Amar Singh vs Hoshiar Singh on 19 September, 1950

Equivalent citations: AIR1952ALL141, AIR 1952 ALLAHABAD 141

JUDGMENT

Mushtaq Ahmad, J.

1. This is a defendant's appeal in a suit for ejectment and for Rs. 36 as arrears of rent for the period from 5.7.1945 to 5.1.1947 in respect of a house. The house originally belonged to the defendant, who, on 14-10-1941, sold it to the plaintiff. The plaintiff's case was that, having purchased the house from the defendant, he had let it out to the latter under a rent note dated 7-6-1942 at a monthly rent of Rs. 2 for a period of nine months. It may be mentioned here that no date as the date of commencement of the lease was mentioned in this document, and one of the questions to be considered is on what date would the tenancy be deemed to have commenced, that is, whether on the date of the execution of the rent note, namely, 7-6-1942, or on the following date ? The plaintiff's case was that the tenancy had commenced on 7.6.1942, while, according to the defendant, it had commenced on the following date.

2. Prior to the suit giving rise to this appeal another suit had been filed by the plaintiff against the defendant in 1945, both for ejectment and for arrears of rent. While the former relief was disallowed on the ground of the notice being invalid, the latter relief was granted. On 7-12-1946 the plaintiff sent a notice to the defendant, asking the latter to vacate the house by the night between 6 and 7-1-1947, and on the 11th January, he filed the suit giving rise to this appeal for the reliefs already mentioned.

3. The defence urged wag that the defendant was still the owner of the house, the sale deed relied upon by the plaintiff having been obtained by fraud and undue influence and that the notice sent by the plaintiff was bad, inasmuch as it was too short by one day.

4. The trial Court, finding that the sale deed was valid but that the notice sent by the plaintiff was invalid, nonetheless decreed the suit on the further findings that no notice was necessary in this case and that the defendant had incurred forfeiture by denying the title of the plaintiff landlord in the previous suit. This decree was affirmed by the lower appellate Court on the finding that the notice sent by the plaintiff was valid, That Court, however, found that there had been no forfeiture, as the plaintiff had not given any notice to the defendant intimating his intention to terminate the tenancy.

5. On the question of the sale deed being a valid document, the learned Judge agreed with the trial Court.

6. Learned counsel for the defendant-appellant has argued that the notice sent by the plaintiff in this case was invalid. His contention is that the defendant having been asked to vacate the house by the

night between 6 and 7-1-1947, the notice which had been issued on 7-12-1946 had not complied with the statutory provision of law contained in Section 106, T. P. Act. This would depend on whether the tenancy had commenced on 7-6-1942 or from the following date. If it had commenced on 7-6-1942, the notice requiring the defendant to vacate the house by the night between 6 and 7-1-1947 would be perfectly valid. If, however, the tenancy had commenced on the day next following the date of execution of the rent note, that is, on 8 6-1942, then the notice was invalid as being too short by one day. Section 110, T. P. Act provides :

> "Where the time limited by a lease of immovable pro-perty 13 expressed as commencing from a particular day, in computing that time such day shall be excluded. Where no day of commencement is named, the lime so limited begins from the making of the lease."

7. I have already said that in the present case no date was mentioned in the rent note as the date on which the tenancy was to commence. It is, therefore, the concluding portion of the above section that applies to the case, and the tenancy must be held to have commenced on the day the lease was made. In this view, if the notice to vacate was to expire with the end of a month of the tenancy, it would be a valid notice, A slight complication is introduced in the present case inasmuch as the defendant was allowed to remain in possession of the house even after the expiry of the period fixed in the rent note. This period according to my view of the date of the commencement of the lease, expired on 6-4.1943. The defendant did pay rent after that date and the plaintiff accepted it. Indeed, in the previous suit of 1945, the plaintiff sued the defendant for arrears of rent, presumably as his tenant, though the defendant had held over after the expiry of the period of the lease. The question is whether the legal position would be affected by this circumstance of the plaintiff having accepted rent from the defendant even after the expiry of the period eo fixed. This question arose in a Single Judge decision of this Court reported in Badal v. RAM Bharosa, A.I.R. (25) 1838 ALL. 649. where it was held that, even in a case of holding over, the initial date remains the date of the commencement of the lease. This view appears also to be in accordance with the provisions of Section 116, T. P. Act and, in my view, represents the position correctly. I must, therefore, hold that the tenancy in this case in spite of the defendant having held over after the expiry of the period originally fixed, had commenced on 7-6 1942, and the notice given by the plaintiff having required the defendant to vacate the house by the night between 6 and 7-1-1947 was, therefore, a perfectly valid notice.

8. Learned counsel no doubt invited my attention to the decisions in Benoy Krishna v. Salsiccioni, A.I.R. (19) 1932 P.C. 279, Charu Chandra v. Bankim Chandra, 42 Cal. W. N. 1116 and Rahmat Ullah v. Mohammad Husain, 1940 ALL. L. J. 502. All these were cases to which the earlier part of Section 110, T. P. Act, applied, namely, cases where it had been specifically mentioned that the tenancy was to commence on the date on which the lease was granted. Such is not the case here, as I have already pointed out. Indeed in the last mentioned case, Iqbal Ahmad J. although disagreeing with the lower appellate Court that the notice given by the plaintiff was valid, proceeded to affirm the decree for ejectment of the defendant on the ground that no notice was necessary at all. That was because the defendant, having ceased to pay rent, had become a trespasser and was not entitled to any notice. Precisely the same is the position in the present case. Here also the defendant had failed to pay rent to the plaintiff for about 18 months, presumably in an attitude of defiance towards the plaintiff. As

we now know, he never admitted the latter's title under the sale deed and dishonestly claimed to be still the owner of the house--a contention that the Courts below had no difficulty in rejecting and which, quite properly, has not been raised before me in this appeal.

9. There is another ground also which rendered the giving of a notice under Section 106, T. P. Act, in this case wholly unnecessary. Paragraph 5 of the rent note provided that "in case of the defendant's failure to pay the rent agreed, the plaintiff would be entitled to eject the defendant."

In such a case no question of notice can arise at all, as, when such a contingency arose, the plaintiff could sue to eject the defendant straightaway as a mere trespasser. In the ruling of this Court A. I. R. (25) 1938 ALL. 649 to which I have already referred, it was further laid down that the defendant having undertaken to quit the house, in case of default in payment of rent, no notice to quit was necessary.

10. There is yet another ground on which the decrees of the Courts below can be affirmed. As the trial Court held, the defendant had incurred forfeiture by denying the plaintiff's title in the earlier suit. The lower appellate Court did not accept this finding on the ground that the plaintiff had not sent a notice to the defendant intimating his intention to determine the lease. Admittedly a notice requiring the defendant to vacate the house was given on 7-12-1946. In this the plaintiff had clearly declared that he required the house for his own purposes and that the defendant should, therefore, vacate it. If by this he had not conveyed his intention to determine, the lease within the meaning of Clause (g) of Section 111 T.P. Act, I cannot imagine what else he had meant. In my view, the lower appellate Court was wrong in holding that no notice within the meaning of the and clause having been given to the defendant, he had not incurred any forfeiture and made himself liable to be ejected.

11. For these reasons, I hold that the notice given by the plaintiff to the defendant was valid, that no notice was in fact necessary, as the defendant having ceased to pay rent, was in possession of the house as a pure trespasser and that the defendant made himself liable to be ejected by incurring forfeiture within the meaning of Clause (g) of Section 111, T. P. Act, the plaintiff having in fact given notice to the defendant as required by that section.

12. Accordingly, I dismiss this appeal with costs. Leave to appeal under the Letters Patent is refused.