

BOMBAY HIGH COURT

The Utility Articles

Vs

The Raja Bahadur Motilal Bombay

(John Beaumont, Kt., C.J. Kania, J.)

23.03.1943

JUDGMENT

John Beaumont, C.J.

1. This is an appeal from a decision of Mr. Justice Chagla raising the important question whether Section 110 of the Transfer of Property Act, 1882, applies to a monthly tenancy. The facts can be stated shortly.

2. The tenancy was created by a letter, dated August 1, 1941, signed by the parties. It starts by reciting that terms had been agreed on July 30. Then Clause 1 is in these terms :It is agreed that you shall be taking the first and second floor north wing rooms adjoining the main central hall in our Mills Building at Tardeo from August 1, 1941, at a monthly rent of Rs. 250 payable at the expiry of each month.

3. The only other relevant clause is Clause 9, which provides that either side will give one clear month's notice to determine the tenancy.

4. On January 29, 1942, the landlords' solicitors wrote to the tenants in the following terms :Our clients Messrs. The Raja Bahadur Motilal Bombay Mills Ltd. instruct us to state that you are in possession and occupation of a portion to wit the first and second floors and ' three corridor rooms on the north side of their premises at Tardeo as tenants under them on a monthly rent of Rs. 340. We are instructed to determine the said tenancy with the expiry of the month of February 1942 and to call upon you to quit and deliver vacant possession of the said premises on the expiry of the said month of February 1942 and to intimate to you that in default our clients will be constrained to institute proceedings against you in ejectment. The question is whether that is a good notice to quit. Mr. Coltman's first point is that it is not a notice to quit at all. His contention is that it merely conveys to the tenants a piece of news, in which they may or may not be interested, as to the instructions which the solicitors have received from their clients; that the letter says "We are instructed to determine the tenancy," but does not say" We determine the

tenancy." In my opinion, there is no substance in that argument. One has to see what that notice would mean to the tenants who received it, and it seems to me that the expression "we are instructed to determine the tenancy" merely means "on the instructions of our clients we determine the tenancy." That is the only rational meaning which can be given to the expression, and the meaning is emphasized by the threat of instituting proceedings, with which the notice concludes. It can hardly be supposed that the landlords' solicitors were writing merely to inform the tenants what instructions their clients had given.

5. A more serious objection is that the notice expiring with the month of February is a bad notice, because the notice must expire on the 1st of the month, and not on the last day of the month. Reading the letter of August 1, 1941, apart from the Transfer of Property Act, it seems to me that the month referred to in Clauses 1 and 9 is an English calendar month. The arrangement had been arrived at at the end of July, and the tenancy is to start from August 1, the rent to be payable at the expiry of each month. That looks to me as if it is to be a monthly tenancy from the first of the calendar month, the rent being payable at the expiration of the calendar month. And when Clause 9 says that either side will give one clear month's notice to determine the tenancy, I should say that that means a calendar month's notice. It is difficult to see what the expression "one clear month's notice" means, if it does not mean a calendar month's notice. Does it mean four weeks' or thirty days' notice, or what? I think the rational meaning to give to such an expression in a tenancy commencing from the first of the month is that it means that one clear calendar month's notice is to be given. The notice in fact was given on January 29, and was to expire at the end of February, so that it was a notice for the clear month of February.

6. But then it is said that that meaning cannot be given to the letter of agreement because of the provisions of Section 110 of the Transfer of Property Act. The first paragraph of that section reads: "Where the time limited by a lease of immoveable property is expressed as commencing from a particular day, in computing that time such day shall be excluded. Where no day of commencement is named, the time so limited begins from the making of the lease." In this case, no doubt, the time is expressed as commencing from a particular day, that is from August 1, and if the section applies, then that day is to be excluded, and a notice to quit will have to be given expiring on the first day of the month, and not on the last day.

7. The real question is whether in the case of a monthly tenancy such as this it can be said that time is limited by a lease. The nature of a periodical tenancy, whether yearly or monthly or weekly, has been explained in many cases, and I may refer to the judgment of Mr. Justice Salter in *Queen's Club Gardens Estate, Ltd. v. Bignell* [1924] 1 K.B. 117 as containing a very clear exposition of the law based on old cases. He points out that a characteristic of a periodical tenancy is that as each period commences, it is not a new tenancy; it is really an accretion to the old

tenancy. A monthly tenancy, that is a tenancy subject to a month's notice, creates in the first instance a tenancy for two months certain. But as soon as the third month commences, that is not a new tenancy; it turns the original tenancy into a three months' tenancy, and when the fourth month begins, the tenancy becomes a four months' tenancy, and so on so long as the tenancy continues, until, that is to say, notice to quit is given. One result of that doctrine is that a notice to quit must always expire with the expiration of the period of the original tenancy. Of course, the rule is subject to any contract the parties may make between themselves. But a provision, as in clauses of this agreement, that either side will give one clear month's notice to determine the tenancy does not, in my opinion, affect the rule that the notice must expire with the expiration of the tenancy. That has not been disputed in this case, and there is a clear authority for the proposition in *Dixon v. Bradford and District Railway Servants' Coal Supply Society*¹

8. Now, that being the nature of a periodical tenancy, can one say that in such a tenancy time is limited by a lease? It seems to me that one cannot say that the lease limits the time; the time is limited by the notice to quit. Until the notice to quit is given, the tenancy continues from month to month. In my opinion the agreement of August 1, 1941, did not, within the meaning of Section 110, limit the time of the lease. It is curious that there is no authority directly upon this point. We have not been referred to any case in which Section 110 has been definitely applied to a monthly or other periodical tenancy, nor, on the other hand, have we been referred to any case in which the section has been held not to apply to such a tenancy. Both sides have relied on a decision of the Privy Council in *Benoy Krishna Das v. Salsiccioni*² But the case, to my mind, really does not help either side. In that case there was a lease for four years on June 1, 1921, and on the expiration of that lease the tenants continued in occupation, and on February 1, 1928, the tenants gave notice to terminate the tenancy, which had become a monthly tenancy, and the notice stated that it was one month's clear notice to take effect from that date, and that possession would be given up on March 1. The Privy Council held that to be a good notice. Mr. Coltman says that the Board applied the provisions of Section 110 to a monthly tenancy; but, in my opinion, they did not do that. They, no doubt, applied the provisions of Section 110 to the four-year lease, and they held that, having regard to Section 110, such lease expired at midnight on June 1, 1925, so that the subsequent monthly tenancy began on June 2, 1925, and could be determined by a notice expiring on the first day of the month, and, therefore, the notice expiring on February 1, 1928, was a good notice. But the Privy Council only applied Section 110 to the monthly tenancy for the purpose of determining when it commenced. On the other hand, Sir Jamshedji Kanga contends that the case helps him, because the Privy Council held that the monthly tenancy commenced on June 2, 1925, and that it was properly determined by a notice which expired on the first of the month, so that they did not exclude June 2 from the computation of the monthly tenancy. But the answer to that is that Section 110 only applies where the time limited by a lease is expressed as

commencing from a particular day, and in that case there was no provision that the monthly tenancy was to commence from June 2. Therefore, the case really does not help.

9. Mr. Justice Chagla held that Section 110 did not apply to a monthly tenancy, and that the notice to quit was good. In my judgment that decision is right.

10. The appeal fails, and must be dismissed with costs including costs reserved.

Kania, J.

11. The terms of the arrangement on which the appellants were given the property on lease are set out in the letter dated August 1, 1941, which confirms the arrangement orally made between the parties on July 30.

12. Two points were raised in this appeal. The first is about the terms of the notice, and, whether the same amounts to a notice to quit at all. I agree with the conclusion of the learned trial Judge and with what has been stated by the learned Chief Justice in his judgment on the point, and have nothing more to add.

13. The second point is whether Section 110 of the Transfer of Property Act applies to the tenancy in question. The learned trial Judge has held that it does not. Mr. Coltman strongly relied on Section 105 for the contention that every lease must be for a term or in perpetuity; no other kind of lease is recognised by the Transfer of Property Act. But a periodical lease does not infringe that section at all. Indeed, it is recognised as one of the leases under Section 105. Section 106 of the Transfer of Property Act further provides that a lease of immoveable property, in the absence of any contract or local law or usage to the contrary, shall be deemed to be from year to year, if the lease is for agricultural or manufacturing purposes or from month to month terminable on the part of either the lessor or lessee by fifteen days' notice expiring with the end of the month of the tenancy. There, again, a periodical lease from month to month is covered and it is not outside the operation of that section. Section 110 opens with the words "Where the time limited by a lease of immoveable property is expressed as commencing from a particular day, in computing that time such day shall be excluded." Section 110, therefore, is included in the Act for the purpose of computing time where the time is limited by the lease. If the words "time limited" were not important, there was no necessity to include them in the section. Those words, therefore, clearly indicate that every lease, which is included under Section 105 of the Transfer of Property Act, is not necessarily one covered by Section 110. Otherwise I do not see any reason why the Legislature should have included in this particular section those two words which have not been used in any of the preceding sections. Again notice may be taken of Clauses (a) and (b) of Section 111, where provision is made for the determination of a lease where the time is limited

by the lease. It is expressly provided that in such cases by the efflux of the time limited, the lease comes to an end. It is material to bear in mind these provisions of the Transfer of Property Act in order to fully appreciate the correct nature of a monthly tenancy.

14. The judgment of Mr. Justice Salter in *Queen's Club Gardens Estates, Ltd. v. Bignell*³ clearly lays down the nature of these periodical tenancies. It is clear that such periodical tenancies do not come to an end by the efflux of time, for the simple reason that the time is not limited by the original lease itself. It commences with the month, and without any further action on the part either of the lessor or lessee continues till either party determines it by giving one month's notice. It is again material to note that the tenancy during the second and third or fifteenth month is not a new tenancy. It is always considered as a part of the original tenancy. It will be wrong to contend that when the tenancy commenced, the term was one month or two months, if without any action on the part of any party it (the original tenancy) continued, say for fifty years, if no one gave a notice terminating the tenancy before that. It may thus continue for an almost indefinite time, but might be brought to an end by either party, without the consent of the other party. I therefore agree that Section 110 is, in terms, inapplicable to periodical tenancies, and in this case the monthly tenancy was a periodical tenancy.

15. That leaves the question what was the agreement between the parties, apart from the meaning sought to be imposed on the wording of the letter by reading Section 110? It seems to me clear that the parties had arranged on July 30 for a lease which was to commence on August 1. The provision that rent was to be paid at the expiry of each month, and the provision for one clear month's notice to determine the lease contained in the letter indicate that the month contemplated was the English calendar month. Any other argument will open up difficult questions about the duration of the month, or when the notice would come to an end. For instance, why should it not be considered a lunar month? It seems to me, therefore, that the clear intention of the parties was to treat this as a tenancy commencing on August 1, and the whole argument raised on behalf of the appellants is based on what I should say an inadvertent use of the word "from" in this letter.

16. I agree, therefore, that the appeal should be dismissed with costs.

17. Negative certificate under Section 205 of the Government of India Act granted.

18. Stay granted until the end of April; but that is peremptory.

Cases Referred.

1[1904] 1 K.B. 444

2(1932) L.R. 59 I.A. 414, S.C. 35 Bom. L.R. 6

3[1924] 1 K.B. 117, 134