

Sevoke Properties Pvt. Ltd. vs West Bengal State Eletrictiy ... on 11 April, 2019

Equivalent citations: AIR 2019 SUPREME COURT 2664, AIRONLINE 2019 SC 337, (2019) 1 RENCR 586, (2019) 2 CAL HN 183, (2019) 2 RENTLR 92, (2019) 3 CIVILCOURTC 818, (2019) 3 ICC 802, (2019) 4 ANDHLD 175, 2019 (4) KCCR SN 273 (SC), (2019) 4 MAD LJ 278, AIR 2019 SC (CIV) 1931

Author: D.Y. Chandrachud

Bench: Hemant Gupta, Dhananjaya Y Chandrachud

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 3873 of 2019
(Arising out of SLP(C) No.32456 of 2018)

Sevoke Properties Ltd.

Versus

West Bengal State Electricity Distribution Company Ltd.

JUDGMENT

Dr Dhananjaya Y Chandrachud, J 1 Leave granted.

2 This appeal arises from a judgment and order of a Division Bench of the High Court at Calcutta dated 14 November 2018. Allowing the first appeal filed by the respondent against a decree for possession, the Division Bench directed, in consequence, that the suit filed by the appellant shall stand dismissed. 3 The subject matter of the dispute is a plot of land situated at Second Mile, Sevoke

Road, Siliguri, West Bengal admeasuring 4 bighas, 18 Cottahs, 9 Chittacks and Reason:

18 sq.ft.

4 On 22 March 1975, a deed of settlement was executed by Mohan Lal Khemka, by which a private trust was created for the benefit of his grandson. By the said deed, Mahabir Prasad Bhartia and Sunita Bhartia were appointed as trustees. On 5 November 1979, a deed of settlement resulted in the creation of a private trust. At this stage, it would be material to note that the property in dispute has by subsequent devolutions vested in the appellant.

5 On 25 May 1981, an indenture of lease was entered into between the appellant and the respondent. The term of the lease was fifteen years. Under the terms of the lease, the respondent took possession of the land. The rent was paid until 19 April 1984.

6 The State of West Bengal initiated proceedings for requisitioning of the land under the West Bengal Lands (Requisition and Acquisition) Act 1948. The appellant challenged the validity of the requisitioning in a Writ Petition before the High Court. The petition was allowed by a judgment dated 25 September 1998 and the order of requisitioning was set aside. The judgment of the Single Judge was questioned in appeal by the respondent. The appeal was dismissed on 16 November 2000. 7 Eventually, a suit for eviction was instituted before the Court of the Civil Judge (Senior Division), Jalpaiguri¹. The respondent filed its written statement. The learned trial judge decreed the suit by a judgment and order dated 30 November 2005. The trial court passed a decree for vacant and peaceful possession. A preliminary decree for mesne profits was passed. The respondent filed an appeal before the High Court. By an interim order dated 18 May 2006, the Division Bench of the High Court directed that proceedings before the trial Court for ascertainment of mesne profits in terms of Order 1 Title Suit 63 of 2001 XX Rule 12 of the Code of Civil Procedure 1908 ² shall continue, but no final decree shall be drawn up without the leave of the Court. The execution proceedings were stayed, subject to deposit of the arrears of rent.

8 Following the order of the High Court, the valuer submitted a report in regard to the valuation of the property. The trial Court accepted the valuation on 7 September 2016. The order of the trial court was challenged by the respondent before the High Court³. The petition was dismissed on 1 May 2018 by a learned Single Judge. 9 By a judgment and order dated 14 November 2018, the High Court has set aside the decree for possession and, in consequence, directed that the suit instituted by the respondent shall stand dismissed. The High Court has held that:

- (i) A lease of immovable property for a term exceeding one year can only be made by a registered instrument;
- (ii) Since the indenture of lease was unregistered, it was governed by the first paragraph of Section 107 of the Transfer of Property Act 1882 ⁴;
- (iii) The relationship between the parties would, in consequence, be governed by the second paragraph of Section 107;

(iv) The tenancy shall, therefore, be deemed to be from month to month terminable by fifteen days' notice under Section 106; and

(v) In the absence of a notice under Section 106 determining the relationship of lessor and lessee between the parties, the suit was not maintainable.

10 Mr C A Sundaram, learned senior counsel appearing on behalf of the appellant urged three submissions:

2 "CPC" 3 CO 456 of 2017 4 "TP Act"

(i) The purpose of a notice under Section 106 is relatable to the necessity of effecting termination of the lease. No specific form is provided by the TP Act.

The purpose of the notice is to furnish an intimation to the tenant of the termination of the lease and to provide a period of fifteen days to quit and vacate the premises. The substantive purpose of such a notice is in effect fulfilled in the form of the suit for possession, so long as an eviction follows beyond a period of fifteen days. In that event, the requirement of Section 106 stands satisfied;

(ii) Since the indenture of lease is an unregistered document, as a consequence of the provisions of Sections 35 and 36 of the Indian Stamp Act 1899 and Sections 17 and 49 of the Registration Act 1908, the contents of the document are inadmissible in evidence to prove the terms of the contract. As a consequence, the presumption under Section 106 would come into operation and the relationship between the parties would be in the nature of a monthly tenancy. The respondent in its written statement categorically admitted that it was in occupation for a period of fifteen years which ended on 24 May 1996. Once this is the position, the position of the respondent would be as a tenant at sufferance, in which event, no notice under Section 106 was necessary; and

(iii) After the respondent entered upon the property on 25 May 1981, it was requisitioned by the State Government in pursuance of a request made by the respondent. The respondent stopped paying the rent after 1984. After the Writ Petition was allowed by the learned Single Judge and the order of requisitioning was quashed, the respondent filed an appeal before the Division Bench. In this view of the matter, the respondent must be treated to have elected or opted out of the lease.

11 On the other hand, Mr Yasobant Das, learned senior counsel appearing on behalf of the respondent, urged that:

(i) Since the document of lease has not been registered, the contents of the lease cannot be looked into for any purpose whatsoever.

(ii) The status of the respondent would be of a monthly tenant;

(iii) Consequently, a notice of termination under Section 106 was mandatory; and

(iv) The failure of the appellant to issue a notice of termination under Section 106 was fatal to the maintainability of the suit. In this regard, reliance was placed on a decision of a two judge Bench of this Court in *Satish Chand Makhan v Govardhan Das Byas*5.

12 Section 107 of the TP Act reads thus:

“107. Leases how made.—A lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.

All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

Where a lease of immovable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee:

Provided that the State Government may, from time to time, by notification in the Official Gazette, direct that leases of immovable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession.” 5(1984) 1 SCC 369

13 In terms of the provisions of Section 107, a lease of immovable property for a term exceeding one year can only be made by a registered instrument. Admittedly, in the present case, the indenture of lease has not been registered. In consequence, the contents of the indenture would be inadmissible in evidence for the purpose of determining the terms of the contract between the parties. This is the plain consequence of the provisions of Sections 17 and 49 of the Registration Act 1908 6. The only purpose for which the lease can be looked at is for assessing the nature and character of the possession of the respondent.

14 The essence of the dispute in the present case is as to whether a notice of termination under Section 106 was necessary. In the judgment of this Court in *Satish*

17. Documents of which registration is compulsory.—(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been examined on or after the date on which, Act XVI of 1864, or the Indian Registration Act, 1866 (20 of 1866), or the Indian Registration Act, 1871 (8 of 1871), or the Indian Registration Act, 1877 (3 of 1877), or this Act came or comes into force, namely—

(a) instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:

49. Effect of non-registration of documents required to be registered.—No document required by Section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882), to be registered shall—

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (1 of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument.

Chand Makhan (*supra*), the father of the plaintiff had leased open land to the defendant for a period of five years under a registered deed of lease. After the expiry of the initial term, there was a draft agreement for renewal for a further period of nine years, which, however, was not registered under Section 17(1)(d) of the Registration Act 1908. The plaintiff served a notice for the determination of the tenancy on the ground of forfeiture under Section 111(g) and brought a suit for ejectment. The High Court held that the lease had been determined by efflux of time under Section 111(a) upon the expiry of the term of nine years and hence, no notice under Section 106 was required for the determination of the lease. While determining the correctness of the judgment of the High Court, this Court observed that “the defendants have nowhere admitted that the lease was for a specific term of nine

years". On the contrary, the defendants had pleaded that they were tenants holding over under Section 116 of the TP Act. This Court held that the unregistered draft lease agreement was inadmissible in evidence under Section 49 of the Registration Act except for a collateral purpose of proving the nature and character of the possession of the defendants. The terms of the lease did not constitute a collateral purpose. Consequently, the unregistered draft lease was held to be inadmissible to create a valid lease for a renewed term of nine years. In this background, this Court held that the defendants were tenants holding over under Section 116 in which event it was necessary for the plaintiff to serve a notice under Section 106. In the absence of such a notice, the suit, it was held, would not be maintainable.

15 Mr Sundaram has sought to distinguish this decision, since in that case this Court found that the defendant was a tenant holding over within the meaning of Section 116.

We find merit in the submission which has been urged by Mr Sundaram. In the case before this Court noted above, the defendants had not admitted that the term of the lease was for a period of nine years. This was noted by the Court, as we have extracted earlier. On the contrary, we find that in the present case, there is an express admission on the part of the defendants that they were in occupation under the lease agreement for a period of fifteen years with effect from 1981 and that the period of lease expired on 24 May 1996. Such a specific admission on the part of the defendants is contained in paragraph 22 of the written statement. Under Section 111(a), a lease of immovable property determines by efflux of time limited thereby. Once this be the position, there can be no manner of doubt that the position of the respondent on the expiration of the lease was of a tenant at sufferance. In the circumstances, there was no necessity of a notice for the termination of the lease under the provisions of Section 106. The respondent having squarely admitted in its written statement that it was in occupation for a term of fifteen years, that term having expired, the lease stood determined by efflux of time. Once the lease stood determined by efflux of time, there was no necessity for a notice of termination under Section 106. 16 In coming to this conclusion, we are fortified by the decision of this Court in R V Bhupal Prasad v State of A P7, where this Court held:

"8.Tenant at sufferance is one who comes into possession of land by lawful title, but who holds it by wrong after the termination of the term or expiry of the lease by efflux of time. The tenant at sufferance is, therefore, one who wrongfully continues in possession after the extinction of a lawful title. There is little difference between him and a trespasser. In Mulla's Transfer of Property Act (7th Edn.) at page 633, the position of tenancy at sufferance has been stated thus:

A tenancy at sufferance is merely a fiction to avoid continuance in possession operating as a trespass. It has been described as the least and lowest interest which can subsist in reality. It, therefore, cannot be created by contract and arises only by implication of law when a person who has been in possession under a lawful title continues in possession after that title has 7 (1995) 5 SCC 698 been determined, without the consent of the person entitled. A tenancy at sufferance does not create

the relationship of landlord and tenant. At page 769, it is stated regarding the right of a tenant holding over thus:

The act of holding over after the expiration of the term does not necessarily create a tenancy of any kind. If the lessee remains in possession after the determination of the term, the common law rule is that he is a tenant on sufferance. The expression “holding over” is used in the sense of retaining possession...” In Park Street Properties Private Limited v Dipak Kumar Singh⁸, the appellant to whom premises had been let out with a right to sub-let them entered into a sub-tenancy in favour of the respondent. The agreement by which the sub-tenancy was created was unregistered. The appellant issued a notice under Section 106 of the TP Act terminating the monthly sub-tenancy and then instituted a suit for recovery of possession. The trial court held that since the sub-lease was unregistered, it was inadmissible in evidence and none of its terms, including clause 6 which empowered the landlord to serve a notice upon default in the payment of rent could be looked into. Hence the notice under Section 106 was held to be valid. The High Court allowed the appeal and remanded the proceedings to the trial court. In appeal, this Court held that clause 6 of the agreement was contrary to Section 106. While Section 106 contains the phrase “in the absence of a contract to the contrary”, this must refer to a valid contract. This Court held that in the absence of a registered agreement, the court is not precluded from determining the factum of tenancy from other evidence on the record including the conduct of parties. However, in the absence of registration, Section 106 created a fiction of tenancy from month to month, the termination of which was governed by Section 106. Consequently, the judgment of the High Court was set aside and the judgment of the trial court was restored. The above judgment is clearly distinguishable. Since the agreement of sub- 8 (2016) 9 SCC 268 lease in Park Street Properties (supra) was unregistered, clause 6 which governed the sub-lease could not be looked into. In the present case, the indenture of lease being unregistered, the contents of the instrument are inadmissible in evidence. However, it is evident from the clear admission in the written statement that the appellant accepted and proceeded on the basis that the period of lease expired on 24 May 1996.

Thereafter, the position of the appellant is of a tenant at sufferance. In Nopany Investments (P) Ltd v Santokh Singh (HUF)⁹, a two judge Bench of this Court has held :

“22...In any view of the matter, it is well settled that filing of an eviction suit under the general law itself is a notice to quit on the tenant. Therefore, we have no hesitation to hold that no notice to quit was necessary under Section 106 of the Transfer of Property Act in order to enable the respondent to get a decree of eviction against the appellant.”

17 For the above reasons, we have come to the conclusion that the judgment of the High Court was in error.

18 We accordingly allow the appeal and set aside the impugned judgment and order of the High Court and restore the judgment of the trial court dated 30 November 2005. In view of the pendency of the proceedings before this Court and having due regard to the interim order that was passed by the High Court during the pendency of the appeal, the respondent should be given the liberty of assailing the judgment dated 1 May 2018 of the learned Single Judge of the High Court accepting the report of the Commissioner in regard to the determination of mesne profits. We grant a period of three months to the respondent to initiate appropriate proceedings in accordance with law for assailing the judgment of the learned Single Judge dated 1 May 2018. 9 (2008) 2 SCC 728 19 Mr Yasobant Das requested for the grant of a year to vacate since the respondent has a store in the land and arrangements for shifting have to be made. We direct that the respondent shall have one year's time to vacate the suit premises from the date of the judgment, subject to the filing of the usual undertaking within four weeks from today. We have granted one year's time since the Court was apprised of the fact that a store which provides services to the entire North Bengal area is situated on the land.

20 The bank guarantee furnished by the appellant as a condition for withdrawal of the occupation charges deposited by the respondent shall stand discharged. However, the amount which has been withdrawn by the appellant shall abide by the final determination of mesne profits.

21 There shall be no order as to costs.

.....J. [DR DHANANJAYA Y CHANDRACHUD]
.....J. [HEMANT GUPTA] NEW DELHI APRIL 11, 2019