few actions. It enveloped virtually every important of aspect of the tenancy arrangement. Counsel dealt with the terms of tenancy as instructed by the defendant-about the rate of rent being only Rs. 10 per month, about the purposes for which the tenancy was created which according to him was for purposes of residence and for conducting a tea trade and about there being no prohibition about sub-letting and like matters. Counsel, as noted earlier, acted on behalf of the defendant in remitting, what according to him was the arrears of rent. Further extension of the authority of counsel is evident from Ext. A4 wherein he made demands on behalf of his client - defendant to effect repairs to the tenanted building. A proposal for adjustment of the expenses incurred in effecting repairs from out of the rental liability was also indicated therein. On a proper evaluation of these documents, the inference is irresistible that counsel had authority to act on behalf of the defendant - tenant in relation to all matters concerned with the tenancy. If that be so, he did have authority on behalf of his client to accept the notice of termination of tenancy sent on behalf of the plaintiff.

9. The general principles relating to counsel's authority, and the facts and circumstances as emerging from the documents referred to above, would clearly make out a case of a valid and proper service of notice as required by law.

Service of Notice :

10. The purpose underlying the service of notice can also be usefully referred to in that connection. There is no particular charm in insisting on a passage from palm to palm as it were, as regards the notice of termination of tenancy. Complexities of modern life, in particular, would rule out the, empty formality. Known and novel methods of communication, could not be tabooed, so long as they subserve the primary purpose of bringing home to the tenant the contents of the notice in clear and categorical terms. Whether it be the authority on behalf of the landlord to serve, or the authority on behalf of the tenant to receive, notice, the current practice available here and in other jurisdictions governed by similar principles could be conveniently noticed in this connection.

11. David Yates and A.J. Hawkins in *Landlord and Tenant Law*" (1981 Edn.) observed at page 256;

Most notices are served by agents on behalf of the landlord, and it can be important to determine if the agent had sufficient authority to service notice. Agents who are concerned with the general letting and management of the property have sufficient authority and can serve notices in their own name." Other agents, e.g. solicitors instructed to recover possession, require authority to serve notices and should do so either in the landlord's name or on his behalf.

The Court found an effective notice when it was served by solicitors in *Narmond Properties Ltd. v. Gajdzis*. (1968) 1 W.L.R. 1858.)

12. The decision relating to service of notice on the tenant has also been discussed in the aforesaid treatise:

A notice is effectively served if it can be shown that it should have come to the tenant before the period of the notice starts to run. Personal service is obviously effective but unusual.

There have been cases where service by delivery to the tenant's wife or at the employee's premises had been found effective. The position of a counsel, particularly one who had wielded extensive authority as in the present case could not be in any way less effective or less extensive.

13. In *Tanham v. Nicholson*, (1872) L.R. 5 H. L. 561, it was held that service upon a person whose duty would be to deliver the notice to the tenant was sufficient, although in fact the notice was never delivered to the tenant.

Sec. 106 of the T. P. Act:

14. The judicial thoughts on general principles are helpful, though the Indian Courts have to deal with their own specific statutory provision.

The relevant provision portion of Section 106 of the Transfer of Property Act reads:

In the absence of a contract or local law or usage to contrary a lease of

immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year, to year terminable, on the part of either lessor or lessee, by six months" 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 or either lessor or lessee, by fifteen days" notice expiring with the end of a month of the tenancy.

The Section can be usefully read and understood in the company of other statutory provisions such as section 188 (extent of agent's authority), Section 237 (Principal being bound by acts of agent) of the Indian Contract Act, 1872 and Order III Rules 2 to 6, C.P.C. which deals with "recognised agents and pleaders"

15. One of the early cases in which service of notice on counsel was acknowledged as sufficient notice is *Bradly v. Riches*. 1898(9) Ch. L.R 189. Fry J. observed;

Now upon that cases seem to me to lay down the rule clearly. You must, in the first place, look at what are the circumstances of the case as to knowledge. If the circumstances of the case are such as in the ordinary course of business between solicitor and client they are, then the solicitor must be assumed to have communicated the fact to his client, and the knowledge of the agent is, to use language of Lord Chelmsford in *Espin v. Perberton* (1), the imputed knowledge of the client. It appears to me to be clear that presumption or imputation is a thing which the client cannot be allowed to rebut.

16. Section 106 no doubt states that notice of termination of tenancy shall be served on the tenant personally. This provision cannot, however, be read in isolation or uninfluenced by other statutory provisions. The provision is subject to the general law of agency. The relationship between the client and attorney or pleader is that of principal and agent. An advocate in the situation as it obtains in this State, combines in him the authority of a solicitor and of an attorney. The area of authority, if at all, is only a larger one.

17. The principle enunciated in *Bradley's* case supra was approvingly referred to by the Sind High Court in *Haroon Haji Hamid v. Meherali Din* AIR 1927 Sind 22.

18. That there is no particular sanctity in handing over a notice to the very hands of the defendant himself had been lucidly explained by Justice Foulton in *Bhojabhai v. Havem Samuel*, ILR 22 Bom 754. The following observation would serve to show the dazzling logic in the view taken by the learned Judge:

The notice was not delivered the defendant personally. I am asked to say that it was not delivered the defendant personally, because it was not placed in his hands by the plaintiffs or their agent. But I could not so decide without adding words to the section which does not determine by whom delivery must be made. So long as the notice is delivered by some one to the defendant, the literal terms of the section are complied with and also, I think, its intention which is simply to

secure due notice to the tenants. I cannot see what difference it makes whether a notice is given in the first instance, to the solicitors and by him conveyed through a relative or servant to the tenant, or whether it is given direct to the tenant by the lessor in the first instance. In both cases it is either eventually or directly delivered to the tenant personally and that is all that the language or the spirit of the section requires. To accept the argument put forward for the defence it seems to me that I should have to alter the wording of the section, and that in doing so I should clearly be defeating its intention.

19. The above view of the Bombay High Court found acceptance by the Calcutta High Court where notice was served on a tenant's attorney (vide *J. Mc. Gaffin and Another Vs. Life Insurance Corporation of India*,). Whether viewed from the point of view of principles or from the persuasive precedents, service of notice on counsel as has been done in the present case, has to be held as effective and vigorous as would have been the case if it had been handed over to the tenant himself.

20. Counsel's high and responsible position vis-a-vis his client, came up for judicial comment in recent times in *Waugh v. H. B. Clifford & Sons*, 1982.1. All E.R. 1095. There is a review of the case law starting from *Swinfen* litigation when Romelly MR took a restricted view. (See *Swinfen v. Swinfen*, 53 E.R. 410). In relation to compromises effected, the law has become well established that the solicitor or counsel retained in an action has implied authority as between himself and his client to compromise the suit without reference to the client provided that the compromise does not involve matter collateral to the action. In *Waugh v. H. B. Clifford & Sons*, supra, Cumming

Bruce L.J. expatiated on counsel's position and the good and onerous work done by him in relation to cases coming to the courts. The following observation appears to be very pertinent:

I think it would be regrettable if this Court were to place too restrictive a limitation on the ostensible authority of solicitors and counsel to bind their clients to compromise..... So many compromises are made in Court, or in counsel's Chambers, the solicitor but not the client being present. This is inevitably so where a co-operation is involved. It is highly undesirable that a Court should place unnecessary impediments in the way of that convenient procedure.....In a proper case he can agree without specific reference to his client. But in the great majority of cases, and certainly in all cases of magnitude, he will in practice take great care to consult his client and I think that his client would be aggrieved if in an important case involving large sum of money he relied on his implied authority. But that does not affect his ostensible authority vis-a-vis the opposing litigant.

The ostensible authority of counsel is undoubtedly of a high and wide character.

21. The decision of the Supreme Court in *State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another*, can also be usefully referred to in this connection.

The State was not allowed in that case to resile from the concession made by counsel in the course of arguments in the case.

Conclusion

22. When counsel had received Ext. A5 notice, he had a duty to communicate it to his client. As noted earlier, the clear indication in the averments in the plaint and in the written statement is about an actual communication of the quit notice by counsel to the tenant. In the circumstances, service of notice on counsel would be sufficient as he had a duty to deliver it to his client. It is unnecessary to lay down a proposition having such an extreme implication in the present case... Service of notice can be held to be sufficient and proper in the light of the legal principles concerning counsel's duty and the actual authority exercised by counsel for the tenant as established by the evidence and circumstances.

23. In the light of the above discussion, I have no hesitation to hold that the service of notice to quit made on counsel, is a proper, valid and effective notice as visualised u/s -106 of the Transfer of Property, Act 1882. It would then follow that the second appeal has to be dismissed. I do so, but without any order as to costs. I direct that the eviction will be deferred for a period of four months, if the appellant files within two weeks an undertaking in the trial court to vacate the premises after the expiry of the aforesaid four months period.

Some general observation. Contentions based on the deficiencies in the content of the notice, the authority for serving and for being served upon, and the mode and manner of such service, have been fertile fields for litigational cultivation. It has been the experience of this Court, and in many of the Subordinate Courts, that contentions of the aforesaid nature, account for substantial portion of the pending actions. It has been so in other countries too., As David Yates and A. J. Hawkins observes, in "Landlord and Tenant, Law" at page 254:

Considerable difficulty has been experienced in stating accurately the "anniversary" of a tenancy when its starting date is known, a fortiori when it is not. This area has provided many a field day for the technically minded lawyers.

The formula to get over the difficulties arising out of the uncertainty of either of the starting date of the tenancy or of correct finishing date has been noted by the authorities. The formula itself has floundered at time as in *Phibbs & Co. v. Rogers*. (1925) 1 K.B. 14, though it had flourished in *Maw v Borun*. (1915) 1 K.B 830, and in *Allam & Co. Ltd. v. Europe Poster Services Ltd.*, 1963. 1. W.L.R. 638. Sortie of the difficulties arising out of the service of notice have been attempted to be removed in England by the statutory provision enacted in that country. Prominent among them would appear to be the Landlord and Tenant Act, 1954. The Transfer of property Act enacted in India 18 years before the dawn of the 20th century, would deservedly merit an examination by the Law Commission on a priority basis at the sunset of that century. The judicial thoughts reflected on the decisions leading to and furnishing the background for the statutory amendments in England may be helpful to take stock of the Indian situation, to

chop off the dead wood of feudal origin and impart to the Statute fresh sap and sunlight and thus give it a new and fresh vitality. A copy of the judgment will be forwarded to the Law Commission for such action as is found necessary by that august body.