Burmah Shell Oil Distributing Now Known as Bharat Petroleum Corporation Ltd

Vs

Khaja Midhat Noor and Others

Special Leave Petition (Civil) No. 15667 of 1987

(Sabyasachi Mukharji, S. Ranganathan JJ)

03.05.1988

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. This is a petition for a leave to appeal against the judgment and order dated November 11, 1987 of the High Court of Patna. On January 16, 1958 a lease deed was executed between the lessee Latifur Rehman and lessor Khaja Midhat Noor (hereinafter called the respondent) with permission to sub-lease the same. The said Latifur Rehman sub-leased the premises to Burmah Shell Oil Distributing Company (the petitioner herein) for running a petrol pump and making necessary constructions thereon. The lease was for a period of ten years which expired on January 16, 1968. It appears further that after the lease period had expired, the sub-lessee, petitioner continued to pay the rent which was being accepted continuously from month to month by the respondent, the lessor. A notice was issued by the respondent to the lessee terminating the lease and for giving Vacant possession of the land by January 15, 1973 and also requiring the removal of the buildings, plant, etc., by January 16, 1973. In the last two paras of the said notice, it was stated that the lessee was to surrender the leasehold land on the expiry of January 15, 1973. No notice was given separately to the petitioner terminating its lease. A suit for ejectment was filed thereafter. The lessee Latifur Rehman did not contest the suit for ejectment. The petitioner, however, contested that proceeding. The learned Munsiff I, Gaya, by his judgment dated May 8, 1979 dismissed the suit holding that the notice terminating the lease was necessary and the notice in this case was invalid. The plea of the landlord that the tenancy expired by efflux of time, was rejected. On February 22, 1983 the First Additional Sub-Judge, Gaya allowed the appeal of the landlord and held that the notice terminating the tenancy and asking the petitioner to surrender by January 15, 1973 was a valid notice.

2. The main question involved is, whether there was a valid termination of the lease and as such the sub-lessee the petitioner herein was bound to deliver vacant possession. A written statement had been filed by the petitioner, the sub-lease, where in it was, inter alia, stated that it was holding over the leasehold property after the expiry of the lease by paying rent. No notice terminating tenancy was received by it. The validity of the notice to the lessee was also challenged. The trial court held that the lease was not extended for a fixed period of five years in absence of any written instrument.

3. The following two questions of law were re-formulated by the High Court;

> (1) In absence of any registered instrument executed by both the parties i.e. the lessor and the lessee after the period stipulated in Ex. 4 i.e. the period of ten years, can it be said that the lease was extended automatically for a period of five years in terms of Ex. 4 or further whether the lessee was holding the suit property as tenancy from

month to month ?

(2) If the first part of question (1) is held in negative and second part in the affirmative, as a consequence of which it must be held that the lease was required to be determined, whether the notice as contained in Ex. 7 validly terminated the lease of the lessee ?

4. Indubitably, the lessee came in possession of the property in question on January 16, 1958. The lease was for a period of ten years with a right of renewal for a further period of five years. After the expiry of ten years, no instrument was executed by the parties and the lessee continued to remain in possession of the suit property. The lessor accepted the rent and allowed the lessee to continue. It is relevant in this connection to refer to the provisions of the Transfer of Property Act, 1882 (hereinafter called 'the Act'). Section 106 of the Act deals with the duration of certain leases in absence of written contract or local usage and Section 107 deals how leases are to be made. These sections read as follows :

106. In the absence of a contract or local law or usage to the 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 lease, 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 of either lessor or lessee, by fifteen days' notice expiring with the end of month of the tenancy.

Every notice under this section must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants, at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

107. 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.

All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

Where a lease of immovable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee :

Provided that the State Government may, from time to time, by notification in the official Gazette, direct that lease of immovable property, other than lease from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such lease, may be made by unregistered instrument or by oral agreement without delivery of possession.

5. In view of the paragraph 1 of Section 107 of the Act, since the lease was for a period exceeding one year, it could only have been extended by a registered instrument executed by both the lessor and the lessee. In the absence of registered instrument, the lease shall be deemed to be "lease from month". It is clear from the very language of Section 107 of the act which postulates 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. In the absence of registered instrument, it must be a monthly lease. The lessee and the sub-lessee in the facts of this case continued to remain in possession of the property on payment of rent as a tenant from month. The High Court so found. We are of the opinion that the High Court was right.

6. Section 116 of the Act which was placed before the High Court deals with the effect of holding over and provides as follows :

> 116. If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-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.

7. It was submitted before the High Court that this was not a case of continuing of old tenancy for a period of five years but in view of the clear provisions of Section 107 which we have noted hereinbefore and in the absence of registered instrument, it must be held that it was holding over and not continuation of old tenancy for a further period office years. That would be the harmonious construction of Section 107 read with Section 116 in the facts of this case. We are of the opinion that the High Court was right that the tenancy was automatically determined on the expiry of ten years which was stipulated in Ex. 4. Thereafter the lessee continued to hold the property and the lessor accepted the rent. The lease was, therefore, renewed from month to month because it was not the case of any party that it was for agricultural purposes.

8. In that view of the matter, the termination of the lease could only be by giving a valid notice. Such notice was given to the lessee but not to the sub-lessee. The respondents case is that a notice to sub-lessee was not necessary. It was contended on behalf of the appellant that by Ex. 7 the lessee was asked to quit the leasehold premises on the expiry of June 15, 1973. Admittedly, in this case, the lease was executed on January 16, 1958 and from that date the lease came into existence. For computing the period of ten years January 16, 1958 had to be excluded. The tenancy was, therefore, terminated on the expiry of 16th of the month. The notice in the instant case of the quit which was Ex. 7 before the court dated November 30, 1972, was given on behalf of the respondent to Latifur Rehman-lessee. In paragraph 4 of Ex. 7 it was stated that the lessee was to deliver the possession of the leasehold property by January 16, 1973. In paragraph 5 of Ex. 7 the lessee and sub-lessee were required to remove the buildings, plants etc. by January 16, 1973. In the last but one and the last paragraph of Ex. 7 it was stated that the lessee was to surrender the properties of the leasehold land on the expiry of January 15, 1973.

9. The question is whether there was a valid notice. The High Court held that in he facts of this case, there was a valid notice of termination and after the valid notice of termination of the lease to the lessee, there was no need to give a fresh notice to the sub-lessee. Notice must be read in the context of the facts of each particular case having regard to the situation of the parties to whom it is addressed. In Harihar Banerji v. Ramsashi Roy [(1917-18) 45 IA 222] at page 225, the Judicial Committee observed as follows :

> ... that notices to quit, though not strictly accurate or consistent in the statements embodied in them, may still be good and effective in law; that the test of their sufficiency is not what they would mean to a stranger ignorant of all the facts and

> circumstances touching the holding to which they purport to refer, but what they would mean to tenants, presumably conversant with all these facts and circumstances; and, further, that they are to be construed, not with desire to find faults in them which would render them defective, but to be construed ut res magis valeat quam pereat.

10. This is how the notices should be laterally construed. This decision was relied upon by this Court in Mangilal v. Suganchand Rathi [(1964) 5 SCR 239 : AIR 1965 SC 101]. There, however, the facts were different. There the defendant was a tenant of the plaintiffs. The defendant was in arrears of rent for one year to the extent of Rs. 1020. On April 11, 1959 the plaintiffs served a notice on the defendant requiring him to remit to them Rs. 1020 within one month from the date of service of notice, failing which suit for ejectment would be filed. This notice was received by the defendant on April 16, 1959. On June 25, 1959 the defendant sent a reply to the notice enclosing with it a cheque for Rs. 1320. This amount consisted of the rents arrears as well as the rent due right up to June 30, 1959. The plaintiffs accepted the cheque and cashed it and gave a fresh notice on July 9, 1959 requiring the defendant to vacate the premises by the end of the month of July. The defendant did not vacate the premises. Then the plaintiffs filed a suit to eject the defendant upon the ground that the latter was in arrears of rent for one year and hadfailed to pay the arrears within one month of the service of the notice dated April 11, 1959 upon him. From the undisputed facts it was clear that the defendant was in fact in arrears of rent and had failed to pay it within the time prescribed by clause (a) of Section 4 of the Madhya Pradesh Accommodation Control Act, 1953. It was held that though the notice dated April 11, 1959 could be construed to be composite notice under Section 4(a) of the Accommodation Act and Section 106 of the Transfer of Property Act it was ineffective under Section 106 of the Transfer of Property Act because it was not a notice of 15 clear days. In that case, the defendant had only 14 clear days' notice. Reference was made to the aforesaid decision of Harihar Banerji v. Ramsashi Roy [(1917-18) 45 IA 222] which was distinguished by this Court. This Court held that notice under Section 106 of the Act must be strictly complied with. In so holding this Court relied on a decision of the Calcutta High Court in Subadini v. Durga Charan Law [ILR 28 Cal 118] which was construing a notice contemplated by Section 106 of the Act and had held that in calculating the 15 days' notice the day on which the notice was served was excluded and even if the day on which it expired was taken into account it would be clear that the defendant had only 14 clear days' notice. This position was again reiterated by the Calcutta High Court in Gobinda Chandra Saha v. Dwarka Nath Patita [AIR 1915 Cal 313 : 19 CWN 489 : 26 IC 962]. This Court affirmed this view that notice must be understood in the light of Harihar Banerji v. Ramsashi Roy [(1917-18) 45 IA 222]. This Court held that the suit was actually based upon the notice dated July 9, 1959 which gave more than 15 days' clear notice to the defendant to vacant the premises. This notice was a valid notice under Section 106 of the Act. In the instant case if all the paragraphs of Ex. 7 which is a notice in the instant case are read together in harmony it would be manifest that the lessee was directed to hand over the leasehold property on January 16, 1973.

11. In the aforesaid view of the matter, in our opinion, there was a valid notice of termination of the lease of the lease. In any event the lessee did not dispute this contention. The lessee accepted there was a valid termination of the leasehold property.

12. In Rupchand Gupta v. Raghuvanshi (Pvt.) Ltd. [AIR 1964 SC 1889], it was held by this Court that it is quite clear that law does not require that the sub-lessee need be made a party, if there was a valid termination of the lease. This Court reiterated that in all cases where the landlord instituted a suit against the lessee for possession of the land on the basis of a valid notice to quit served on the lessee and did not implead the sub-lessee as a party to the suit, the object of the landlord is to eject

the sub-lessee from the land in execution of the decree and such an object is quite legitimate. The decree in such a suit would bind the sub-lessee. This Court noted at page 1892 of the report that this might act harshly on the sub-lessee; but this was a position well understood by him when he took the sub-lease. The law allows this and so the omission cannot be said to be an improper act. In the facts of this case these observations apply more effectively. The termination of the lessee was not disputed by the lessee. There is no allegation of any collusion between the lessee and the respondent.

13. In that view of the matter, we are of the opinion that the High Court was right. The suit in question was instituted in May 1979 and the valid notice to quit was given long after the expiry of the period of lease. The sub-lessee had long innings. It is time for him to quit. There is no merit in this petition. The special leave petition fails and is, therefore, dismissed with costs.

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