

**PATNA HIGH COURT**

Moulvi Alauddin Ahmad

Vs

Aziz Ahmad

(Courtney-Terrell, C.J. K Sahay, J.)

21.12.1934

**JUDGMENT**

**Courtney-Terrell, C.J.**

1. These are two appeals by the defendant from the judgment of Mr. Justice Noor sitting singly by which he reversed the decision of the Subordinate Judge and restored the decree of the Munsif in favor of the plaintiffs.

2. The suits were to recover arrears of rent for the years 1331-1331. The material facts are that the plaintiff had bought the land in question from two ladies by two kobalas, dated respectively July 11, 1921 and August 9, 1921. Before they sold to the plaintiff they had made a, verbal arrangement with the defendants according to which the defendants were to become tenants for the period from 1328 to 1334 at an annual rent of Rs. 72-10. The defendants did not pay the agreed rent in spite of requests but remained in possession of the property and when sued they contended that the verbal lease was invalid by reason of Section 107 of the Transfer of Property Act and Section 17 of the Registration Act and notwithstanding that they had under the verbal arrangement remained in possession of the land leading the ladies to believe that they were there as tenants so that the ladies did not let the land to anyone else, they may perhaps be compelled to quit but they are not liable to pay anything for the use and occupation of the land.

3. In my opinion on these facts the defendants are estopped by their conduct from denying the relationship of landlord and tenant. It is perfectly true that the plaintiff cannot set up the verbal lease for the specified period. But I agree with Justice Noor that a verbal lease for more than one year accompanied by delivery of possession is valid for the first year 1328. There was no fresh lease and the defendants continued in possession after its termination (admittedly as tenants) for successive years, by holding over and Section 116 of the Transfer of Property Act applies. They cannot be held liable under the terms of the verbal lease for the period 1328 to 1334, and if the period verbally fixed had been 20 years they would have been entitled at the end of their yearly tenancy in 1334 to walk out of the property and ignore the remainder of the term so agreed upon.

But they cannot be allowed to escape payment for the years during which they were in occupation as tenants on the ground that the verbal lease is not binding as a lease for the period agreed upon. The defence is not honest and must fail and this appeal must be dismissed with costs.

**Kulwant Sahay, J.**

4. I agree.