

Satish Chand Makhan and Others

Vs

Govardhan Das Byas and Others

Civil Appeal No. 10041 of 1983

(E. S. Vankataramiah, A. N. Sen JJ)

27.10.1983

JUDGMENT

A. P. SEN, J. -

1. This appeal by special leave is directed against a judgment of the Andhra Pradesh High Court dated July 5, 1983 upholding the judgment and decree of the Civil Judge, City Civil Court, Hyderabad dated December 31, 1982 and those of the Third Assistant Judge, City Civil Court Hyderabad dated March 5, 1982 and decreeing the plaintiff's suit for possession of open land described in the plaint schedule and more mesne profit thereof.
2. Put very shortly, the essential facts are these. By a registered indenture of lease dated January 8, 1965 Ex. A-3, the father of the plaintiffs demised a piece of open land admeasuring 84 ft. x 22 ft. situate at Basheerbagh, more fully described in the plan annexed to the lease deed, to the defendant No. 1 for a period of five years. The rent stipulated in the lease deed was Rs. 311 per month. Acting upon the grant, the defendant No. 1 put up a superstructure worth more than rupees one lakh and carried on the business of running a hotel from the demised premises. After the expiry of the period of five years, the parties entered into an agreement to renew the monthly lease for a further period of nine years w.e.f. June 1, 1971 the terms whereof were reduced to writing in the form of the draft leases agreement Ex. B-2, which remained to be registered as required under Section 17(1)(d) of the Registration Act, 1908. Clause 9 of the agreement provided that the defendant No. 1 shall restore possession of the demised premises to the plaintiffs' father after removing all the superstructure built upon the land. It further stipulated that on his failure to comply with the said condition, the plaintiffs' father would be liable to recover possession of the aforesaid plot of land together with mesne profits at Rs. 700 per month. The plaintiffs served a notice dated February 1, 1976 upon the defendants determining the tenancy on the ground of forfeiture under Section 111(g) of the Act complaining of breach of the terms of the lease. On March 27, 1976 the plaintiffs brought the suit for ejectment and mesne profits. The defendants contested the claim of the plaintiffs and pleaded inter alia that they were tenants holding over as tenants from month to month under Section 116 of the Transfer of Property Act and since there has been no determination of the lease by service of a notice under Section 106 of the Act, the suit as framed was not maintainable. They further pleaded that the unregistered draft lease agreement Ex. B-2 was inadmissible for want of registration under Section 49 of the Registration Act and that in any event the period of the lease as stipulated w.e.f. June 1, 1971 with an option of further extension of the same by three years and therefore they were entitled to continue in possession of the demised premises.
3. Upon these facts, the High Court as well as the courts below following the decision of this Court in *Pasupuleti Venkateswarlu v. Motor & General Traders* ((1975) 3 SCR 958 : (1975) 1 SCC 770 :

AIR 1975 SC 1409) and that of the Andhra Pradesh High Court in Syed Jaleel Zane v. P. Venkata Murlidhar (AIR 1981 AP 328) held that the plaintiffs were entitled to the reliefs claimed for upon the basis of the plea taken by the defendants in their written statement that there was a renewal of the initial lease for five years by a further term of nine years on the altered circumstances i.e. upon the expiry of the said period of nine years on May 31, 1980, to take notice of the altered circumstances since the institution of the suit and mould the relief accordingly in order to shorten the litigation and to do complete justice between the parties. Upon this basis, they held that the lease was determined by efflux of time under Section 111(a) of the Transfer of Property Act, 1982 and no notice was required under Section 106 of the Act for determination of the lease.

4. It is argued that the High Court as well as the courts below were in error in holding that there was determination of the lease by efflux of time under Section 111(a) of the Transfer of Property Act, upon the wrongful assumption that the subsequent draft lease agreement Ex. B-2, though unregistered, was admissible for the collateral purpose of proving the term of the subsequent lease under the proviso to Section 49 of the Registration Act, 1908. It is further urged that the defendants after the expiry of the earlier term of five years as stipulated by the registered lease deed dated January 8, 1965, Ex. A-3, being in possession under the unregistered draft lease agreement Ex. B-2, were nothing but tenants holding over from month to month under Section 116 of the Transfer of Property Act and therefore the plaintiffs' suit was not maintainable for want of a notice under Section 106 of the act determining the lease. It is also urged that there was no question of the court granting the plaintiffs relief on the altered circumstances since the institution of the suit under Order VII, Rule 7 of the Code of Civil Procedure, 1908, based upon the plea taken by the defendants in their written statement that there was a renewal of the initial lease for a further term of nine years. In our opinion, these contentions must prevail.

5. There can be no doubt that the High Court and the courts below have wrongly assumed that the plaintiffs were entitled to the reliefs claimed for by reason of the subsequent change of circumstances under Order VII, Rule 7 of the Code, on the alleged admission of the defendants in their written statement that the renewed term under the unregistered draft lease agreement Ex. B-2 was for a period of nine years. Upon that wrongful assumption they have held that the lease was determined by efflux of time under section 111(a) of the Transfer of Property act and no notice of termination of the tenancy under Section 106 was required. The rule laid down by this Court in Pasupuleti Venkateswarlu case ((1975) 3 SCR 958 : (1975) 1 SCC 770 : AIR 1975 SC 1409), that it is incumbent on the Court under Order VII, Rule 7 of the Code to take notice of the altered circumstances since the institution of the suit and mould the relief accordingly in order to shorten litigation and to do complete justice between the parties, was not attracted in the instant case. The High Court obviously fell into an error in thinking that the lease for the renewed term of nine years was determined by efflux of time under Section 111(a) and accordingly the defendants became tenants at sufferance and no quit notice was necessary, as laid down in Kai Khushroo Bezonjee Capadia v. Bai Jerbai Hirjibhoy Wardon (1949 FCR 262 : AIR 1949 FC 124) and Badri Lal v. Municipal Corporation of Indore ((1973) 3 SCR 15 : (1973) 2 SCC 388 : AIR 1973 SC 508).

6. Ordinarily a suit is tried in all its stages on the cause of action as it existed on the date of the institution, but the court can look to subsequent events when the relief claimed originally has (1) by reason of subsequent change of circumstances become inappropriate, or (2) where it is necessary to take notice of the changed circumstances to shorten litigation, or (3) to do complete justice between the parties. None of these requirements to attract the power of the Court under Order VII, Rule 7 of the Code is present. There is nothing to show that the original relief claimed for had, by reason of subsequent change of circumstances, become inappropriate, or that it was necessary to have the

decision of the Court on the altered circumstances in order to shorten litigation, or to do complete justice between the parties. The defendants have nowhere admitted that the lease was for a specific term of nine years. On the contrary, they have pleaded that they were tenants holding over under Section 116 of the Transfer of Property Act. The unregistered draft lease agreement Ex. B-2 was clearly inadmissible in evidence under Section 49 of the Registration Act, except for the collateral purpose of proving the nature and character of possession of the defendants. The documents Ex. B-2 was admissible under the proviso to Section 49 only for a collateral purpose of showing the nature and character of possession of the defendants. The proviso to Section 49 was however not applicable in the present case inasmuch as the terms of a lease are not a "collateral purpose" within its meaning. It follows that the unregistered draft lease agreement Ex. B-2 was inadmissible in evidence to prove the transaction of lease. It was also ineffectual to create a valid lease for a renewed term of nine years for want of registration as required under section 17(1)(d) of the Registration Act.

7. We have no doubt in our mind that the defendants were tenants holding over under section 116 of the Transfer of Property act and therefore it was necessary for the plaintiffs to serve a notice under Section 106 of the Act. Where a person holds over under an unregistered lease and continues in possession by paying the monthly rent, the holding over must be held as a tenancy from month to month : Mulla's Transfer of Property Act, 5th Edn., p. 762. It was definitely wrong on the part of the High Court to have proceeded on the assumption that the lease was for a specific term of nine years and therefore the lease stood determined by efflux of time under Section 111(a) of the Transfer of Property act, and that the defendants were tenants at sufferance and no quit notice was required. It is no doubt true that where the lease is for a definite term, it stands determined by efflux of time under Section 111(a) of the Transfer of Property Act, and the erstwhile tenants becomes a tenant at sufferance, but that is not the case here. The legal position is not contested and it was fairly conceded that the defendants were holding over under Section 116 of the Transfer of Property Act as tenants from month to month, and further that no notice as required by Section 106 was served on them. That being so, the plaintiffs' suit for ejection as framed was not maintainable. The decree for mesne profits shall be treated as a decree for arrears of rent, if any.

8. In the result, the appeal partly succeeds and is allowed. The judgment and decree of the High Court and the courts below decreeing the plaintiffs' suit for ejection are set aside. The plaintiffs' suit for ejection is dismissed and the decree for mesne profits shall be substituted by decree of arrears of rent and it shall be computed according to the contractual rate.

9. There shall be no order as to costs.

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