CALCUTTA HIGH COURT

Sheikh Aklu

Vs

Sheikh Emaman

(Lancelot Sanderson, C.J. A Mookerjee, J.)

15.03.1916

JUDGMENT

Lancelot Sanderson, C.J.

1. In this case I think the appeal must be dismissed. The lease was given on the 18th of January 1904 to the defendant's brother, one Sheikh Chandu, of a particular area of land which was 2 cottahs, and the rent was Rs. 12 a year. In 1909 Chandu died. From that time the defendant and the heirs of Chandu, and I think all his heirs, lived on the land in question; but apparently after the death of Chandu the land occupied by the defendant and the heirs, who according to the judgment of' the lower Appellate Court were probably living with the defendant, was 21 cottahs and the rent that was paid was not Rs. 12 a year but was Rs. 15 a year, and the first question raised is whether the tenancy was a heritable one.

2. The learned Subordinate Judge has held that the tenancy was not a heritable one, and he bases his judgment upon the terms of the lease. That has been examined by my learned brother Mr. Justice Mookerjee and he agrees that there is nothing in the lease to show that the tenancy was a heritable one. Further than that, the fact that the area occupied after Chandu's death was different from that in the, lease and the fact that the rent was different from that which was specified in the, lease, lead me to come to the conclusion that the judgment of the learned Subordinate Judge that the holding was not a heritable one was correct Therefore, the position is this. The lease has come to an end; a new tenancy must have been created, and upon that two questions arise--with whom was the new tenancy created, and secondly, on what terms.

3. Now, upon the first point, the learned Vakil who has argued the case for the appellant urges that the tenants were not only the defendant but also the heirs who were co-sharer tenants, as he suggests, with the defendant. That point is really a question of fact and that has been decided by the learned Subordinate Judge against him, who has held that the defendant was the only tenant, and if it is necessary for me to express any opinion, I think that the learned Judge was perfectly right in coming to that conclusion, as far as I can judge from the materials before me: it is not necessary for me to go into detail; they are referred to in the two judgments that are before us. Therefore, the tenancy was between the plaintiff and the defendant.

4. Then the second point arises, what were the terms of that tenancy? There is no dispute as to

that, because the Court of first instance has held that the rent was an annual rent of Rs. 15 a year. The contest had been as to whether the rent was a monthly rent or a yearly rent: the amount was agreed between the parties and as to that there was no dispute; The question was whether it was an annual rent of Rs. 15 or a monthly rent of Rs. 1-4. The Court of first instance has dealt with that specific question which is a question of fact, and has found that the rent was an annual rent of Rs. 15 a year. Then arises the next question, whether from that fact it can be presumed that the tenancy was an annual tenancy. I should be prepared to follow what was said by my learned brother Mr. Justice Mookerjee in the case *Durgi Nekarrini v. Goberdhan Bose*[1] namely, "It may possibly be accepted as a proposition generally true that, as indicated in *Wilkinson v. Hall*[2] the mode in which rent is expressed to be reserved affords a presumption that the tenancy is of a character corresponding thereto. The rule, however, is not of universal application, and, it was pointed out by Mr. Justice Maule in *Atherstone v. Bostock*[3] that the presumption of yearly taking from the rent being paid yearly does not apply to the case of lodgings, and the same view is supported by the case of *Wilson v. Abbott* [4]" Now in this case there is nothing to rebut the presumption which, I think, ought to be drawn from the fact that the rent was to be an annual rent. Therefore, the presumption ought to be drawn that the tenancy was to be an annual tenancy; and so far that conclusion at which I have arrived is in favour of the appellant. Therefore, within the words of Section 106 of the Transfer of Property Act, there would be a contract, namely, such as I have described, a contract of tenancy between the plaintiff on the one hand and the defendant on the other, and an annual tenancy for which an annual rent of Rs. 15 was to be paid; and, therefore, Section 106, if it stood by itself, would not apply, because there would be a contract to the contrary. But unfortunately for the appellant, there is Section 107 which says that such a contrast as that, a contract such as I have described which reserves a yearly rent, can be made only by a registered instrument, and, inasmuch as there is no registered instrument in this case, that contract must be treated as an invalid contract and as not existing. Therefore, I am forced to the conclusion that this case does come within Section 106, because there is an absence of a contract to the contrary, inasmuch as the contract which was in fact made and was in fact held to exist by the Court of first instance was not put into writing and was not registered. Therefore, there being no contract to the contrary, and inasmuch as this was a lease of immoveable property and not for agricultural or manufacturing purposes, but for some other purpose, it must 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 a month of the tenancy, and, inasmuch as fifteen days' notice was admittedly given in this case, a sufficient notice under the Statute was given and the plaintiff consequently is entitled to obtain a decree for possession of the land, for arrears of rent and for damages for holding over after the notice to quit.

5. For these reasons the appeal must be dismissed with costs.

6. I should like to say, this is one of the first cases that I have heard argued by the learned Vakils of this Court that in my opinion it has been very well argued on both sides.

Asutosh Mookerjee, J.

7. I agree.

Cases Referred.

124 Ind. Cas. 183 : 20 C.L.J. 448 at p. 454 : 19 C.W.N. 525
2(1837) 3 Bing. (N.C.) 508 : 4 Scott. 301 : 3 Hodges : 56 L.J.C.P. 82 : 132 E.R. 506 : 43 R.R. 728
3(1841) 10 L.J.C.P. 113 : 2 Man. & G. 511 : 2 Scott : (N.S.) 637 : 1 Drink. 96 : 133 E.R. 850
4(1824) 3 B. & C. 88 : 4 D. & R. 693 : 2 L.J. (O.S.) K.B. 215 : 107 E.R. 667