

Smt. Shanti Devi

Vs

Amal Kumar Banerjee

Civil Appeal No. 2731 of 1980

(A.P. Sen, E.S. Venkataramiah JJ)

09.01.1981

JUDGMENT

1. The only point involved in this appeal from judgment of the Calcutta High Court, in reversal of the judgment and decree of the Additional District Judge, affirming those of the Subordinate Judge, Birbhum, and dismissing the plaintiff's suit for ejection, is whether the plaintiff's suit for ejection was not maintainable without a notice under Section 106 of the Transfer of Property Act, 1882.

2. The material facts of this case are as follows : By an indenture of lease dated March 19, 1956, the appellant who was the plaintiff, demised a cinema theatre known as ' Shanti House' situate at Sainthia under Anchal Panchayat in district Birbhum, to the respondent-defendant for a term of four years with a covenant of two renewals of three years each. The lease of this cinema theatre was to commence from the date on which the defendant was able to procure a licence. On May, 2, 1970, the plaintiff brought a suit for ejection on the ground that the lease had expired by efflux of time and also pleaded in the alternative that he had sent a notice dated April 3, 1970 to the defendant both at his Calcutta address and at his Sainthia address determining the tenancy with the expire of the month of April 1970. The defendant contested the plaintiff's claim on various grounds. The defendant pleaded, inter alia, that no notice under Section 106 of the Transfer of Property Act having been served upon him, the suit was not maintainable. The High Court and the courts below have confined their attention to the question whether any valid quit notice had been served on the defendant without entering into the controversy whether such a notice was necessary or not. Both the learned Subordinate Judge as well as the learned District Judge upheld the plaintiff's claim that the lease had been validly determined by service of a quit notice and accordingly decreed his suit. The High Court however, reversed that decision of theirs holding that service of a notice under Section 106 of the Transfer of Property Act on the defendant had not been proved, and therefore, held that the plaintiff' suit for ejection was not maintainable.

3. There can be no doubt that the High Court and the courts below have without applying their mind as to the question whether Section 106 of the Transfer of Property Act was applicable or not, proceeded to deal with the question as to the validity of the notice, on the assumption that the lease was a lease from month to month. They have completely overlooked the fact that the lease was for a term of four years with a covenant for renewal for two terms of three each, i. e., lease for a definite duration of then years. The preamble of the lease deed recites that the lessor, in consideration of the rent reserved, and the conditions contained therein, demises unto the lessee the tenement of the cinema theatre known as 'Shanti House' "for a term of four years", with option on the part of the lessee for renewal and subject to his paying a monthly rent of Rs. 400 as reserved. Clause (g) of the first part which deals with the lessee's covenants, provides that the lessee shall at the expiration of the said term or at the expiration of the renewed term, if any, peaceably and quietly deliver possession of the

cinema theatre to the lessor. Clauses (u) and (vi) of lessor's covenants, i. e., the second part of the deed lay down that the lessor in the first instance, at lessee's request shall grant a fresh lease for a term of three years and on the expiry of such term, on a similar request, a further fresh lease for another term of three years.

The lease deed further provides by clause (6) of the third part, that in the event of the lessee's failure to procure a license by April 30, 1956, the demise shall not take effect. The lease was duly effected by a registered instrument. It is not disputed that the defendant secured the licence on January 11, 1960. The period of the lease, therefore, commenced from that date.

4. The courts below have apparently been misled by the averment in paragraph 3 of the plaint that because the defendant could not fulfil the condition regarding obtaining of a licence, the grant made by the indenture of lease did not and could not take effect, as also that in paragraph 7 that the tenancy of lease was from month to month. The parties could not by their pleadings alter the intrinsic character of the lease or bring about a change of the rights and obligations flowing therefrom. The lease was a lease for a definite term and, therefore, expired by efflux of time by reason of Section 111 (a) of the Transfer of Property Act. That being so, the service of a notice under Section 106 of the Transfer Act was not necessary.

5. Undoubtedly, Section 111 (a) of the Transfer of Property Act, which deals with determination of a lease by efflux of time, has to read with Section 116 of the Act. But in the present case there is no allegation by the defendant that he was a tenant holding over within the meaning of Section 116 of the Act. Now, in order that a lease should be deemed to have been continued in favour of the defendant it was necessary to show that he remained in possession of the premises demised after the determination of the lease granted to him and the plaintiff had expressly or by necessary implication assented to his continued possession. There being no such plea of holding over, the matter falls to be governed by Section 111(a) of the Transfer of Property Act. If the period of lease had expired on January 10, 1970, the relationship of landlord and tenant ceased and the defendant became a trespasser. In the present case, the respondent who was the defendant, in Ground 6 of his memorandum of appeal before the High Court urged that the courts below should have held on the basis of the plaintiff's case read with the lease deed that the lease would expire on January 10, 1970. There was, therefore, no question of service of any notice under Section 106 of the Transfer of Property Act.

6. There is also no question of the defendant being a statutory tenant. It is no doubt true that the State Government of West Bengal by Level Self Government Department Notification dated August 10, 1972 constituted Sainthia to the a notified area, but that is of no legal consequence. There is a distinction between a municipality and a notified area. The provisions of the West Bengal Premises tenancy Act, 1956 extend to a municipality and are not applicable to a notified area upon determination of the contractual tenancy, the defendant therefore did not become a statutory tenant. The point was decided against the defendant by the court of first instance and was not pressed into service before the learned district Judge or the High Court. The matter must rest at that.

7. The result, therefore, is that the appeal succeeds. The judgment and decree passed by the High Court is set aside and those of the courts below decreeing the plaintiff's suit are restored. There shall be no order as to costs.

8. After we had dictated the judgment, counsel for the respondent made a request for time to vacate the demised premises. Even though the respondent has remained in possession for over 10 years

after the expiry of the lease, we direct that the decree shall not be executable till December 31, 1981 provided the respondent files an undertaking within four weeks from today that he shall over vacant and peaceable possession to the appellant at the expiry of the said period, and will not, in the meanwhile, induct any other person or part with possession of the premises., If such undertaking is not filed within four weeks from today, the decree shall be executable forth-with without any further reference to this Court. We further direct that the respondent shall deposit all the arrears of damages for use and occupation up to date within one month from today and shall continue to deposit such damages equivalent to monthly rent on the 10th day every month.

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