Raman Lal vs Bhagwan Das on 23 March, 1950

Equivalent citations: AIR1950ALL583, AIR 1950 ALLAHABAD 583

JUDGMENT

Desai, J.

1. This is an appeal by a plaintiff whose suit for ejectment of the defendant-respondent from a shop was decreed by a Munsif, but has been dismissed, on appeal, by an Additional Civil Judge. The facts are these.

2. The appellant let out the shop to the respondent's father Lallo Mal for a period of eleven months on 23rd October 1942 on a monthly rent of Rs. 15. The period of the lease expired on 23rd September 1943 and Lallo Mal continued to be in possession, paying rent at the same rate of Rs. 15 per month which was accepted by the appellant. Lallo Mal died in January 1944, and the respondent continued in possession. The appellant did not recognise him as his tenant and refused to accept the rent offered by him. He asked him to vacate the shop and on his refusal filed the suit for possession, treating him as a trespasser. He had not given him any notice to quit. The suit was contested on the ground that the respondent had become a tenant by inheritance from his father and was not liable to be ejected without a valid notice to quit. The learned Munsif, holding that he was a trespasser having absolutely no right to remain in possession, decreed the suit, but the learned Civil Judge holding that he was a tenant from month to month and that he could not be ejected without a valid notice to quit, dismissed it. The questions which require to be answered are : (1) What was the nature of the right possessed by Lallo Mal at the time of his death in the shop; and (2) Whether that right was heritable and, if so, the respondent could not be ejected without a notice to quit? It is conceded on behalf of the respondent that if he was a trespasser, that is a person having absolutely no right to remain in possession, he could be ejected without a notice. His case is that Lallo Mal became a tenant from month to month by holding over after the expiry of the lease on 23rd September 1943, that the interest of a tenant from month to month is heritable and that consequently he (the respondent) also became a tenant from month to month. The appellant's case, on the other hand, is that Lallo Mal was a tenant-at-will since 23rd September 1943, that the interest of a tenant-at-will is not heritable, and that the respondent is a trespasser pure and simple. The respondent, in the alternative, contended that, even if Lallo Mal were a tenant-at-will, his interest as such was heritable.

3. It is necessary to reproduce the terms of the lease which are contained in a rent-note executed by Lallo Mal. They are as follows :

> "I have taken the shop on rent of Rs. 15 per month for the period of eleven months. I shall pay the rent month by month; if I fail the landlord would have the right to eject me at once from the shop. After the expiry of eleven months the landlord can at his

> will whenever he likes give ma a month's notice to vacate and I will vacate without any objection, or l can myself vacate at my will whenever I like after giving a month's notice to the landlord."

This is a lease for eleven months certain; Lallo Mal had a right to remain in possession for eleven months provided he paid the rent regularly and the appellant could not eject him during this period. After the expiry of this period, he became bound to vacate on a month's notice. The first point to note about the terms is that though it is stated at three places, in the rent-note that the lease was for the period of eleven months, it was not a lease just for eleven months which came to an end on the expiry of eleven months. The words "ba miyad gyara mah" have been used not to signify that the lease was for the fixed period of eleven months, but to signify that it was for the minimum period of eleven months and that so long as this period was not over, the tenant was not liable to be ejected at the landlord's will (provided he paid the rent regularly). There is nothing to indicate that the lease was to end, and the tenant was bound to restore possession, immediately on the expiry of eleven months. It is, therefore, not a lease for a fixed term. A lease for a fixed term is determined by efflux of the time. A tenant holding for a fixed term is under the statutory obligation to restore possession to the landlord on the expiry of that term; see Section 108(q), T. P. Act. When Lallo Mal was not bound by the terms of the rent-note to restore possession to the appellant on the expiry of eleven months, that is on 23rd September 1943, it follows that the lease was not for the fixed period of eleven months.

4. The lease was not one from month to month also. A lease from month to month is similar to a lease from year to year, the only difference between the two being that in the former case the unit is a month while in the latter case it is a year. Substitute the word 'month' for the word 'year' and a year to year lease becomes a month to month lease. According to Woodfall's "Landlord and Tenant," 24th Edn., p. 267, "a tenant from year to year is one who holds under a demise for a term, Which may be determined at the end of the first or any subsequent year of the tenancy, either by the landlord or the tenant, by a regular notice to quit."

A year to year tenancy is a continuing tenancy so long as the parties are satisfied; and though terminable at the option of either party at the end of any year, does not ipso facto terminate at the end of every year. As stated in Cattley v. Arnold, (1859) 28 L. J. Ch. 352 : (7 W. R. 245) he has a lease for a year certain with a growing interest during every year thereafter, springing out of the original contract and parcel of it. His tenancy is not determined by efflux of time and a notice in a particular form is necessary to determine it. The notice must expire on the last day of the year. The duration of the notice may vary according to the circumstances; but it must expire on the last day of the year. It would be a contradiction in terms to say that a year to year tenancy can be determined by a notice expiring on any day of the year. The tenant has a right to remain in possession for the whole of the year; he cannot possibly be asked to vacate in the middle of the year. A year to year tenancy arises by implication of law; if the contract does not contain anything to the contrary, a lease is deemed to be a lease from year to year (or month to month as the case may be) ; see Section 106. In the present case, it is expressly stated in the rent note that the appellant could give at his will a month's notice at any time when he wanted the shop to be vacated; the words "at his will" and "at any time when he wanted the shop to be vacated" are important; the notice to be given by the landlord was not

required to expire on the last day of a month but could expire on any day. And if it could expire on any day, it follows that the tenancy was not a month to month tenancy. When there was a special contract about the termination of the lease, a month to month tenancy could not be implied under the law.

5. Lallo Mal could in the circumstances be only a tenant-at-will since 23rd September 1943. He could be ejected at any time at his will, the only condition required being that a month's notice should be given.

6. Learned counsel for the respondent relied upon Section 116 and contended that according to its provisions Lallo Mal became a tenant from month to month with effect from 23rd September 1943. Section 116 deals with the effect of holding over and the question of holding over arises only when the lease has been determined. There cannot possibly arise any question of holding over when the lease has not been determined and the possession continues in accordance with the terms of the lease. I have explained that the lease that was granted to Lallo Mal did not expire on 23rd September 1943 but continued to be in operation. That lease could expire only when the appellant served a month's notice expiring on any day after 2 2nd September 1943. It is the admitted case of the parties that the appellant never served any notice upon him; on the other hand, he accepted two months' rent paid by Lallo Mal after 22nd September 1943, Therefore Lallo Mal's tenancy never came to an end and at no time he held over. The rent note itself contemplated Lallo Mal's continuing in possession as a tenant after 23rd September 1943 without any act on the appellant's part of accepting rent from him. A tenant holding over after the determination of his lease is presumed to have become a tenant from year to year (or month to month, as the case may be), only when the landlord accepts rent from him or otherwise assents to his continuing in possession. The acceptance of rent or the assenting to the continuing in possession must obviously take place after the determination of the lease. In the present case, no such act was necessary on the appellant's part in order to continue Lallo Mal's tenancy after 23rd September 1943; he would have continued as tenant even if the appellant did not accept any rent from him and did not otherwise assent to his continuing in possession. This naturally follows from the fact that his lease was not determined by efflux of time of eleven months or in any other manner. How a lease is determined is stated in Section 111; if Lallo Mal's lease determined on 23rd September 1943, it could have done so only on the ground of efflux of time. A lease determines by efflux of time only when it is for a fixed term. I have shown that Lallo's lease was not such a lease. I hold that Lallo Mal at no time held over and consequently did not become a tenant from mouth to month. In Troilokynath v. Sarat Chandra, 32 Cal. 123: (8 C. W. N. 901) Section 116 was applied because the lease was for three years and the tenant continued in possession after the determination of the lease. Dasarathi Kumar v. Sarat Chandra, A. I. R. (21) 1934 Cal. 135 : (149 I. C. 722) also was a case of holding over after the determination of the lease by efflux of time. In Suiti Devi v. Banarasi Das, A I. R. (36) 1949 ALL. 703, it was held, following Khuda Baksh v. Abid Husain, 12 O. C. 279: (3 I. C. 873), Badal v. Ram Bharose, A.I.R. (25) 1938 ALL 649: (178 I. C. 986) and Lalman v. Mt. Hullo, A.I.R. (12) 1925 oudh 173: (27 O. C. 224). that if a lease for a fixed term is governed by a special contract about the notice to quit, that contract would govern also the implied tenancy resulting from the holding over. There was a lease for one year for a manufacturing purpose with a special contract that the lease could be determined by a three mouths' notice, the tenant held over after the expiry of the period of the lease

and it was decided that the year to year tenancy which he acquired by holding over could be determined by a three months' notice, even though an ordinary year to year lease for a manufacturing purpose requires a six months' notice. In Khuda Baksh v. Abid Husain (12 O. C. 279 : 3 I. C. 873) the lease was for one year but with the superadded condition that the tenant would vacate the house as soon as required by the landlord and the tenant, who held over, was held liable to be ejected without any notice. Lallo Mal could not be ejected after 23rd September 1943 without a month's notice. But that is because of the express provision in the rent-note itself and not because he became a month to month tenant under Section 116. For the period of eleven months he could not be ejected at all except on the ground that he failed to pay the rent when it fell due.

7. Lallo Mal's tenancy was for an indefinite term subject to a minimum of eleven months. A year to year tenancy also is a tenancy for an indefinite term but so also is a tenancy-at-will. Any tenancy that is not in perpetuity or for a fixed term is a tenancy for an indefinite term. The tenancies in Soames v. Nicholson, (1902) 1 K. B. 157 : (71 L. J. K. B. 24) and Dixon v. Bradford and District Railway Servants' Coal Supply Society, (1904) 1 K. B. 444: (73 L. J. K. B. 136), were for an indefinite period, but the latter was a year to year tenancy while the former was not. In both there was an agreement that the tenancy would determine on a three months' notice by either side. Since the tenancy in the latter case was held to be a year to year tenancy, it was held that the notice must expire on the last day of a year, and the tenancy in the former case was apparently treated as a tenancy-at-will and it was held that the notice could expire on any day. The tenancy of Lallo Mal resembles more the tenancy in the former than that in the latter case. Soames v. Nicholson, (1902 1 K. B. 157 : 71 L. J. K. B. 24) was distinguished in Bevi Umma v. Shamu Mennon, A.I.R. (4) 1917 Mad. 141: (32 I. C. 709) where there was a lease for a year certain and provided for yearly payments in case the lessee continued to hold on and it was held that by holding on the tenant became one from year to year and that his tenancy could be determined by notice expiring on the last day of a year. It was suggested during the argument that the tenant became a tenant-at-will by holding over, but the Court replied that the contract did not say when the demand should be made, that in the absence of such a stipulation it should be presumed that the demand must be to terminate the tenancy at the end of year and that even if the. tenant became a tenant-at-will he held from year to year. The Court relied upon a dictum of Alderson, B. in Pope v. Garland, (1841) 4 Y. & C. 394 at p. 399: (10 L. J. Ex. Eq. 13) that "a tenant-at-will at a yearly rent is a tenant from year to year." The tenancy in Pope v. Garland, (1841-4 T. & C. 394: 10 L. J. EX. EQ. 13) might have been from year to year, but it is impossible to say that Lallo Mal's tenancy after 23rd September 1943 was from month to month when he was liable to be ejected on any day of a month. In Bevi Amma's case, (A.I.R. (4) 1917 Mad. 141: 32 I. C. 709) the Court might not have been in a position to presume that the demand could be made to terminate the tenancy at any time during a year, but in the present case it was established that the demand could be made to terminate the tenancy on any day of a month just as in Soames v. Nicholson, (1902-1 K. B. 157: 71 L. J. K. B. 24) the demand could be made to terminate the tenancy on any day during a year. Therefore, even if a tenancy-at-will can be a tenancy from year to year, the tenancy-at-will of Lallo Mal was not a tenancy from year to year.

8. A tenancy for a fixed term determines only by efflux of time; the death of the tenant during the term has absolutely no effect and his legal representatives continue to be tenants for the remainder of the term. In other words, a tenancy for a fixed term is an interest in land which is heritable. The

tenant has a right to remain, by himself or his legal representatives, in possession for the full term. T gave a lease for seven years to R. R died after remaining in possession for four years and his heir s continued in possession. The lease contained no expression pointing to any earlier determination of the interest of the tenant. There were no such words as "provided the tenant so long lived." Consequently, it was held that the interest of R was heritable and that his heir was entitled to remain in possession as a tenant for the remainder of the term; see Maharaja Tej Chund Bahadur v. Sri Kanth Ghosh, 3 M. I. A. 261 : (6 W. R. 48). Ainslie J. stated in Sheikh Dannoolah v. Sheikh Amanutoolah, 16 W. R. 147:

> "We think that any leasehold estate, when not expressly limited to the life of the lessee, passes to his heirs in the same way that any other property belonging to him devolves on them."

9. The interest of a tenant from year to year also is heritable. Cheshire writes in his "Modern Real Property," Edn. 5 at p. 143, that the death of a tenant from year to year is insufficient to bring about the determination of his tenancy. Lord Kenyon Ch. J. said in Doe d. Shore v. Porter, (1789) 3 T. R. 13 at p. 16 : (1 R. R. 626): "This was a chattel interest from year to year as long as both parties pleased; and it seems clear to me, that whatever title the intestate had must vest in his administrator as his legal representative." Woodfall also writes at p. 268 that the death of either party will not determine a tenancy from year to year. Nasim Ali J. took the same view in Anwar Ali v. Jamini Lal Roy, A.I.R. (27) 1940 Cal. 89 : (I.L.R. (1939) 2 Cal. 254) and Vivian Bose J. in Rajib Husain v. Nawab Yanus Khan, A.I.R. (24) 1937 Nag. 321 : (I.L.R (1937) Nag. 406). Vivian Bose J. observed that a lease is a transfer of interest in land and that the right to land or an interest in it is ordinarily heritable.

10. The interest of a tenant-at-will, however, is not heritable. This is one of the features which distinguish a tenancy at will from a tenancy from year to year; see Cheshire, p. 148, The interest of a tenant-at-will is equitable and not legal. Cheshire quotes at p. 149 the following from Co. Litt. 55a:

> "Tenant at will is where lands or tenements are let by one man to another, to have and to hold to him at the will of the lessor, by force of which lease the lessee is in possession. In this case the lessee is called tenant at will, because he hath no certain or sure estate, for the lessor may put him out at what time it pleaseth him."

For says in his "Landlord and Tenant," Edn. 5, p. 580, that if a tenant at will dies the tenancy is determined. Vivian Bose J. stated in Rajib Husain's case, (A.I.R. (24) 1937 Nag. 321: I.L.R (1937) Nag. 406): "Under the English law, every kind of lease except a tenancy-at-will devolves upon the heir." According to Woodfall (see page 281):

> "An estate at will may be determined by a demand of possession, or by the implication of law: of the latter description will be the death of either party, which in general determines the will, etc."

Sir Dinshah Mulla also says the same thing in his "Transfer of Property. Act," 1933, p. 522.

11. A lease for an indefinite period also is said to be determined by the death of the lessee. Sir Montague E. Smith stated in Lekhraj Roy v. Kunhya Singh, 4 I. A. 223 at p. 225 : (3 Cal. 210 P. C.):

> "If it can be ascertained definitely what that term is, the rule of construction that a grant of an Indefinite nature enures only for the life of the grantee would not apply. If a grant be made to a man for an indefinite period, it enures, generally speaking, for his lifetime, and passes no interest to his heirs unless there are some words showing an intention to grant an hereditary interest."

In Saldanha v. R.C. Church, A. I. R. (17) 1930 Mad, 434 : (125 I. C. 242), there was a lease for an indefinite period containing no such words as "from generation to generation" and no reference to the heirs and descendants of the tenant, and the Court held, on the basis of Lekhraj Roy v. Kunhya Singh, (4 I. A. 223 : 3 Cal. 210 (P.c.)) that the lease enured only during the lifetime of the tenant.

12. I have found that Lallo Mal was at the time of his death a tenant-at-will and that his lease was for an indefinite period; the lease, therefore, determined by his death and no interest passed to the respondent. As no interest passed to the respondent his possession of the shop was adverse and he could be sued as a trespasser. No notice to quit was required because there was no interest to be determined by a notice.

13. On 4th May 1944 the appellant made an application in another suit for dissolution of partnership between the respondent and a stranger, asking for possession of the shop on the ground that the respondent was his tenant and his rent was in arrears. This statement made in an application can hardly be availed of by the respondent to claim tenancy rights. If he did not acquire any tenancy rights under the statute, he cannot acquire them by estoppel. Further he did not alter his position at all to his detriment on account of this application. Statements or admissions in pleadings are not to be treated as estoppels; they are made only for the purpose of the particular case. The appellant might have been under a mistake of law in thinking that the respondent was his tenant; if so, he was not prevented from suing him as a trespasser when he was correctly apprised of the legal position.

14. In my judgment the appeal should be allowed and the appellant's suit be decreed with costs of both Courts.

Mushtaq Ahmad, J.

15. I agree.