

Kishan Lal vs Lal Ram Chander on 6 September, 1950

Equivalent citations: AIR1952ALL634, AIR 1952 ALLAHABAD 634

JUDGMENT

Wanchoo, J.

1. This is a second appeal by Kishan Lal who was a deft, in a suit for ejectment from a shop in which a flour mill used to be worked by him. The suit was brought by Bam Chander, plff. resp. His case was that the deft., Kishan Lal, had taken the shop from him on a monthly rent of Rs. 11 on 24-5-1938. The plff. gave notice to Kishan Lal in March, 1945, to vacate this shop on 23-3-1945. The deft, did not vacate the shop & consequently a suit for ejectment was brought.

2. The main defence of the deft., with which I am now concerned in this second appeal, is that the notice was invalid inasmuch as he should have been given six months' notice as required under Section 106, T. P. Act, as the shop was given to him for manufacturing purposes.

3. The lease, in this case, was created by a document executed by the parties on 24-5-1938. By this document, Kishan Lal was to remain in possession of the shop for one year from that date & was to maintain a flour mill therein on payment of Rs. 11 every month as rent. After the year was over, Kishan Lal continued to hold over till notice to quit was given to him in March, 1945. Both the Courts below have held that the purpose for which the shop was taken was a manufacturing purpose. The trial Court was, however, of the view that, as such, six months' notice was necessary, while the lower appellate Court took the view that fifteen days' notice was sufficient as, after the period of lease was over, Kishan Lal must be deemed to be holding over as a tenant from month to month.

4. The only point that requires consideration is the nature of the holding over by Kishan Lal. In this connection, reference may be made to Section 107, T. P. Act, which provides that a lease from year to year must be by registered document. If the holding over, in this case, were to be treated as one from year to year, it will mean that the parties will, successfully, be able to evade the provisions of Section 107, T. P. Act which requires that leases from year to year must be by registered instruments. It seems to me, therefore, that when a person holds over, after an unregistered lease of this kind for one year, which fixes only monthly rent, the holding over cannot be from year to year as that would amount to negating the provisions of Section 107. Further considering that the rent, in this case, was reserved from month to month & became payable after the holding over from month to month, the proper construction to be put on the nature of this holding over must be that it was a monthly tenancy which came into existence after the year was over. It would have been a different matter if the document of 24-5-1938 had been a registered document. In that case, the provisions of Section 107 would have been complied with & the holding over could only be from year to year considering the nature of the document itself. But when the document is not registered, it would, in my opinion, be going against the provisions of Section 107, T. P. Act to hold that the holding over

was from year to year &, therefore, six months' notice was necessary.

5. I, therefore, agree with the Court below that after the first year, the tenancy must be held to be from month to month, so far as the period of holding over is concerned &, therefore, the notice given in this case was sufficient. There is no other point raised in this appeal & it is, hereby, dismissed with costs to the plff.-respondent.

6. Leave to file an appeal under the Letters Patent is asked for & granted.