

Radha Ballabh vs Bahore Ram Chand on 25 February, 1955

Equivalent citations: AIR1955ALL679, AIR 1955 ALLAHABAD 679

JUDGMENT

Agarwala, J.

1. This is a defendant's appeal arising out of a suit for ejectment. The plaintiff respondent is the owner of a building which was let out to the defendant appellant under an unregistered rent-note executed by the defendant-appellant. The rent agreed to be paid was from month to month at the rate of Rs. 50/- per month according to the Hindi Calendar.

2. The evidence disclosed that the lease was for the purpose of establishing a Dal factory, that is, for a manufacturing purpose. The defendant-appellant held over after the expiry of the rent note and rent was accepted by the plaintiff-respondent. On the 13th January, 1960, the plaintiff-respondent gave fifteen days' notice to the defendant-appellant for vacating the premises and when the defendant-appellant did not vacate, he filed the present suit for his ejectment.

The defendant-appellant's contention, Inter alia, was that the notice was defective inasmuch as the lease being for a manufacturing purpose he was entitled to six months' notice under the provisions of Section 106, T. P. Act. The trial Court held that only fifteen day's notice was necessary and decreed the suit.

The lower appellate Court held that since the defendant-appellant had been holding over for a number of years the original lease of eleven months should be construed to have become a lease from year to year and that six months' notice was necessary and therefore allowed the appeal and dismissed the suit. In Second Appeal a learned Judge of this Court upheld the trial Court's decision and restored its decree.

3. In this Special Appeal the learned counsel for the appellant has urged that by holding over the lease became a yearly tenancy and that six months' notice was necessary because the lease was for a manufacturing purpose.

4. In our opinion there is no force in the contention of the learned counsel. The rent-note, as we have already observed, was for a period of eleven months and there was an express contract in the lease that the rent-would be paid from month to month. Section 106, T. P. Act provides as follows.

"106. Duration of certain leases in the absence of written contract or local usage. In the absence of a contract or local law or usage to the contrary, a lease of immoveable 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 lessee, by six months' notice; and a lease of immoveable 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 thirty days' notice."

5. The presumption laid down under this section is that a lease of immoveable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year and can be terminated by six months' notice, in the absence of a contract to the contrary. In the present case there was a specific contract that the rent would be paid from month to month. Further the lease was for a fixed period of eleven months only.

Consequently under the contract it could not be said that the lease was from year to year and that as such it could only be determined by a six months' notice.

6. No doubt the appellant held over for a number of years. Under Section 116 of the Transfer of Property Act the effect of holding over has been described in these words:

"116. Effect of holding over. 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. Renewal of a lease from year to year or from month to month, according to the purpose for which the property is leased, is to be presumed only when there is no "agreement to the contrary". The agreement referred to in Section 116 may be an agreement after determination of the original lease or it may be in the original lease itself.

In the present case in the original lease itself (we are assuming that the rent-note was a lease) the agreement was that the rent was to be paid every month and the period of the lease was eleven months. There was, therefore, an agreement to the contrary in the present case, and it could not be held that by holding over the defendant appellant acquired greater rights than what he possessed under the original lease.

By holding over the defendant-appellant's tenancy never became a tenancy from year to year, but remained a tenancy from month to month. If we were to hold that it became a tenancy from year to year by reason of holding over. We would be defeating the object of Section 107, T. P. Act.

That section requires that a lease of Immovable property from year to year, or for any term exceeding one year, or reserving an yearly rent, can be made only by a registered instrument. Where the original lease is not an yearly lease, holding over will be deemed to be a tenancy from month to month.

8. In this connection we may refer to the observations of a learned Single Judge of this Court in -- 'Kishan Lal v. Ram Chander,' AIR 1952 All 634 (A), with which we respectfully agree.

9. We, therefore, find no force in this appeal and we dismiss it with costs.