
(1964) 10 AHC CK 0015
In the Allahabad High Court
Case No : First Civil Appeal No. 89 of 1957

Zahoor Ahmad Abdul Sattar

APPELLANT

Vs

State of Uttar Pradesh and Another

RESPONDENT

Date of Decision : 23-10-1964

Acts Referred:

Government Grants Act, 1895 — Section 2

Transfer of Property Act, 1882 — Section 106, 107, 116, 14, 5

Citation : AIR 1965 All 326 : (1967) RD 16

Hon'ble Judges : N.U. Beg, J;G.D. Sahgal, J

Bench : Division Bench

Advocate : S.C. Das, for the Appellant; Kesribir Prasad, for the Respondent

Final Decision : Partly Allowed

Judgement

Sahgal, J.—This is a defendant's appeal against whom a suit for a sum of Rs. 11,000/. by way of compensation for use and occupation has been decreed by me Civil Judge of Kheri. A decree for a sum of Rs. 1,000/- has also been passed against the appellant for special costs u/s 35-A of the Code of Civil Procedure.

2. The dispute relates to a piece of land 200" x 200" situated in Chandan Chowki, Sonaripur Range in the North Kheri Forest Division. The State of U. P., respondent No. 1. is the proprietor of the reserved forest wherein the land lies. The defendant-appellant erected a paddy husking mill in that land for which purpose he had taken it. The land was originally taken for a sum of Rs. 100/- as rent for one year from the 1st of March, 1947. A document was executed for the purpose, copy of which is Ext. 3 at page 39 of our paper book. A subsequent lease for the same sum of Rs. 100/- was executed on the 10th of June, 1948 for one year beginning the 19th of March, 1948. This document is Ext. 4 and is at page 42 of our paper book. Thereafter though the defendant continued to remain in possession of the land, it took sometime before the terms were actually settled. The Under Secretary to Government in the Forest Department wrote a letter to the Chief conservator of Forests saying that the Government did not

agree to the renewal of the existing leases or to the grant of fresh leases at the nominal rent of Ra. 100/-.

On the other hand, normal procedure of inviting tenders was directed to be followed and highest bid offered was to be referred to the Government for sanction. In case any concession was proposed, full reasons for justifying it were to be intimated to the Government. As to the terms so far allowed to the lessees--there were other lessees also of other plots for similar purposes--it was pointed out that they were much too favourable and should be revised. The Chief Conservator was asked to submit to Government proposals for changes in these terms as may be fair to both the parties. This letter is dated the 8th of November, 1949 and is Ext. 10 at page 53. From this letter it appears that even though the lease had not been renewed for the year 1949-50, the lessee continued to be in possession of the land. In the meantime the Regional Food Controller seems to have come to know about this letter of Government and on the 3rd of December, 1949 he wrote a letter to the Conservator of Forests, Eastern Circle, saying that as Chandan Chowki and Gauriphanta this was the other area within which (similar mills were allowed to be erected--were very important centres for rice procurement and rice mills had been working in these places for several years, he would suggest for the issuing of interim permits to run the mills to those that applied to him if they had been working last year.

He promised that the mills would give in undertaking in writing that they would abide by the new lease sanctioned by the department. Rice procurement was likely to suffer if there was any delay in the running of the rice mills. A copy was forwarded to the Divisional Forest Officer, north Kheri also (vide Ext. 11, page 55). On receiving this letter the Divisional Forest Officer wrote a letter on the 12th of December, 1949 to the Conservator of Forests that the lease of the defendant-appellant would expire on the 18th of March, 1950 and in view of the recommendation of the Regional Food Controller he was of opinion that the leases of all the three existing mills including that of Zahoor Ahmad, the appellant, be renewed on payment of Rs. 1,000/- each for the period ending July 15, 1950 (Ext. 9, page 51). In the meantime, it appears, Zahoor Ahmad gave an undertaking to the Divisional Forest Officer on the 2nd of December, 1949 that if he was given permission to run his mill till the 15th of July, 1950, he would pay the rent and abide by the terms of the renewed lease as might be sanctioned by the Government in the Forest Department (Ext. 7, page 40).

The Divisional Forest Officer thereafter wrote a letter on the 8th of March, 1950 advising the defendant-appellant to deposit a security of Rs. 1,500/- forthwith, failing which he would not be allowed to run the mill beyond the 18th of March, 1950 and in case the amount was deposited, he would be allowed to run the mill up to the 16th of July, 1950 and would have to pay the rent for the year of an amount which may be demanded by the Government (Ext. A-6, page 67). This letter was written in reply to a letter sent on behalf of the defendant along with a cheque for Rs. 100/- to the Divisional Forest Officer. That cheque also was

returned. The defendant seems to have continued to occupy the land and we may take it that he agreed to abide by the decision of the Government as to the amount of the rent that may have to be paid for his continuation in possession till the 15th of July, 1950. By mesne of a D. O. the Government agreed to grant the leases to the proprietors of the existing rice mills including the defendant for the year ending the 16th of July, 1950 on a rental of Rs. 1,000/- per annum each (Ext. 8 page 50). Thus the lease that was originally started on the 1st of March, 1947 continued up till the 15th of July, 1950. For the first two years the rent was Rs. 100/- per annum while for the third year which was extended upto the 15th of July, 1950 it was agreed to at Rs. 1,000/-. The present suit relates to the period after the 15th of July, 1950.

3. According to the plaint allegations, after the 15th of July, 1950 the appellant was asked to vacate the premises but he did not do so, at the same time assuring the officers all the time that he would pay the rent as fixed by the Forest Department. The Government fixed the annual rent at Rs. 3,000/- per annum after taking into consideration the prevailing conditions and peculiar circumstances in that area and allowed the defendant to run his existing husking mill for the years 1950-51, 1951-52 and 1952-53. He was given an option that if he did not agree to pay Rs. 3,000/- per annum he could pay Rs. 1,800/- only with a clear condition that he would vacate the premises after the season of 1950-51. The defendant did not pay any amount towards the annual rent nor did he vacate the premises with the result that a notice was served on him to pay the annual rent for the years 1950-51 and 1951-52 on the 29th of October, 1952, the total coming to Rs. 6,000/- and vacate the premises. On failure to pay the amount and vacate the premises he was told that he would be liable to pay Rs. 5,000/- annually as rent for future use and occupation of the land. As the amount had not been paid, the suit was tiled for the recovery of a sum of Rs. 3,000/- for the year 1950-51 and Rs. 3,000/- for the year 1951-52 and of Rs. 5,000/- for the year 1952-53, the total coming to Rs. 11,000/-.

3a. The defence was that though a notice was given by the plaintiff for charging enhanced rent, it was not agreed to by the defendant. The plaintiff attempted to enhance the rent which enhancement was most unreasonable and unjust and the defendant never agreed to pay any higher rent than what was originally fixed. The lease had terminated on the 15th of July, 1950 and for the period thereafter the plaintiff could at the most claim reasonable amount by way of damages for the use and occupation of the land. It was also pointed out that the plaintiff having assented to the defendant's continuing in possession after the termination of the lease, the defendant would in law be deemed to be holding over under the same terms and conditions as the original lease. The plaintiff was, according to the assertion on behalf of the defendant, entitled to not more than Rs. 100/- a year which the defendant was always-willing to pay and which was a fair valuation for the use and occupation of the land.

4. At the time of the settlement of the issues when statements on behalf of the

parties were recorded under Order X of the CPC the District Government Counsel on behalf of the plaintiff gave a statement to the effect that the defendant was not a tenant by holding over and there was no renewal of the lease after July, 1950 and that the claim even for the sum of Rs. 6,000/- for the years 1950-51 and 1951-52 was for use and occupation of the land by the defendant. Thus the entire suit ultimately was one for use and occupation of the land by the defendant.

5. It may be pointed out that the original lessee was Zahoor Ahmad, the appellant. He had taken a partner also in his business and the mil) was run in the name of the Associated Industries, Bareilly, who was also added as a defendant at a later stage.

6. The learned Civil Judge held that the defendant was occupying the land as trespasser after the termination of the lease on the 15th of July, 1950 and he assessed the compensation for use and occupation for each year at Rs. 4,000/-. According to him, the plaintiff was entitled to a decree for Rs. 12,000/- but as Rs. 11,000/- had only been claimed, he passed a decree for that amount. He also held that Zahoor Ahmad having given an undertaking that he would abide by the decision of the Forest Department as to the amount of rent that may be fixed, he had taken a false defence and the defence taken was vexatious. He, accordingly, decreed a sum of Rs. 1,000/- against him by way of special costs u/s 35-A of the Code of Civil Procedure.

7. It is in these circumstances that the appeal has been filed. We have, therefore, to see what the position of the defendant is and for what amount should a decree be passed against him. We have also to see if the plaintiff was entitled to any special costs.

8. We have already examined the documents leading up to the order of Government contained in G. O. dated the 6th of June, 1950, Ext. 8, under which it sanctioned the proposal for the grant of the lease to the defendant for the year ending July, 1950 on a rental of Rs. 1,000/- per annum. The defendant was bound to pay this amount in view of his having given an undertaking already referred to above (Ext. 7). The defendant, however, continued to remain in possession even after the expiry of the lease on the 15th of July, 1950 and we have to see in what capacity he remained in possession.

9. The next document that we have in this connection is the copy of a telegram dated the 26th of September, 1950 (Ext. A-4 at page 65) from the Divisional Forest Officer to the defendant wherein he was asked, if he was willing, to pay Rs. 5,251/- per annum for the renewal period of lease for the land. We do not know whether any reply was sent by the defendant to this telegram or not. We next come to document Ext. 6 consisting of a G. O. dated 7th of February, 1951 to the Conservator of Forests wherein it is stated that the Governor had been pleased to sanction the lease of the site on a rental of Rs. 3,000/- for one year in favour of those who held the lease during the previous year (including the

defendant) and it was on the same conditions as had been laid down for the site of the mills of Gauriphanta, the other area where there were similar mills. There does not appear to have been given any undertaking this year on the part of the defendant to abide by the decision of the Government but Ext. 6 at page 47 does show that the Government did take the decision by which it wanted to charge Rs. 3,000/- per year.

The Government cannot claim this amount from the defendant unless it is able to show that the defendant ever agreed to pay it. From the record we do not find any undertaking of the type that was given during the earlier year on behalf of the defendant agreeing to abide by the decision of the Government in that connection. On the 27th of August, 1951 the Divisional Forest Officer wrote a letter to the defendant (Ext. A-3 at page 64) wherein he asked the defendant to see him at his office on the 1st of September, 1951 to discuss with him the communication received from the Government regarding the rental for the rice mills for the year 1950-51. We do not know whether the defendant met the Divisional Forest Officer that day or not and If he met him what happened to that Interview, hut we have on record another letter dated the 4th of December, 1951 (Ext. A-7, page 69) from the Divisional Forest Officer to the firm of the defendant wherein it was asked to pay the rental of Rs. 3,000/- for the year 1950-51 and if it did not agree to pay this amount, the rental should be reduced to Rs. 1,800/- but the mill would not be allowed to have the lease in future in any circumstances.

It was told that in spite of the reminders it had not deposited the rental of Rs. 3,000/-. This seems to have been a registered notice and the arm was required even to remove the mill from the Forest Department land within six months from the date of receipt of the notice and during this interim period it could not run the mill. It was also warned that on failure to do this, all the buildings and machinery existing at site would lapse to the Forest Department and the sum of Rs. 1,800/- would be recovered from its property. It would thus appear that till the 4th of December, 1951 the defendant-appellant had not agreed to any amount of rent payable by him for the year 1950-51. The mill was asked to agree to pay Rs. 3,000/. per annum on which condition further lease would be granted but in case it did not agree to do so, a sum of Rs. 1,800/- could be paid and even if that amount could not be paid, it would be realised from its property. The premises were to be vacated in these circumstances and the running of the mill stopped.

Obviously, it appears that the defendant was allowed to continue in the occupation of the lease land without any agreement as to the amount that was payable as lease money for the year 1950-51 and without any undertaking on the part of the defendant, the Government arbitrarily fixed the amount at Rs. 3,000/- for the continuation of the lease and in case this amount was not agreeable the defendant was to pay Rs. 1,800/- for the year and to vacate the premises after the period of six months. Nothing seems to have been done

thereafter and even up till this day the land has not been vacated. Probably the Government itself did not want to get the lease land vacated for it did not file any suit for ejectment. Instead, it filed a suit for the recovery of compensation for use and occupation.

On the 29th of October, 1952 the Conservator of Forests sent a notice to the defendant wherein it has been pointed out that the lease having expired on the 18th of March, 1950 and the defendant having been allowed to occupy the land at a rental of Rs. 1,000/- per annum up till the 18th of July, 1950 (this ought to have been 15th of July in view of the facts above stated) and whereas the Government further offered to allow him to run the mill beyond the 15th of July, 1950 for three years provided he was prepared to pay Rs. 3,000/- per annum and for one year only in case he was prepared to pay Rs. 1,800/. with the further condition that the lease would not be renewed and whereas he had not executed any deed of lease formally Incorporating the terms and whereas he was running the mill without any authority in spite of the notice served by the Divisional Forest Officer from time to time and where- as he was a mere licensee liable to eviction at will, he should vacate the land and remove the plant and machinery that he might have erected thereon and within one month of the date of the receipt of the notice pay an amount of Rs. 6,000/-to the Government on account of damages for the use and occupation of the land and in case he did not do so, a suit would be filed against him for the recovery of the amount for the use of the land and damages at the rate of Rs. 6,000/- per annum for future use and occupation.

In reply to this notice the defendant pointed out the plaintiff that he was not a mere licensee of the land, the land having been leased to him under a lease deed executed by him. He claimed that he was holding over under the original lease deed. He also stated that he never refused to renew the original lease deed but the Government was taking a queer and strange position by arbitrarily enhancing the rent according to its sweet will. The rent demanded was far from being reasonable and fair though he had always shown his willingness to pay a fair and reasonable rent. He also asserted that he was not legally liable to be ejected from the land (vide Ext. A-10, page 74). It is in these circumstances that the suit giving rise to this appeal was filed and it is in the light of these circumstances that we have to examine what the position of the defendant was with respect to the land and for what amount should a decree have been passed against him.

10. From the facts above stated, it would be clear that the defendant was granted a lease from the 1st of March, 1947 at an annual rental of Rs. 100/. The lease was renewed the next year also but from the 10th of March. After the termination of the lease for the year 1948-49 in March 1949, the defendant continued to be in possession of the land and he agreed to abide by the terms to be fixed by the Government and under those terms he was required to pay Rs. 1,000/- as rent for the occupation of the land till the 15th of July, 1950. Thereafter also he continued to be in occupation with the consent of the

Government but this time the defendant does not seem to have given any undertaking that he would be prepared to pay whatever rent the Government might think it fit to charge from him. The Government was anxious to charge as much as it could. A telegram was sent to him demanding a sum of Rs. 5,251/- but this matter does not seem to have been pursued. Ultimately it demanded Rs. 3,000/- for the renewal of the lease but in case the defendant did not agree, it asked the defendant only to pay Rs. 1,800/- but vacate the premises after the expiry of six months. To this also the defendant does not seem to have agreed but the occupation of the land continued with the consent of the Government. The correspondence referred to above shows that the defendant was throughout agreeable to pay any reasonable amount as rent. Rs. 3,000/- a year, therefore, cannot be said to be the amount to which the defendant might have been a consenting party.

11. Section 116 of the Transfer of Property Act, in to far as it is relevant for our purposes, provides :

"if a lessee.of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor. accepts rent from the lessee.or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in Section 106.

12. In this case the lessee, the defendant, remained in possession of the leased property after the determination of the lease on the 15th of July, 1950. The lessor, the Government of U. P. did not accept rent from him but from the conduct of the former, it must be deemed otherwise to have assented to his continuing in possession. in the circumstances there being no agreement to the contrary, the lease being for industrial purposes must be deemed to have been renewed from year to year as specified in Section 106 of the Transfer of Property Act. There was thus a renewal of the lease from the 18th of July, 1950 and one of the terms of the lease was that it was a lease from year to year and in terms of Section 106 of the Transfer of Property Act, it was a lease terminable by six months" notice expiring with the end of a year of the tenancy. What would under these circumstances be the amount of rent payable? A perusal of Section 116 would show that though the lease had determined, it was renewed. The renewal of the lease would mean that its terms and conditions would be the same as of the previous lease except that having due regard to the nature of the lease, it would be deemed to have been renewed from year to year in view of the specific provisions contained in Section 116 of the Transfer of Property Act. The plaintiff was in these circumstances not entitled to charge more than Rs. 1,000/- a year for the continuation of the defendant in possession of the land.

13. In AIR 1925 173 (Oudh) it has been held that where a tenancy is created by reason of the landlord allowing the tenants to hold over after the original lease terminates, then in the absence of any terms to respect of the new tenancy the

terms governing the original lease would be deemed to have been accepted by the parties.

14. A Division Bench of the Calcutta High Court also in *Krishna Charan Sukladas and Others Vs. Nitya Sundari Devi*, held that when the lessee holds over after the expiry of the lease he must be considered to hold on the terms stipulated in the lease.

15. A single Judge of our own High Court in *Badal and Others Vs. Ram Bharosa and Others*, following AIR 1925 173 (Oudh) also held that where a lease for one year is taken commencing from certain date of a month, say 24th, and the lessee is allowed to hold over after the expiry of the term of the lease, the commencement of the tenancy is the initial date on which the original lease commenced.

16. *Goodeham and Works Ltd. v. Canadian Broadcasting Corporation* AIR 1949 PC 80 was a case in which after the termination of the lease the landlord had accepted the rent from the tenant. The lease in the circumstances stood renewed and it was held that from and after the 15th of May, 1936, the date on which the original lease terminated, the relation of the parties was by presumption of law that of landlord and tenant under a year to year tenancy terminable by six months notice on either side before 15th May in any year.

17. It would thus appear from the trend of authority as also from the plain interpretation of the section that the renewed lease would be on the same terms as the original lease except that it would be a lease from year to year or from month to month according to the nature of the tenancy, the other conditions remaining the same.

18. On behalf of the State the learned Counsel drew our attention to a case of the Assam High Court *Ambar Ali v. Anjab Ali* AIR 1949 Gau 87 to show that it was not correct to say that the renewal of the lease within the meaning of Section 116 of the Transfer of Property Act amounted to a continuation of the lease on the same terms. He drew our attention to head-note (b) but a careful perusal of the case shows that this authority does not go against the view above expressed but in fact supports it. It was urged in that case by Mr. Ghose for the appellants that the renewal of the lease within the meaning of Section 118 of the Transfer of Property Act amounted to a continuation of the original lease on the original terms. This contention was repelled by remarking that it was based upon an erroneous interpretation of Section 116. It was pointed out that in the case of holding over at the determination of the tenancy, the acceptance of rent or the express or implied assent of the landlord to the occupation of the tenant after the termination of the lease has the effect of renewing the lease and not continuing the original lease.

With this view we are in respectful agreement. As a result of holding over, the old lease is terminated but the lease is renewed. It is not the case of the original lease continuing. The terms of the new lease would, however, be the same as the

old lease except that it would be a lease from year to year or from month to month according to the nature of the tenancy. Thus if in the original lease there was any term under which the lease would not be from year to year or from month to month, then having due regard to the nature of the lease. It would become a lease from year to year or from month to month as the case may be. By way of an illustration if a lease is granted for a fixed period of three years and is terminable after the expiry of that period and there is holding over after the termination of the lease, the new lease will not be a lease for three years but will be a lease from year to year or from month to month according to the nature of the lease. i.e., if it is a lease for Industrial or agricultural purposes, it would be a lease from year to year and if it is a lease for any other purpose, it would be a lease from month to month.

The holding over, therefore, makes this much difference that if there is any condition in the original lease as to the period of the lease, that condition would no longer apply but instead the lease would be from year to year or from month to month according to the nature of the lease terminable with the end of the year of the tenancy or the end of the month of the tenancy as the case may be. In the Assam case AIR 1949 Gau 87 the provisions of Section 44 read with Section 3(17) of the Assam Tenancy Act came into the picture and under those provisions of law the plaintiffs were not entitled to recover, by way of rent, anything more than five times the annual revenue less the deductions allowed by the Government and even though the rate of rent was Rs. 16/- per annum in the original lease, it was reduced to Rs. 3/12 for three bighas in terms of that Act. There is no such statutory provision here that might entitle the plaintiff to enhance or the defendant to reduce the rate of rent from that contained in the lease which was terminated on the 15th of July, 1950. In view of what we have said above, the lease in favour of the defendant would be deemed to have been renewed as from the 16th of July, 1950 on a rental of Rs. 1,000/- per annum and the lease would be a lease from year to year terminable on a six months' notice.

19. Having come to the conclusion that as from the 16th of July, 1950 the lease was renewed from year to year, we have to see what is the effect of the notice dated the 4th of December, 1951 (Ext. A-7) referred to above. This notice required the defendant that in case he did not agree to a rental of Rs. 3,000/- for 1950-51, it could be reduced to a rental of Rs. 1,800/- but he should vacate the premises within six months of the date of the notice. The defendant did not agree either to pay Rs. 3,000/- per annum or even to pay Rs. 1,800/-. This would appear from the reply sent by the defendant contained in Ext. A-10 already referred to above wherein the defendant protested that the rent demanded was far from being reasonable and fair. It cannot, therefore, be said that he agreed to continue in occupation of the land on condition that he would pay either Rs. 3,000/- or Rs. 1,800/-. We are fortified in this view of ours by a Division Bench case of the erstwhile Chief Court of Oudh in AIR 1933 465 (Oudh) wherein it has been held that where enhanced rate of rent is proposed by a landlord, and the tenant continues to occupy the leasehold property without any

protest as to the proposed enhancement of rent, the latter should be deemed to have accepted the proposal; but when the tenant protests against such enhancement and the landlord does not take ejectment proceedings, he is not entitled to claim rent at the enhanced rate.

20. The new tenancy commenced from the 16th of July, 1950. We do not know when notice (Ext. A-7) was received by the defendant, but in order that it may terminate the tenancy, it should have been a notice in accordance with the provisions of Section 106 of the Transfer of Property Act, i.e., a six months' notice expiring with the end of a year of the tenancy, i.e., the 15th of July, 1952. The notice does not show that it was such a notice. The renewed tenancy as a result of the holding over, therefore, continued and was not terminated. The plaintiff is in these circumstances not entitled to anything more than Rs. 1,000/- a year for three years for which the suit has been filed and a decree that could be passed could not be for more than Rs. 3,000/-.

21. The learned Counsel appearing on behalf Of the State drew our attention to the provisions of Section 107 of the Transfer of Property Act. It Provides that 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. He drew our attention to the lease that was originally granted in the case, namely, Ext. 3 and the lease granted subsequent to it Ext. 4 already referred to above. Those leases, according to him, ought to have been registered in view of the provisions of Section 107 of the Transfer of Property Act and as they were not registered, those documents could not create tenancy rights in the land for the defendant. There was, therefore, no question of holding over u/s 116 of the Transfer of Property Act and if anything could be recovered, it could be recovered for use and occupation and not by way of rent. In support of his contention he relied on an authority of the Chief Court of Oudh in *Thakur v. Jagdambika Pratap Narain Singh* AIR 1942 Oudh 83.

In our opinion the argument is not tenable, in order that the provisions of Section 107 may apply to a lease, it should be a lease either from year to year or for a term exceeding one year or it should be a lease reserving a yearly rent. Obviously, the original lease was never from year to year. Document Ext. 3 describes it as a lease only for a year. The term "from year to year" implies that the tenancy continues so long as the Party desires it to continue though it is terminable at the option of either party at the end of any year. The lease from year to year is not ipso facto determined at the end of every year. When a lease is only for a year, it is determined at the end of the year. The lease (Ext. 3) and thereafter the lease (Ext. 4) being only for a year cannot be said to be leases from year to year. These documents do not constitute leases from year to year nor for any term exceeding one year. They cannot also be said to be leases reserving yearly rent. They reserve rent for the period for which they have been granted, namely, one year.

The term "yearly rent" implies that the lease is for a number of years or at least

is not for one year only. Thus neither lease (Ext. 3) for the year 1947-48 nor the lease (Ext. 4) for the year 1848-49 is a lease from year to year or a lease for more than a year, or a lease reserving a yearly rent. The next lease also was for one year ending July 15, 1850. It was not a lease in writing though the terms can be culled from the conduct of and the correspondence between the parties. Section 107 of the Transfer of Property Act, therefore, does not apply to the lease in question. The authority cited also, therefore, does not apply at all. In that case the lease had been granted for three years and it being not a registered instrument, it was held that it was not a lease. It was in these circumstances held that Section 116 of the Transfer of Property Act would not apply to such case. As to the renewal of the lease by holding over in the instant case also it was not necessary for it to be a registered instrument. No doubt, u/s 116 of the Transfer of Property Act by holding over, the defendant became a tenant from year to year but as the relation of landlord and tenant between the plaintiff and the defendant was a result of operation of the law and not the result of an act of parties, Section 107 would not apply. Section 107 applies to leases that are "made" and not to leases that are created by law. (The underlining (herein " ") is ours). As a result of the holding over there is a case of the renewal only by operation of law and not the making of the lease. This argument, therefore, also cannot be accepted.

21a. Lastly, it was pointed out that as the provisions of the Crown Grants Act, 1895 (Act XV of 1895 now the Government Grants Act, 1895) apply to the present case, u/s 2 of that Act the provisions of the Transfer of Property Act will not apply and as such there was no case of any holding over u/s 110 of the Transfer of Property Act. This argument, however, has been set at rest by a long trend of authority of our High Court, the last being *Lala Kishun Chand Vs. Sheo Dutta*, . It has been pointed out therein that Section 2 of the Crown Grants Act of 1895 does not render all the provisions of the Transfer of Property Act inapplicable to lands held under grant from the Crown, but the meaning of the Section is that when the Court is called upon to construe an instrument granting land by the Crown, it shall construe such grant irrespective of the provisions of the Transfer of Property Act. Section 2 of the Act provides:

"Nothing in the Transfer of Property Act, 1882, contained shall apply or be deemed ever to have applied to any grant or other transfer of land or of any interest therein heretofore made or hereafter to be made by or on behalf of the Government to, or in favour of, any person whomsoever; but every such grant and transfer shall be construed and take effect as if the said Act had not been passed."

The second portion of this section after the semicolon is the key to the understanding of the section. It provides that if the grant ever comes to be construed, then the Court shall construe such grant irrespective of the provisions of the Transfer of Property Act. For instance, Section 14 of the Transfer of Property Act provides what is known as the rule against perpetuity. In case of a

grant made by the Government this rule will not apply. This argument, therefore, also is of no avail.

22. There is no question of any special costs being allowed to the State. The special costs were allowed on the ground that the appellant had falsely taken the plea that he had not given any undertaking for the fixing of the rent by the Forest Department. The undertaking that he had given, however, was only for the rent for the year 1949-50 regarding which there is no dispute in the case. The grant of the special costs, therefore, was not Justified.

23. One of the grounds taken in the memorandum being ground No. 9 is to the effect that the decree should not have been granted against the appellant alone but this ground was not pressed during arguments. It is the appellant alone who entered into the contract of tenancy with the Government and he alone was liable.

24. The appeal is, accordingly, allowed only to this extent that in place of a decree for a sum of Rs. 11,000/- with costs and a sum of Rs. 1,000/. as special costs in favour of respondent No. 1 against the appellant, it shall be substituted by a decree for a sum of Rs. 3,000/- only with proportionate costs. The appellant shall be allowed costs against the respondent in the trial Court as also in this Court proportionate to his success. Respondent No. 1 shall also be allowed costs against the appellant in this Court proportionate to the failure of the appeal.