

Fathimabi Vs. Mehboob

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Court : Karnataka

Decided On : Jun-27-1984

Reported in : ILR1985KAR393

Judge : Kudoor, J.

Acts : [Transfer of Property Act, 1882](#) - Sections 105

Appeal No. : R.F.A. No. 282 of 1982

Appellant : Fathimabi

Respondent : Mehboob

Advocate for Def. : Mahaboob Ali Khan, Adv.

Advocate for Pet/Ap. : B.N. Dayananda, Adv.

Disposition : Appeal dismissed

Judgement :

Kudoor, J.

1. The plaintiff in O.S. No. 10326 of 1981 on the file of the II Additional City Civil Judge, Civil Station, Bangalore is the appellant and the defendant is the respondent in this appeal.

2. The plaintiff instituted the above suit for a declaration that there was creation of fresh tenancy in respect of the suit schedule premises between the parties from 2-7-1980 in view of the fact that there was a change in the rate of payment of rent and a fresh advance and as such the order of eviction passed in H.R.C. No.110/77 on the file of the II Additional Civil Judge, Civil Station, Bangalore, is inexecutable and for restraining the defendant by an order of permanent injunction from evicting the plaintiff from schedule premises or from executing the order of eviction dated 1-7-1980 passed in H.R.C. No. I 10/77.

3. The suit brought by the plaintiff was based on the following averments.

The defendant is the owner of the suit schedule premises. The plaintiff was a tenant in respect of the suit schedule premises under the defendant paying a monthly rent of Rs. 125/-. The defendant filed an eviction petition for the eviction of the plaintiff from the suit schedule premises in H.R.C. No. 110/1977 on the ground that the suit schedule premises was required by the defendant for his bona fide use and occupation. The suit was pending hearing. In the meanwhile the defendant who was not anxious to evict the plaintiff from the schedule premises but only wanted an enhanced rent of Rs. 200/- as against the rent of Rs. 125/- which was being paid till May 1980, suggested that the defendant would withdraw the eviction Petition if the plaintiff agreed to pay rent at Rs. 200/- per month and also pay a further sum of Rs. 2000/- as advance. The plaintiff agreed to the proposal with a view to buy peace. However, the then Counsel appearing for the defendant was not in favour of the defendant withdrawing the eviction Petition as he thought that if the defendant did so, it would affect another eviction case filed by the defendant for eviction of another tenant who was occupying one other portion of the same building. Therefore, he suggested that if the plaintiff agreed for an order of eviction being passed, the defendant would execute an agreement not to execute the order of eviction and that the plaintiff would be allowed to continue in the schedule premises on payment of higher rent of Rs. 250/- per month and an advance of Rs.2500/-. It was under these circumstances that an order of eviction came to be passed against the plaintiff granting one year's time to vacate the suit schedule premises. The defendant entered into an agreement on 1-7-1980 with the plaintiff that even after the expiry of the period of one year to vacate the premises to be

provided under the order of eviction, the defendant would not execute the order of eviction until such time as the plaintiff found an alternative accommodation for her residence. The defendant in fact, recovered the rent at the rate of Rs. 250/- per month for the two months of June and July 1980. The cumulative effect of the agreement is that so long as the defendant retains the sum of Rs. 2500/- paid by the plaintiff as advance, and the plaintiff continues to pay rent at the enhanced rate of Rs. 250/- per month, the defendant should not execute the order of eviction and the tenancy of the plaintiff was deemed to continue from 1-7-1980 onwards. There was no need for the defendant to recover possession of the schedule premises as he did not need the same bona fide for his own use and occupation but was only interested in getting higher rent. As late as 21-6-1981 the defendant assured the plaintiff that he would not execute the order of eviction and the plaintiff may continue as a tenant on payment of enhanced rent of Rs. 250/- per month. However, as a precautionary measure, the plaintiff filed a Caveat Petition in the Court of Small Causes, Civil Station, Bangalore on 22-6-1981 and sent copies of the Petition and the accompanying affidavit to the defendant. In response to the notice on caveat, the defendant caused a reply notice dated 1-7-1981 to be sent through his advocate wherein the defendant has advised the plaintiff to file an application under Section 148 C.P.C. in the H R C. case for extension of time with prior notice to the defendant and the defendant would agree to the extension of reasonable time but not one year as sought in the notice. In view of the stand taken by the defendant in his reply, the plaintiff was constrained to file the suit against the defendant for the reliefs stated supra. The plaintiff also filed an application I.A. No. 4 under Order 41 Rule 27 read with Section 151 C.P.C. seeking leave of the Court to receive the documents produced along with the application by way of additional evidence.

4. The defendant resisted the suit on several grounds. I shall narrate only the material grounds adduced by the defendant in his written statement in resisting the suit. Admitting that he has filed an eviction petition in H.R.C. No. 110/1977 seeking eviction of the plaintiff from the suit schedule premises on the ground that he required the premises bona fide for his own occupation, he denied emphatically the circumstances narrated in the plaint under which the eviction order came to be passed. He has stated that before filing the eviction petition the defendant had

terminated the tenancy of the plaintiff. There upon he brought the eviction petition and the H.R.C. Court allowed his petition granting eviction of the plaintiff from the suit premises as per its order dated 1-7-1980 granting one year's time for the plaintiff to vacate the premises. The allegation that the defendant did not require the suit premises for his own use and occupation was rejected by the Eviction Court. The defendant further denied the allegation that the defendant was not anxious to evict the plaintiff from the suit premises but only wanted enhanced rent. He has denied all other averments made in the plaint leading up to the execution of the agreement between the defendant and the plaintiff. Having denied the case set up by the plaintiff in this regard, the defendant has further stated that the plaintiff, expecting that the Court would grant two years time to vacate the premises, asked for two years time to vacate the premises so as to enable her to complete the construction of her own house but the Court granted only one year's time to vacate. The plaintiff, being apprehensive that she may not be able to complete the construction of her house or find an alternate accommodation within one year, the plaintiff and her Counsel requested the defendant to give some concession to the plaintiff in the matter of vacating the suit schedule premises. The defendant taking pity over the plaintiff assured the plaintiff that even after one year, if she was not able to complete the construction of her house or unable to find alternate accommodation, he would desist from executing the decree for a reasonable time to enable her to find alternate accommodation. In consideration of the defendant agreeing to extend the time granted by the Court to vacate the suit schedule premises, the plaintiff agreed to pay a sum of Rs. 250/- per month by way of damages for use and occupation from 1-8-1980 and also a sum of Rs. 2,500/- by way of assurance that the plaintiff would continue to pay Rs. 250/- per month till she would vacate the premises. Thus the agreement dated 1-7-1980 came to be entered into between the defendant and the plaintiff. All that was agreed to by the defendant was that the defendant would extend the time granted by the court for the plaintiff to vacate, to a reasonable period and that during such period, he would not execute the eviction order. The agreement cannot be construed to mean that the defendant had agreed not to execute the order of eviction at all. The agreement dated 1-7-1980 would not bring about a fresh tenancy with fresh terms as sought to be made out by the plaintiff in her plaint. The

order of eviction is legally effective and executable. The plea put forward in the plaint that the tenancy of the plaintiff was to continue from 1-7-1980 is not maintainable as the tenancy was terminated long prior to the agreement in question and long before the filing of the eviction petition. The terms of the agreement do not create either a fresh tenancy or a continuation of tenancy in favour of the. plain-tiff. There was no intention in the mind of the parties to create a fresh tenancy at the time of entering into the agreement ; the only intention was to grant furthertime to the plaintiff to vacate the suit schedule premises. The sum of Rs. 2500/- was received 'in advance' and not 'By way of advance' to ensure due compliance by the plaintiff of her undertaking to vacate the premises within the stipulated time. On the basis of these averments, the defendant prayed for the dismissal of the suit.

5. Upon the pleadings of the parties, the Trial Court raised the following issues :

1. Does the plaintiff prove that there in a creation of fresh tendency in her favour from 2-7-80 in view of the agreement dated 1-7-80?

2. Is the plaintiff entitled to the declaration and injunction sought for?

3. What decree or order?

6. The Trial Court appreciating the evidence, both oral and documentary, adduced by the parties, recorded itsfindings on both issues 1 and 2 against the plaintiff and accordingly dismissed the suit with costs. Hence this Regular First Appeal by the plaintiff.

7. Sri B. N. Dayanand, learned Advocate appearing for the plaintiff, strenuously contended that the findings of the Trial Court on both issues Nos. 1 and 2 are manifestly erroneous. His contention was that the learned Trial Judge has overlooked the important features and the terms of the agreement dated 1-7-1980 while reaching the conclusion that the agreement in question does not either create a fresh tenancy or a continuation of the tenancy. He drew the attention of the court in particular to para 9 of the agreement and emphasised that the plaintiff was obliged under the agreement to pay a rent of Rs. 250/-per month in place of

the existing rent commencing from the next tenancy month and also paid a sum of Rs. 2.500/- to the defendant as advance which would be refundable without any interest on the surrender of the premises by the plaintiff subject to any charge against the arrears of rent, arrears of water charge or electricity bill as the case may be which were payable by the plaintiff to the defendant. It was his further argument that the agreement dated 1-7-1980 answers all the requirements of law relating to the creation of a fresh tenancy and as such the finding of the Trial Court that the plaintiff was not entitled for the declaration and injunction sought for in the suit, is wholly erroneous. He has also submitted that the application I.A No. 4 filed by the plaintiff for receiving additional evidence may be allowed and the documents produced may be taken into consideration in the appeal.

8. Sri Mahboob Ali Khan, the learned Advocate appearing for the defendant controverted all the submissions made on behalf of the plaintiff. He argued in support of the findings of the learned Trial Judge, advancing arguments on the same lines as advanced before the Trial Court. He maintained that the agreement dated 1-7-1980 does not create any fresh lease but it would amount only a licence for the plaintiff to occupy the suit premises until she found an alternative accommodation. He commended for acceptance the reasoning of the Trial Court and finally prayed for the dismissal of the appeal.

9. In view of the rival contentions urged on behalf of the plaintiff and the defendant, the only point that arises for consideration is whether the agreement dated 1-7-1980 creates a fresh tenancy in favour of the plaintiff with effect from 2-7-1980 or it creates only a licence for the plaintiff to occupy the suit premises until she found an alternative accommodation.

10. The answer to this question will depend upon the true construction of the terms of the agreement dated 1-7-1980 entered into by the parties. The said agreement is produced and marked as Ex. P. 2. Before I advert to the terms of the agreement, I shall refer to the legal requirements that distinguish a lease from a licence. In *Associated Hotels of India -v.- R.N.Kapoor*, : [1960]1SCR368 . His Lordship Justice Subba Rao, as he then was, summarised the propositions that distinguish a lease from a licence as follows at page 1269.

'The following propositions may, therefore, be taken as well-established:

1. To ascertain whether a document creates a licence or lease, the substance of the document must be preferred to the form;
2. The real test is the intention of the parties-whether they intended to create a lease or a licence ;
3. If the document creates an interest in the property, it is a lease ; but if it only terms another to make use of the property of which the legal possession continues to be the owner, it is a licence; and
4. If under the document a party gets exclusive possession of the property, 'prima facie' he is considered to be a tenant ; but circumstances may be established which negative the intention to create a lease.'

In *M.N. Clubwaia -v.- Eida Hussain Saheb*, : [1964]6SCR642 again the Supreme Court observed -- 'whether an agreement creates between the parties the relationship of landlord and tenant or merely that of licensor and licensee the decisive consideration is the intention of the parties. This intention has to be ascertained on a consideration of all the relevant provisions in the agreement. In the absence, however, of a formal document the intention of the parties must be inferred from the circumstances and conduct of the parties.'

In *Isack -v.- Hotel De Paris*, 1960-1 ALLER 348-352 Lord Denning, speaking for the Judicial Committee of the Privy Council observed :

'There are many cases in the books where exclusive possession has been given of premises outside the Rent Restriction Acts and yet there have been held to be no tenancy. Instances are *Errington. v.. Errington and Woods*, 1952-1 All ER 149 and *Cobb v.. Lane*, 1952-1 All ER 1199 which were referred to during the argument. It is true that in those two cases there was no payment or acceptance of rent, but even payment and acceptance of rent - though of great weight is not decisive of a tenancy where it can be otherwise explained.'

As to the true meaning of the term rent, the Supreme Court in *State of Punjab v. British India Corporation*, : [1964]2SCR114 observed thus :

'In its wider sense rent means any payment made for the use of land or buildings and thus includes the payment by a licensee in respect of the use and occupation of any land or building. In its narrower sense it meant payment made by tenant to landlord for property demised to him.'

In *Ramamurthy Subudhi -v.- Gopinath*, : [1967]2SCR559 the true import of a compromise decree for eviction passed in the appellate Court granting five years ' time for the judgment debtor to vacate the suit house and enabling the decree holder by its terms to execute the decree if the judgment debtor failed to pay the future rent for any three consecutive months where the suit for eviction of the tenant after termination of the tenancy having been dismissed came up for consideration.

Placing reliance on the observation of the earlier Supreme Court rulings as well as that of Lord Denning in the decisions referred above, the Supreme Court held:

'the compromise deed did not create a lease but a license. It was difficult to impute to the decree holder an intention to create a fresh tenancy while the fact that he brought the suit showed that his intention was to eject the judgment debtor after having purported to terminate the tenancy. The fact that the word 'rent' had been used in the compromise deed was not conclusive as in its wider sense rent meant any payment made for the use of land or buildings and thus included the payment by a licensee in respect of the use and occupation of any land or buildings. The period of five years granted under the deed to the judgment debtor for continuation of the possession also did not militate against the construction, that the compromise only created a licence, for the decree holder had lost in the Trial Court and it was only in the court of appeal that the compromise was arrived at.' (as paraphrased in the last para of the Head Note).

11. Keeping in mind the above observations, I shall now proceed to consider the terms of the document Ex. P-2 evidencing the agreement between the parties. The defendant and the plaintiff who were parties to the document were described as

First Party and Second Party respectively at the commencement of the document. Thereafter the terms of the agreement were set out in paras-1 to 9 reads :

'1. Whereas , the 1st party is the land lord, and the 2nd party is the tenant of premises bearing No. 27/3 (Upstairs), Cunningham Road, Bangalore-52, it being a part of the Upstair portion and an unit of accommodation in main premises No. 27.

2. Whereas in respect of the said unit of accommodation, the 1st Party has filed a petition for eviction of the 2nd party, in the court of the II Additional Civil Judge , Civil Station, Bangalore in HRC No. 110/77 on the ground of requirement of the 1st party to the said premises, for his bona fide use and occupation;

3. Whereas the trial of the petition has commenced already and is in an advanced stage.

4. Whereas the parties have already reported to the court that the petition before the said court be allowed giving the responded one year's time to vacate the premises.

5. Whereas is the meantime, on account of the failing health of the 1st Party a proposal for settlement of the case hasbeen made, and with the mediation of common friends who are witnesses to this agreement it is de-sired that in the mutual interest of both the parties, an agreement is made settling the dispute to the common advantage;

6. That the 2nd Party shall vacate the premises within the period of one year if she were to secure an alternate accommodation elsewhere and hand over possession to the 1st Party

7. Should however, if the 2nd party is unable to make alternate arrangement to secure an alternate house, the 1st Party at the request of the 2nd party shall provide such reasonable time and in that regard will extend the time by such period as may be agreed to ;

8. If, in the circumstances the 2nd party does not get an alternate house and for that reason does not vacate the present house over which an order of eviction is

passed by the court in the said H.R.C. Petition, the 1st party shall not execute the order of eviction against the 2nd party and will grant further time ;

9. The rent of the said premises having regard to the existing conditions and tax structure, is and has to be revised at Rs. 250/- (rupees two hundred and fifty per month in place of the existing rent, commencing from the next tenancy month. The 2nd party hereby pays to the 1st party a sum of Rs. 2,500/- by Cheque No. 368980, as an advance to the 1st Party which will be refundable without any interest on surrender of the premises by the 2nd party subject however to any change, against the arrears of rent, arrears to water tax, or electricity bill as the case may be which the 1st party has to pay of her own account'.

12. The crux of the case is whether the above terms of the document create a fresh tenancy or it is only a licence. The question in these class of cases as enunciated in the various decisions referred above, is one of intention of the parties. If the terms of the agreement are clear and unambiguous as to the true import of the intention between the parties that a particular document is a lease or licence, then the matter will have to be decided upon the terms of the document without recourse to the surrounding circumstances and the conduct of the parties. On the other hand, if the terms of the document evidencing the agreement between the parties are not clear and conclusive, then the surrounding circumstances and the conduct of the parties have also to be borne in mind for ascertaining the real relationship between the parties. There was no dispute that the defendant brought an eviction suit in H.R.C. No. 110/77 against the plaintiff seeking her eviction from the suit schedule premises after terminating the tenancy by issuing a notice. In the course of the enquiry, the evidence of the defendant was recorded. Before the evidence of the plaintiff was to begin, the parties entered into a compromise and filed a compromise Petition dated 1-7-1980 as per Ex. D-2. Under the terms of Ex. D-2, both the plaintiff and the defendant agreed for passing of an eviction decree, on the basis of the evidence already recorded as they did not wish to adduce any further evidence since the plaintiff having consented to withdraw her statement of objections filed against her eviction, granting one year's time to the plaintiff to vacate the Petition schedule premises. It was also stated that the rent up to 1-7-1980 had been paid. In view of the

compromise entered into by the parties and also considering the evidence adduced in the case, a decree for eviction was passed on 2-7-1980 as per Ex. P-1 granting one year's time for the plaintiff to vacate the premises, failing which the defendant was entitled to recover possession through Court. In between the compromise Petition Ex. D-2 and the eviction decree Ex. P-1, the parties entered into the agreement Ex. P-2. It is therefore clear from the above facts that, after the parties settled their disputes in the eviction proceedings in the manner stated in Ex. D-2, they entered into the agreement Ex. P-2. The fact that the defendant had brought the suit for the eviction of the plaintiff in which the parties agreed for a decree for eviction to be passed and that the agreement Ex. P-2 was entered into just before the passing of the actual decree, is a very important factor to be taken into consideration to find out the intention of the parties in entering into the agreement Ex. P-2. On a plain reading of the document Ex. P-2 as a whole by giving due importance to the various terms of the agreement, I find it difficult to spell out any intention on the part of both the parties to the document to create a fresh tenancy in favour of the plaintiff as sought to be made out, while the fact remains that the defendant had brought the eviction suit on the ground that he required the suit premises bona fide for his personal use and occupation and a decree was to follow on the basis of the compromise Petition filed by the parties for the eviction of the plaintiff from the suit premises granting one year's time for her to vacate and put the defendant in possession of the suit premises.

13. Now turning to the contents of Ex. P-2, it seems to me quite clear that the terms contained in paras 6 to 8 would not suggest that the parties intended to do away a decree yet to be passed on the basis of the compromise petition filed into court by creating a fresh tenancy in favour of the plaintiff. On the other hand, they clearly point out the mode of execution and satisfaction of the eviction decree to be passed. No doubt Clause 9 of the agreement stipulates that the plaintiff were to pay rent at the revised rate of Rs. 250/- per month in addition to an advance of Rs. 2,500/- to the defendant which will be refundable to the plaintiff without any interest on surrender of the premises by the plaintiff subject to any charge in respect of arrears of rent, arrears of water tax or electricity bill as the case may be which the plaintiff has to pay on her own account. Having regard to the other terms of the agreement it is reasonable to hold that the word 'rent' was used in para 9 of

the agreement in its wider sense that it was the amount payable by the plaintiff to the defendant for the use of the suit premises till the plaintiff vacates after securing an alternate accommodation for her stay. Similarly, the payment of Rs, 2.500/- by way of advance would not support the view that the parties intended to create a fresh lease under the document, but it only represents an assurance by the plaintiff regarding the payment of Rs. 250/- per month which she agreed to pay to the defendant till she vacates the suit premises and also against any arrears of water tax or electricity bill, which the plaintiff were to pay in respect of the suit premises so long as she occupies the suit premises. The terms of the agreement, in my opinion, are clear and unambiguous, all point only in one direction that the parties to the document did not intend to create a fresh tenancy in favour of the plaintiff but only permitted the plaintiff to continue to stay in the suit premises by enlarging the time to be fixed under the decree for vacating the premises until she secures an alternate accommodation, if the plaintiff could not secure such alternate accommodation within the time to be stipulated under the decree of the Court. In that view, it is appropriate to hold that the agreement Ex. P-2 only creates a licence and not a lease.

14. Sri Dayanand, the Learned Advocate for the plaintiff' vehemently contended that apart from the stipulation in the agreement Ex, P-2 for the payment of the enhanced rent, the defendant in fact received the rent at that rate for the subsequent period and this, according to him, is a strong circumstance to hold that the defendant intended to create a fresh tenancy under the document Ex. P-2. Once it is held that the word 'rent' has been used in the agreement, not in its narrower sense that it was a payment to be made by a tenant to the landlord for the property demised, but in its larger sense meaning thereby that that payment was for the use of the suit premises till it was vacated, the same reasoning will hold good in respect of the rent paid by the plaintiff and received by the defendant for the period subsequent to the agreement. So the use of the word 'rent' in the receipts passed by the defendant in favours of the plaintiff while receiving the 'rent' from the plaintiff for the period subsequent to the agreement would not support the creation of a fresh tenancy. Rejecting a similar contention canvassed before the Supreme Court in H.S. Rikhy -v.- New Delhi Municipality, : [1962]3SCR604 that the use of the word 'rent' in receipts passed by a Municipality to the occupiers of the shops in the

market constructed by it, is conclusive of the matter that the relation of landlord and tenant is created between the Municipality and the occupiers, the Supreme Court observed thus ;

'The use of the word 'rent' is not conclusive of the matter. It may be used in the legal sense of recompense paid by the tenant to the landlord for the exclusive possession of premises occupied by him. It may also be used in the generic sense, without importing the legal significance aforesaid, of compensation for use and occupation. 'Rent' in the legal sense can only be reserved on a demise of immovable property.'

In the instant case, there is no evidence to show that the suit premises was demised under the agreement in favour of the plaintiff. Thus, mere passing of the receipts for the amounts received from the plaintiff, describing it as 'rent' would not support the argument that relationship of landlord and tenant between the defendant and the plaintiff was created under the agreement.

15. Sri Dayanand also contended that payment of advance under the agreement is an indication that the parties intended to create a fresh lease in favour of the plaintiff. I do not wish to deal with this aspect elaborately in view of the decision of the Supreme Court in Ramamurthy's case wherein a similar contention was canvassed and it was not accepted by the Supreme Court.

16. Sri Dayanand next placed strong reliance upon a recent decision of the Supreme Court in *Kaloo -v.-Dhakadevi*, : [1982]3SCR201 . The facts of this case are these ;

The predecessor of the respondents who was the decree-holder filed a suit for eviction of the predecessor of the appellants who was the judgment-debtor and obtained a decree on 21-3-1969, inter alia, for eviction from a shop. The decree-holder filed a petition for execution of the decree for eviction in the executing Court on 3-1-1961. The Petition was dismissed on 20-1-1961. A fresh Petition for execution was filed on 19-1-1965. It was also dismissed on 20-3-1965. Thereupon the decree-holder again filed an application for execution of the decree on 22-6-1966. During the pendency of this execution proceeding, the parties filed a

compromise Petition on 31.3.1968. The terms of the compromise were as follows :

(1) That for the present the judgment-debtor is not getting a shop. His established business will be rained by vacating the shop in hurry. Therefore, the judgment-debtor wants time till 31-12.1972 from the decree holder for vacating half the shop in his possession. So the judgment-debtor will vacate the shop and give possession thereof to the decree-holder by 31-12-1972. He has vacated half the shop and given itsprofession.

(2) That during this period the judgment-debtor shall pay damages to the decree-holder for use of the shop @ 110 per month.

(3) That the damages shall be paid up to the 5th of every month- In the event of non-payment of damages for any six months, the decree-holder shall be entitled to get the shop immediately vacated, by filing execution, from the possession of the judgment-debtor, without any objection as regards limitation.

(4) The decree-holder wants to have new shutters put up after removing the present shutters in the front portion of the shop. The judgment debtor will not be entitled to object to this.

He will help in the putting of girders and he will vacate the portion.

If he will demur to it, the decree-holder can have the shop vacated, without any objection as regards the above limitation.

So, the aforesaid compromise be accepted and kept on record.

The aforesaid compromise was accepted and kept on record. On the basis of the said compromise, an argument was canvassed before the Supreme Court by the judgment-debtor that the compromise created a fresh lease in favour of the judgment-debtor in respect of the undelivered half of the shop and the decree-holder's remedy was by a suit forrecovery of its possession. Repelling the said contention, the Supreme Court observed as follows :

'When a compromise Petition is filed in an execution proceeding, and a contention is raised by the judgment-debtor on a subsequent execution being started by the

decree-holder that the compromise has given rise to a fresh contract between the parties and that the decree sought to be executed is not executable, what is to be seen is whether the decree has been extinguished as a result of the compromise and a fresh contract has emerged. When a compromise takes place in the course of execution of a decree for eviction, the compromise may extinguish the decree and create a fresh lease, or the compromise may provide a mere mode for the discharge of the decree. What actually takes place depends on the intention of the parties to the compromise. And the intention has to be gathered from the terms of the compromise and the surrounding circumstances including the order recorded by the Court on the basis of the compromise.

I do not think this ruling in any way supports the contention raised by Sri Dayanand on behalf of the plaintiff. It is impossible to hold that the agreement in question extinguished the decree passed and created a fresh lease.

17. Besides the terms of the agreement Ex.P-2, there is one other material available in this case to show as to what was the true intention of the parties when they entered into the agreement. A notice dated 22-6-1981 as per Ex D-I was caused to be sent by the plaintiff through her Advocate to the defendant enclosing a caveat petition Ex. D - I(a) supported by an affidavit Ex. D-I (c). In the notice Ex, D-I referring to the agreement Ex- P-2, it is stated that since the plaintiff was not able to secure alternative accommodation for her residence, extension of time of one year was sought for with effect from 1-7-1981 i.e. on the expiry of the one year's time granted under the decree, as per Ex. D-I (b). To the same effect, there is an averment made in para-5 of the affidavit Ex. D-I (c) filed in support of the caveat petition Ex. D-I (a) seeking extension of time of about an year to vacate the premises with effect from 1-7-1981 i.e. on the expiry of the time granted under the decree. If it was the intention of the parties to create a fresh lease under the agreement Ex. P-2, I fail to see what was the necessity for the plaintiff to seek extension of time from the defendant on the expiration of the time granted for vacating the premises under the decree. This piece of material, as rightly observed by the Trial Court, is fatal to the case urged by the plaintiff that a fresh tenancy was created under the agreement Ex. P-2.

18. Before I conclude, it is necessary to deal with the application I. A-IV filed under Order 41 Rule 27 read with Section 151 C.P.C. by the plaintiff for receiving the document filed along with the application by way of additional evidence in the appeal. The document sought to be produced by way of additional evidence is an agreement dated 2-7-1980. This document, in its contents, is the replica of Ex. P-2 with change of date as 2-7-1980. In view of the conclusion I reached on the agreement Ex. P-2 dated 1-7-1980, I do not think it necessary to permit the plaintiff to produce the document now sought to be produced by way of additional evidence. That apart, the grounds urged in the affidavit filed in support of the application also do not support the application to receive the document to be produced by way of additional evidence. On these grounds, I am inclined to hold that the application I.A.IV is liable to be rejected.

19. Having regard to all the facts and circumstances of the case and also the conclusion reached by me on the points canvassed in this appeal, I hold that the Trial Court has reached the right conclusion on the basis of proper appreciation and evaluation of the entire material produced in the case. In that view of the matter, I do not find any ground to interfere with the decree passed by the Trial Court. Accordingly, the appeal fails and the same is dismissed without costs.