

M.i. Thimmappa Gowda Vs. Devanna Gowda

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SooperKanoon Citation : sooperkanoon.com/378410

Court : Karnataka

Decided On : Oct-28-1983

Reported in : AIR1984Kant102

Judge : Narayana Rai Kudoor, J.

Acts : [Transfer of Property Act, 1882](#) - Sections 110

Appeal No. : R.S.A. No. 618/76

Appellant : M.i. Thimmappa Gowda

Respondent : Devanna Gowda

Advocate for Def. : A. Keshava Bhat and ;K. Shrivashankar Bhat, Adv.

Advocate for Pet/Ap. : M.R. Janardhana, Adv.

Disposition : Appeal allowed

Judgement :

Kudoor, J.

1. The appellant and the respondent in this Regular Second Appeal were the plaintiff and the defendant respectively in O.S. No. 440 of 1972 on the file of the Principal Munsiff, at Puttur, South Kanara, now Dakshina Kannada. The parties to this appeal will be referred to as in the court of first instance in the course of this

judgment for the sake of convenience.

2. The plaintiff brought the original suit No. 440 of 1972 against the defendant for possession of the plaint 'A' Schedule building and 'B' schedule moveables and for recovery of Rs. 500/- as damages, Rs. 450/- as arrears of rent, Rs. 20/- as notice charges together with mesne profits and costs.

3. The case of the plaintiff as could be ascertained from the plaint averments stated briefly are as follows :

Certain Koragappa Gowda who was examined as P.W. 3 was the original owner of the plaint 'A' schedule building and 'B' schedule moveables. The defendant was the tenant under Koragappa Gowda of both the items of properties. The plaintiff purchased these properties from Koragappa Gowda on 10-3-1966 under a registered sale deed. After the plaintiff became the owner, he also leased out both 'A' and 'B' schedule properties to the defendant on a monthly rent of Rs. 25/- for a period of 11 months under a written rent bond dated 12-5-1966 Ex. P. 1. In Ex. Pl. the date of commencement of the lease was stated as 1-4-1966, As per the terms of the rent bond, the defendant was obliged to pay the rent at the end of every month and obtain receipts and surrender both the items of properties to the plaintiff at the end of February 1967. The defendant was required to enjoy the lease hold properties during the lease period carefully and systematically. He enjoyed them till the lease period was over. Thereafter he continued to enjoy them as a tenant holding over on the same terms. He paid rents as per the terms of the rent bond for some time and failed to pay the same for six months from 1-10-1970 to 31-3-1971. Early in the year 1971, the plaintiff effected substantial repairs to the building. Some extension was also made to the existing building. The plaintiff had incurred substantial expenses for the said work and asked the defendant to give back the leasehold properties, but the defendant wanted to continue the leasehold for some more time and agreed to pay additional rent of Rs. 25/- with effect from 1-4-1971. Thus, the defendant continued in the premises as a tenant on a monthly rent of Rs. 50/- from 1-4-1971. He agreed to surrender the lease hold at the end of eleven months i.e. on 29-2-1972. In spite of repeated demands, the defendant failed to pay the arrears of rent due from April 1971 at the enhanced rate. The

defendant failed to pay rent at the rate of Rs. 25/- per month for six months from 1-10-1970 to 31-3-1971 and at the enhanced rate from 1-4-1971 to 31-3-1972 for a period of ten months. Subsequently, the defendant sent some money to the plaintiff towards the arrears of rent by money order which the plaintiff received in part satisfaction of the rent due to him.

4. The defendant has committed damage to the premises and also to the 'B' schedule moveables deliberately with a view to cause loss to the plaintiff. The plaintiff got issued a registered notice on 10-2-1972 to the defendant terminating his tenancy with effect from 1-3-1972 and also demanding him to pay the arrears of rent and the damages. The said notice was served on the defendant. In spite of service of the notice, the defendant neither paid the arrears of rent nor surrendered the leasehold. The defendant got issued a frivolous reply. As the registered notice issued to the defendant on 10-2-1972 was found to be defective the plaintiff got issued another notice to the defendant on 31-7-1972 terminating his tenancy on the day ending with 31-8-1972. That notice was duly served upon the defendant who got sent a reply on 8-8-1972 along with a cheque for Rs. 50/-. The plaintiff received the amount in part satisfaction of the rent due. Since the defendant failed to surrender possession of the suit properties and also to pay the arrears of rent together with damages claimed, the plaintiff filed the afore-said suit against the defendant for necessary reliefs.

5. The suit was resisted by the defendant on several grounds. The defendant having admitted the execution of the rent bond Ext. P. I dated 12-5-1966 and came into possession of the plaint 'A' and 'B' schedule properties as per the terms of the rent bond, denied the allegation that he will in arrears of rent as stated in the plaint. However, he admitted that the plaintiff had carried out certain repairs to the suit building, but denied having agreed to pay the enhanced rent as claimed in the plaint. On the other hand, the defendant maintained that after the completion of the repair work to the suit building, the plaintiff requested him to surrender the western portion of the building to the extent of one-third portion of the entire building in the month of December 1971 and it was agreed between the defendant and the plaintiff in the presence of others that the defendant should continue his tenancy under the plaintiff in the remaining portion on the same terms and

conditions of the rent bond Ext. P.1 regarding rent. As the plaintiff had supplied wooden materials for the repair work and as there was already some amount due to him from the plaintiff in connection with some other transaction between them, the plaintiff asked the defendant to adjust the rental due from the month of October 1970 and onwards towards the amounts due from him. Hence, the defendant did not pay the rent due from the month of October 1970. After the plaintiff took possession of a portion of the 'A' schedule building, some misunderstanding arose between the plaintiff and the defendant in the month of January 1972. Therefore, the plaintiff began to demand rent from him and also threatened to file a suit for arrears of rent. In order to avoid litigation the defendant sent a sum of Rs. 375/- by money order to the plaintiff towards the full satisfaction of the rents due from October 1970 to December, 1971. The defendant denied the alleged agreement to pay higher rent. He denied the allegation that he had entered into a fresh lease with the plaintiff on 1-4-1971 and also agreed to surrender the building on 29-2-1972. As there was no agreement to pay rent at Rs. 50/- per month, there is no question of his falling in arrears of rent at that rate from 30-4-1971 and onwards as alleged in the plaint. He also denied the alleged damages to the 'B' Schedule moveables. He contended that all the moveables which were existing on the date of the rent bond are even now in the same condition as they were, when they were given to the possession of the defendant. He admitted the receipt of the notice issued by the plaintiff. He maintained that he had sent the amounts to the plaintiff by cheques and moneyorders, towards the full discharge of the rents due from him and the plaintiff has accepted the same. Having accepted the rent sent by him, the plaintiff is estopped from saying that he has received the money orders and cheques towards the part satisfaction of the rent due from him. He has discharged the agreed rent up to the month of July 1972. He tendered the rents due for the months of August and September 1972 along with his written statement. He also contended that the plaintiff has not validly terminated the tenancy of the defendant in respect of the plaint 'A' schedule building and as such, the suit was liable to be dismissed.

6. On these pleadings, the Trial Court raised the following issues :

1) Does the plaintiff prove that the tenancy month is calendar month?

- 2) Does the plaintiff prove that the tenancy started on 1-4-1966 ?
- 3) Does the plaintiff prove that the defendant has taken on lease the moveables described in 'B' Schedules ?
- 4) Does the plaintiff further prove that the paid rent of Rs. 25/- is both for 'A' and 'B' schedule properties as alleged ?
- 5) Does the defendant prove that he has paid the rentals as alleged in paras 4, 5, and 10 of the written statement ?
- 6) Does the plaintiff prove that the defendant has caused damage as alleged in para 7 of the plaint ?
- 7) If so, is the plaintiff entitled to claim damages to the extent of Rs. 500/- ?
- 8) Whether the plaintiff has validly terminated the tenancy of the defendant ?
- 9) Whether the Court fee paid is not correct ?
- 10) To what reliefs are the parties entitled ?

7. The Trial Court decreed the suit in part directing the defendant to deliver vacant possession of the suit 'A' schedule building and to deliver possession of the 'B' schedule moveable to the plaintiff. It also directed the defendant to pay Rs. 119/- as damages and Rs. 20/- as notice charges to the plaintiff. The claim of the plaintiff for recovery of Rs. 450/- as arrears of rent was rejected. It further directed that there shall be an enquiry under Order XX Rule 12 C P.C. for ascertaining the future mesne profits. The suit was thus decreed with proportionate cost of the plaintiff as per the judgment dated 22-8-1973.

8. The defendant carried the matter in appeal before the Civil Judge at Puttur in Regular Appeal No. 117 of 1975 assailing the correctness of the judgment and decree of the Trial Court on the points held against him. The plaintiff also filed cross objections against the same judgment and decree respecting the portion of the decree rejecting his claim for recovery of arrears of rent of Rs. 450/-.

9.The lower Appellate Court having heard both sides formulated the following points for decision :

1) Whether the quit notice caused to be issued by the respondent to the appellant dated 31-7-1972 marked Ext. D.5 terminating the tenancy of the appellant with effect from 31-8-1972 is legal and valid ?

2) Whether the respondent has proved that the appellant had caused damage to the suit 'A' schedule premises and to the suit 'B' schedule moveable and whether the finding of the Trial Court directing the appellant to pay to the respondent damages of Rs. 119/- is correct ?

3) Whether the respondent has proved that the appellant had agreed to pay an enhanced rent of Rs. 50/- per month with effect from 1-4-1971 and that the appellant was due in the sum of Rs. 450/-till the end of 31-8-1972 towards the arrears of rent and whether the finding of the Trial Court rejecting this claim of the respondent not correct ?

4) Does the judgment and decree of the Trial Court call for interference at the hands of this court ?

5)To what reliefs, if any, are the parties entitled to ?

10. Having considered the points formulated for decision in appeal, the lower Appellate Court allowed the appeal filed by the defendant in part and dismissed the cross-objections, filed by the plaintiff. While so allowing the appeal in part, the lower Appellate Court held that the termination of the tenancy of the defendant by the plaintiff as per the quit notice Ext. P-2 dated 31-7-1972 was not legal and valid and on that ground it held that the suit brought by the plaintiff for recovery of possession of the suit 'A' schedule building was liable to be dismissed and accordingly it was so dismissed by its judgment and decree dated, 27-11-1975. Further, it held that the defendant was liable to pay to the plaintiff only a sum of Rs. 37/- with interest towards the damages. The judgment and decree of the Trial Court dismissing the claim of the plaintiff for recovery of arrears of rent of Rs. 450/- was confirmed.

11. Aggrieved by the decree passed by the lower Appellate Court, the plaintiff has preferred this appeal.

12. In this appeal the plaintiff sought to challenge only the correctness of the finding of the first Appellate court holding the quit notice not legal and valid and the dismissal of the suit on that score. The reasonableness of the findings on other points held against the plaintiff has not been questioned.

13. The only ground on which the suit for possession of the 'A' schedule premises was dismissed is that there was no valid termination of the tenancy.

14. Sri M. R. Janardhana, learned Advocate appearing for the plaintiff forcefully contended that the view taken by the lower Appellate Court on the legality and validity of the notice of termination of the tenancy got issued by the plaintiff was wholly erroneous. The time or duration of the lease period stipulated in a lease is a matter of contract between the lessor and the lessee. Hence, what the parties actually intended at the time of entering into a lease, is a factor to be taken into consideration while construing the duration or the period of the lease since it is a matter of pure contract between the parties. If the terms of the rent bond Ex. P.1 are considered against this background, it was the submission of Sri Janardhana that the parties to Ex. P.1 intended to include the first day of April 1966 within the period of duration of the lease stipulated, viz., 11 months ending with 28-2-1967. That being so, the first day of April 1966 cannot be excluded in computing the period of the lease by applying the provisions of Section 110 of the [Transfer of Property Act, 1882](#) (for Short 'the Act'). According to him the first Appellate Court has committed a serious error in placing or assigning the meaning 'from' to the word mentioned in the rent bond Ex. P.1 and thus applying paragraph 1 of Section 110 of the Act for computing the duration of the lease. It was the contention of Sri Janardhana that the meaning of the word according to the dictionary meaning as well as the context in which that word was used in Ex. P.1 would be 'commencement' or 'from the beginning' and not 'from' as held by the court below. That being so, paragraph 1 of Section 110 of the Act would be wholly inapplicable to the suit lease Ex. P. 1 and the first of April, the day on which the lease was commenced cannot be excluded for the purpose of computation of time or the

period of the lease under Ex. P. 1. Finally, he contended that on a proper reading of the recitals of Ex. P.1. it would be reasonable to hold that the tenancy commenced 'on' the first of April 1966 and not 'from' the first of April 1966 and in that view of the matter, the notice of termination Ex. P. 2 got issued by the plaintiff terminating the tenancy on the day ending with 31st day of August 1972 was valid and legal and in full compliance with the provisions of Section 106 of the Act.

15. Per contra, it was contended by Sri Keshava Bhat, learned Advocate appearing for the respondent, that the meaning of the word is 'from' as stated by the first Appellate Court and not 'on' as tried to be canvassed on behalf of the plaintiff. He further contended that the meaning of the word whether it is 'from' or 'on' does not make any difference both would mean the same i.e. that the lease was commenced from the 1st of April 1966 and so, paragraph 1 of Section 110 of the Act is clearly attracted and the first Appellate Court was just and correct in excluding the first of April for the purpose of computing the time or the lease period under Ex. P. 1. He finally contended that the findings of the court below that the suit notice was not valid and legal and the dismissal of the suit for possession of the 'A' schedule building are unassailable and so the appeal is liable to be dismissed.

16. In view of the contentions urged on behalf of the plaintiff and the defendant, the only point that arises for decision in this appeal is whether the quit notice Ex. P. 2 got issued by the plaintiff to the defendant dated 31-7-1972 terminating the tenancy of the defendant on the day ending with 31st day of August 1972 is legal and valid.

17. Paragraph 1 of Section 110 of the Act which is relevant for our purpose reads :

'Where the time limited by a lease of immoveable property is expressed as commencing from a particular day, in computing that time, such day shall be excluded. Where no day of commencement is named, the time so limited begins from the making of the lease'

(Emphasis is supplied)

A simple reading of the above provision would show that paragraph 1 of Section 110 contemplates two stipulations viz, that a time or period should be limited by the lease and the period must be expressed to commence from a particular day and when these two conditions are fulfilled, the rule of interpretation laid down thereunder would apply.

This has been emphasized by the Calcutta High Court in *Calcutta Landing and Shipping Company v. Victor Oil Company Ltd.* : AIR 1944 Cal 84 . The observations of their Lordships at page 88 read.

'Paragraph 1 of Section 110 T. P. Act, which is relevant for our present purposes contemplates, that a time or period should be limited by the lease and the period must be expressed to commence from a particular date. When both these conditions are fulfilled, the rule of interpretation laid down in the paragraph applies and in computing the period that is to be excluded....'

The Supreme Court had the occasion to consider the application of the provision of paragraph 1 of Section 110 to a lease of immoveable property in *Dattopant Gopala Rao Devakate v. Vithal Rao Maruthi Rao* : AIR 1975 SC 1111 . In that case, the appellant had taken the suit premises on rent for a period of one year from the respondent's predecessors-in-title by a written document Ex. P. 12 dated 15-6-1945. The tenancy commenced from 9-4-1945. The respondent purchased the property in August 1968 and gave a notice on 19-11-1968. It was served on the appellant on 21-11-1968 terminating his tenancy and asking him to deliver possession by 8th December 1968. One of the contentions urged before the Supreme Court was that the notice terminating the tenancy was invalid because the lease was an yearly one being for a manufacturing purpose and even if the tenancy be a monthly one, the notice was not in accordance with law.

18. On the basis of the evidence in the case, the Appellate Court took the view that the lease was not for a manufacturing purpose, that the lease was for one year which expired on 9-4-1946, that the tenant held over under Section 116 of the Transfer of Property Act, that the lease-deed Ex. P. 12 did not mention the purpose of the lease and that the appellant started manufacturing soda in a small portion of the demised premises after the lease for one year was taken and that

the dominant purpose of the lease was not a manufacturing one, but was the sale of aerated water. The High Court has affirmed this finding in revision. The Supreme Court also proceeded on the basis of the aforesaid findings of the two courts below. The Supreme Court further observed that if the purpose of the lease was not a manufacturing one, then the holding over under Section 116 of the T.P. Act created a month to month tenancy under Section 106 of the T.P. Act terminable by 15 days notice ending with the tenancy month given under Section 106 of the T. P. Act. On this basis, the Supreme Court proceeded to consider the contentions urged before it respecting the validity of the notice of termination and observed as follows :

'The appellant, however, must succeed on the last submission made on his behalf that even so, the notice was invalid. As already stated the notice purported to terminate the tenancy by the 8th December 1968 treating the month of tenancy as commencing from the 9th day of a month and ending on the 8th day of month following. The requisite period of 15 days was given but the defect in the notice was that it did not expire with the end of the month of the tenancy. The end of the month of tenancy was the 9th day and not the 8th day as wrongly held by the High Court affirming the view of the lower Appellate Court. Under Ex. P. 12 the appellant agreed to pay Rs. 600/- as rent for one year from the 9th April 1945. The tenancy obviously, therefore, commenced from that date. That being so, under Section 110 of the Transfer of Property Act in computing, the period of the one year, the date of commencing, i. e. the 9th day of April 1945 had to be excluded. The one year's tenancy ended on the 9th April 1946. It is clearly mentioned to be so in Ex. P. 12 in these words :

'I shall make use and enjoyment of the said shops as a tenant for one year and deliver your shops to you without objections on 9th April 1946.' By holding over the tenancy from month to month started from the 10th April 1946 ending on the 9th day of the following month. This view finds support from the Rent Receipts Ex. D.1 and D.1 (a). The evidence on behalf of the respondent that there was a mistake in those receipts is not correct as the said receipts are in conformity with Ex. P. 12. On the other hand, Ex. P. 13 and P. 14, the other two rent receipts, being not in accord with Ex. P. 12 could not be relied on. In Ex. P. 16 the Controller by his

order dated 29th April 1963 while fixing the fair rent of the suit premises at Rs. 1050/- per year had fixed it with effect from 10th April 1963. That also shows that the tenancy month commenced from 10th day of a month and ended on the 9th day of the following month.'

9. Keeping in view the mandate of paragraph 1 of Section 110 of the Act and also the above decision of the Supreme Court, let me now proceed to consider the question involved in this appeal. At the very outset, it would be useful to refer to the admitted facts of the case which are these :

The plaintiff had caused a notice of termination of tenancy as per Ex. P.2. dated 31-7-1972 terminating the tenancy on the day ending with 31st day of August 1972 which was received by the defendant on 2-8-1972 as per Ex. P.3 the postal acknowledgment. The defendant had executed a rent bond dated 12-5-1966 as per Ex. P. 1 in favour of the plaintiff. The defendant has continued to be in possession of the suit 'A' schedule premises even after the expiry of 11 months' period fixed under Ex. P. 1 as a tenant holding over and the tenancy of the defendant after the expiry of 11 months mentioned in Ex. P. 1 was a monthly tenancy. The lease of the defendant was liable to be terminated by 15 days notice expiring with the end of the month of the tenancy under Section 106 of the Act. 15 day's notice was given by plaintiff to the defendant terminating his tenancy.

20. However, the question about which there is serious dispute between the parties in this case is whether the notice Ex. P. 2 sent by the plaintiff to the defendant terminating his tenancy on the day ending with 31st day of August 1972 has or has not expired with the end of the tenancy month and therefore, Ex. P.2 is or is not legal and valid. In order to resolve this controversy between the parties, it seems to me appropriate to extract the relevant portion of the rent bond Ex. P. 1 which reads :

from the recitals of the rent bond Ex. P.1 excerpted above, it is clear that the time or duration of the rent bond was initially for 11 months. It is further recited in Ex. P.1 that the time or period fixed under the rent bond commenced '1966 . There is serious divergence between the parties as to what exactly is the meaning of the word whether it connotes 'from' or 'on' thereby including the 1st of April 1966. The

dictionary meaning of the word in English is 'beginning,' 'commencement' 'from the beginning', or 'from a long time' as given in Kittel's Kannada-English Dictionary, revised and enlarged edition 1971 Vol IV. The first Appellate Court having noticed the dictionary meaning of the Kannada word in English, as stated above, proceeded to observe that 'It is therefore clear that the dictionary meaning of the word is 'from' and not 'on'. It seems to me that the learned Judge has not clearly kept in view the correct meaning of the word as found in the dictionary to which he made a reference in his judgment. Nowhere we find a meaning to the word given in the dictionary as 'from' but what the dictionary provides is 'from the beginning' or 'beginning' or 'commencement' etc. It seems to me that there is a world of difference between the expression 'from' and 'from the beginning' when these expressions are used relating to the commencement of time or period fixed with reference to a particular day of the month, the former connotes an uncertainty or indefiniteness whereas the latter connotes certainty or definiteness regarding the actual point of time of the commencement of the time or period fixed. If the expression 'from' is used with reference to a day of the month for the commencement of time fixed, say, 'from the first of a month', it would mean that the commencement of the time would begin at any point of time during the first day of the month where as if the expression 'from the beginning' is used it would mean that the commencement of the time fixed would begin from the beginning of the first day of the month. In other words, it would mean that the commencement of the time fixed would be inclusive of the first day of the month. If the meaning of the word is taken as 'from' and adopted for the purpose of construing the controversial recitals contained in Ex. P.1 then it would mean that the commencement of the time or duration of the period fixed under Ex. P.1 was 'from' the first of April and if its meaning is taken as 'from the beginning' then it would connote that the commencement of the time or the duration of the lease under Ex. P.1 was 'from the beginning' of the 1st of April. There is no controversy between the parties that if the meaning of the word is 'from' as adopted by the court below, then the first of April shall have to be excluded for the purpose of computing the period of the lease fixed under Ex. P.1 on the basis of the construction of paragraph 1 of Section 110 of the Act. But would it follow that the first of April shall have to be excluded if the meaning of the word is taken nor adopted as 'from the beginning' of

the first of April for the purpose of computation of the period fixed under the lease. The answer to my mind appears to be in the negative for the simple reason that if we apply the meaning of the word as 'from the beginning' to the controversial clause in Ex. P.1 then it would read that the commencement of the time or the duration of the lease under Ex. P.1 was 'from the beginning' of first of April and it would thereby clearly indicate that the parties intended to include the first of April in the time or duration of the period of the lease fixed under Ex.P.1 when they entered into the lease.

21. The above view I take that first of April 1966 was included in the computation of the time of the duration of the lease fixed under Ex. P.1 gains further support from the recitals of Ex. P.2 relating to the time or duration of the lease which reads :

This clause contained in Ex. P.1 could be given effect only if first of April 1966 is included in the computation of the period of 11 months fixed by the parties under Ex.P.1. Here again, the parties were definite and have in unequivocal terms expressed their intention that the period of 11 months commencing from the beginning of the first of April would end on the last day of February 1967. The defendant himself has stated in his reply to the notice of the plaintiff Ex. P.2 that the allegation in the notice to the effect that the defendant had agreed to surrender the building on 28-2-1967 and thereafter he was enjoying the said premises as a tenant, holding over was correct. Thus the aforesaid recitalsubstantially supports the view that the parties intended that the commencement of the period or the time of 11 months fixed under the rent bond Ex. P.1 was to be computed inclusive of first of April and not to its exclusion.

22. There is yet another circumstance in this case that would also go to show that the parties to Ex.P.1. intended to include the first of April in the computation of the period of the tenancy. It is in the evidence of P.W.3 the original owner of the suit premises, that the defendant was a tenant in respect of the suit 'A' schedule building at the time, the plaintiff purchased the same from him. P.W.3 was not only the vendor of the suit 'A' schedule building, but also the scribe of Ex. P.1. It is seen from Ex. P.1 that the purchase of the suit 'A' schedule property by the plaintiff from

P.W.3 was on 10-3-1966. that was about the middle of the month. Ex. P.1 recites that the time or the duration of the lease of 11 months fixed there under was to commence . This would conform to the meaning of the word as 'from the beginning' intending thereby that the tenancy of the defendant under the plaintiff was to commence 'from the beginning' of the 1st April after the end of 31st day of March 1966, probably for facilitating the vendor of the plaintiff to realise the full rent for the month of march from the defendant in view of the sale of the property concerned under Ex. P.1 to the plaintiff on 10-3-1966, about the middle of the month.

23. If one could say that the time or the duration of the lease fixed under Ex. P.1 was for a period of 11 months 'from the beginning' of the 1st of April till the last day of February 1967, it would be the same thing as to say that the time or the period fixed under the lease was to commence 'on' the 1st of April 1966, because it strikes to me that it would give the same meaning as the expression 'from the beginning' of the 1st of April would convey.

The defendant also appeared to have understood the commencement of the period fixed under the lease in the same way as I propose to do, which is clear from the admission of the defendant in his evidence 'the tenancy between me and the plaintiff commenced on 1-4-1966'. If the tenancy were to commence on 1-4-1966 and if the period of the tenancy fixed under the deed was for 11 months, the parties must have intended to include 1st of April in the period of tenancy stipulated under Ex. P.1. The lower Appellate Court, it appears to me rather curiously observed in para 8 thus :

'There is no dispute between the parties that the initial tenancy commenced from '1966

I say that this observation was rather curious because if there was no dispute between the parties about the commencement of the initial tenancy 'from' the 1st of April 1966, then the plaintiff would not have any case to urge before this court in this appeal, because if that was the meaning to be assigned to the word then the application of paragraph 1 of Section 110 of the Act cannot be said to be erroneous. It seems to me that the observation of the learned Judge referred

above is clearly erroneous because the very controversy or dispute between the parties as could be seen from the stand taken by them, both in the Trial Court as well as in the lower Appellate Court, was about the true meaning of the word and the commencement of the lease period, whether it was from 1st of April or 'on' 1st of April. As the dictionary meaning of the word is not 'from' but 'from the beginning' etc., and the meaning of the word 'from' in Kannada is the recital in Ex. P. 1 would have been :

24. For the aforesaid reason, I am inclined to hold that the commencement of the period of the lease under Ex. P. 1 is not 'from' 1st of April 1966 but 'from the beginning' of 1st of April, same as 'on' 1st of April 1966. The court below having noticed the correct dictionary meaning of the word proceeded to observe :

'It is therefore clear that the dictionary meaning of the word is 'from' & not 'on' and if that is so, what has been stated in Ex. P. 1 is that the tenancy commenced from 1-4-1966'.

The above conclusion appears to me clearly wrong and erroneous.

25. Paragraph 1 of Section 110 of the Transfer of Property Act as I observed in the earlier part of this judgment contemplates two conditions for its application, namely, that a time or period of the lease should be limited by the lease and the period must be expressed to commence 'from' a particular date. If these conditions are satisfied, then paragraph 1 of Section 110 of T.P. Act would apply and in computing the time, such day shall be excluded. The principle adumbrated in paragraph 1 of Section 110 of the T.P. Act appears to be to give full benefit or advantage to the lessee of an immovable property to enjoy the full period of the lease where the time limited by the lease is expressed as commencing 'from' a particular day, in computing the time, such day should be excluded. This concession is made in favour of the lessee because of the uncertainty of the time during the day on which the lease of immovable property actually commenced where the time limited by the lease is to commence 'from' a particular day. To set this uncertainty at rest and make it certain, provision is made to exclude that day altogether in computing the time of the lease & add a day more at the end. This is what Mukherji, J, as he then was., observed in Calcutta L & S Company's Case :

' I agree with what has been said by Ameer Ali, J., in 4 2C.W.N. 1115 that Section 110 T. P. Act attempts to render certain, what in England would have been a matter of some doubt and lays down the artificial rule of construction that where a lease is said to commence from a certain date, it means from the end of that date and will have another day added on at the end.'

26. On a careful consideration of all the relevant facts and circumstances of the case and for the reasons stated supra, I am inclined to hold that the 1st of April 1966, the date of commencement of the lease stipulated in Ex. P. 1 shall have to be included in computing the time limited by the lease because the word was used to which connotes inclusion of that day and if the word is understood in that way. I have no doubt in my mind to hold so no other conclusion can be reached but to include the 1st of April in the computation of the time of the lease fixed and any other construction, in my opinion, would violate the terms of the deed. There is no dispute if 1st of April 1966 is to be included in the computation of the period of the lease stipulated in Ex, P. 1 the notice Ex. P. 2 got issued by the plaintiff is valid and legal and the termination of the tenancy of the defendant was in accordance with Section 106 of the T. P. Act. So I hold that the notice of termination Ex.P. 2 is valid and it has validly terminated the tenancy of the defendant in accordance with law. The only irresistible conclusion thereby to be recorded is that the suit brought by the plaintiff for possession of the Suit 'A' schedule building has to be decreed and consequently he is entitled for mesne profits from the date of the termination of the tenancy.

27. In the result, for the reasons stated above, the appeal is allowed. The judgment and decree of the lower Appellate Court in dismissing the suit of the plaintiff for possession of the suit 'A' schedule building are hereby set aside. There shall be a decree in favour of the plaintiff for possession of the suit 'A' schedule building together with the mesne profits as from the date of the termination of the tenancy. The mesne profit shall be ascertained by an enquiry under Order 20 Rule 12 C.P.C. In other respects, the lower Appellate Court's Judgment is confirmed. In the circumstances of the case, I direct each party to bear his own cost.

