

Narain Kumar Vs. Onkar Nath Agarwal

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Court : Allahabad

Decided On : Sep-29-1972

Reported in : AIR1973All257

Judge : K.B. Asthana, J.

Acts : [Transfer of Property Act, 1882](#) - Sections 106 and 107

Appeal No. : Second Appeal No. 1183 of 1971

Appellant : Narain Kumar

Respondent : Onkar Nath Agarwal

Advocate for Def. : Gajadhar Prasad Bhargava and ;Amar Nath Bhargava, Adv.

Advocate for Pet/Ap. : K.C. Saxena, Adv.

Disposition : Appeal dismissed

Judgement :

K.B. Asthana, J.

1. The defendant appellant, Narain Kumar, took on rent a power machinery run by electricity fixed in a building at Rs. 70/- per month for a period of eleven months from the plaintiff respondent who was the owner of the said machine and building. The defendant signed a document on a stamp-paper of rupees twelve which is a

'Kabuliyat' containing the terms on which he took the power machine and the building on lease. It shows that the defendant agreed to pay Rs. 70/- per month as the rent for the power machine and the building in which it was installed. The defendant was to pay for the electricity consumed for running the machine and was permitted to make necessary additions and alterations in the walls of the building and internal structure and when quitting was to restore the machinery and the building in the same condition as when they were leased. The lease was for a period of eleven months and at the option of the defendant he could continue to be a lessee on payment of enhanced rent of Rs. 90/- per month. The defendant was at liberty to give up the tenancy rights whenever he wished and leave the premises after handing over possession of the machine and the building in its original shape. The defendant paid Rs. 210/- as three months' rent in advance. The plaintiff delivered possession of the machine and the building to the defendant on 6-12-1958. On the expiry of eleven months in November, 1959 the defendant continued to operate the machine and retain the building on payment of Rupees 90 per month. On 18-11-1967 the plaintiff served a notice on the defendant demanding from him arrears of rent from 6-8-1967 to 5-11-1967 and terminated the tenancy. The defendant in December 1967 remitted a sum of Rs. 180/- towards the arrears of rent by money order which was refused by the plaintiff. It appears that the plaintiff did not take any further action on the basis of said notice. Then on 27-1-1968 a second notice was caused to be served on the defendant by the plaintiff demanding arrears from 6-8-1967 to 27-1-1968 and terminating the tenancy on the expiry of six months from the date of the receipt thereof. The defendant was asked to hand over possession of the machine and the building. The defendant not having complied with the said notice, the suit giving rise to this appeal for his eviction and for recovery of the arrears of rent and damages was instituted by the plaintiff.

2. It was alleged by the plaintiff that the building in which the machine was installed was constructed in 1956, hence the provisions of U. P. Act III of 1947 were not applicable and the suit for eviction would be filed without obtaining any permission from the District Magistrate. It was also alleged that the defendant defaulted in paying the arrears and a legal notice under Section 106 of the Transfer of Property Act was duly served on him terminating the tenancy.

3. The defendant raised a contest, inter alia, on the pleas that the plaintiff had no right to terminate the tenancy by a notice to quit as under the terms of the lease the defendant with the knowledge of the plaintiff had raised constructions and installed a regular manufacturing business at a cost of rupees thirty thousand, that the plaintiff having agreed to accept the enhanced rent at the rate of Rs. 90/- per month on the terms and conditions that the defendant was to carry on his manufacturing business as long as he paid rent and it being left to the option of the defendant to give up possession to the plaintiff whenever he liked, the lease could not be terminated by the plaintiff; that the suit was barred by principles of acquiescence as the defendant was allowed to raise constructions and install machinery after incurring huge costs; that it was open to the defendant under the terms of the lease to carry on manufacturing business as long as he wished. It was denied that the building was not subject to the provisions of U. P. Act III of 1947 and it was pleaded that the suit of the plaintiff was barred by the provisions of the said Act. It was also pleaded that three months' rent having been paid in advance and the money order for Rs. 180/- having been wrongly refused, the defendant was not in default of payment of arrears of rent.

4. Both the courts below have recorded a concurrent finding that Rs. 210/- paid in advance as three months' rent under the terms of the lease was to be accounted for when the defendant vacated the premises, hence that sum could not be treated at that stage towards payment of rent, thus the defendant was in arrears. A concurrent finding has also been recorded to the effect that the Kabuliyat which is a unilateral document signed by the defendant was not a document of lease and there being no registered document of lease creating a tenancy for a period of more than one year, the plaintiff was entitled to determine the tenancy by a notice to quit.

5. While the trial Court's judgment was that one month's notice to quit was sufficient, the lower appellate Court held that the lease being for manufacturing purposes six months' notice to quit was required. The notice dated 27-1-1968 being a six months' notice for termination of the tenancy was held to be valid and effective. The suit of the plaintiff thus succeeded for all the reliefs in the courts below whose decrees are concurrent. The appellant has now come up in second

appeal.

6. I have heard Sri K. C. Saksena, learned counsel appearing for the defendant appellant, and Sri A. N. Bhargava, learned counsel appearing for the plaintiff respondent. There is no document of lease. It is the admitted case of the parties that no lease was executed. Under Section 107 of the Transfer of Property Act a lease of immoveable property from year to year or for any term exceeding one year can be made only by a registered instrument. The Kabuliyat Ext. 6 is not a lease. It is manifest, therefore, that the plaintiff having allowed the defendant to use and occupy the machinery and the building on receiving a rent of Rs. 70/- per month for the first eleven months, and thereafter Rs. 90/~ per month, by itself would not create a lease from year to year or for any term exceeding a year, as such a lease could only be made by a registered instrument. I am impressed with the argument of Sri Saksena for the appellant that from the terms of the Kabuliyat Ext. 6, an intention was manifest that a lease for an indefinite period was created in favour of the defendant and he could at his option remain in possession as a lessee so long as he wished. The learned counsel emphasised the fact that under the terms of the Kabuliyat the defendant was permitted to raise any constructions and instal any machinery permanently for carrying on his manufacturing business which clearly showed that the lease was permanent lease as no term was fixed after the first term of eleven months had expired.

The document Ext. 6, the learned counsel conceded, by itself did not create any lease but he submitted that it could be read as collaterally indicating the terms of the lease. Assuming that what Sri Saksena submits is correct and Kabuliyat Ext. 6 can be read in evidence as a collateral document, yet it will not establish that the plaintiff created a lease in favour of the defendant for a term exceeding one year as by law such a lease could only be made by a registered instrument. My attention was drawn by Sri Saksena to a decision of the Supreme Court in the case of Delhi Motor Co. v. U. A. Basrurkar : [1968]2SCR720 in support of his contention that the lease in favour of the defendant was a permanent lease not terminable by a notice to quit so long as the defendant continued to pay rent or the lease otherwise was not forfeited on account of any breach of its terms. I do not think the learned counsel can derive any help from the decision of the Supreme

Court in the case cited above. In that case the learned Judges of the Supreme Court had occasion to consider the terms of a registered lease and on the construction of those terms came to the conclusion that a permanent heritable lease was created. Here in the instant case there is no registered lease, hence the question does not arise for interpretation or construction of the terms thereof.

7. The question then arises whether the lease in question would be merely a lease from month to month creating a tenancy at will. Before I answer that question I think it would be convenient to deal With an argument raised by Sri Saksena on behalf of the appellant. He contended that the parties having failed to execute a registered document no lease came into existence, thus the relationship between the plaintiff and the defendant will not be of lessor and lessee but merely that of the licensor and the licensee. On this assumption the learned counsel argued that the defendant acting upon the terms of the licence having raised permanent constructions, the licence became irrevocable and the plaintiff was not entitled to possession. I am not impressed With this line of argument. Firstly, the defendant admitted in his written statement that he was a tenant of the plaintiff and no case was pleaded that he was a mere licensee. Secondly, the proposition by itself appears to me untenable. Section 107 of the Transfer of Property Act lays down how the leases are to be made. A lease from year to year and for a term exceeding one year can only be made by a registered instrument, while other leases of immoveable property can be created either by a registered instrument or by oral agreement accompanied by delivery of possession.

It is the own case of the defendant that the plaintiff agreed to give him on rent the power machine and the building in which it was installed on payment of Rs. 70/- per month for a period of eleven months at first and put him in possession thereof. Since the term of eleven months was less than one year and the plaintiff gave possession of the immoveable property to the defendant, no registered instrument was required to be executed for it. I think the lease in question would be an oral lease and the Kabuliyat, Ext. 6, signed by the defendant would be the corroborative evidence thereof. In so far as the plaintiff lessor is concerned, he by his act intended to create a lease. On 6th December 1958 when the possession of the immoveable property in suit was delivered to the defendant by the plaintiff on

having agreed to receive a rent of Rs. 70/- per month, a lease was created. It would be a lease from month to month.

8. There is a recital in the Kabuliyat (Ext. 6) that the defendant was taking the power machine and the building on a monthly rent of Rs. 70/-. I am not called upon in this case to consider the question as to what would be the effect of a term having been agreed upon between the parties that the lease would at first be for a period of eleven months. In my judgment when in November 1959 by mutual agreement between the parties the defendant continued in occupation on payment of an enhanced rent of Rs. 90/- per month and no registered instrument was executed by the plaintiff and the defendant, the lease continued from month to month on a rental of Rs. 90/- per month. I think there is no escape from the conclusion that the lease in question was a lease from month to month and it is not possible to hold that a lease exceeding a term of one year or a permanent lease was created. Had that been the intention of the parties, there is no doubt in my mind that a registered instrument of lease would have been executed by the plaintiff and the defendant. The mere fact that no such instrument was executed and registered establishes that none of the parties ever intended to create a permanent lease which would certainly be a lease exceeding a term of one year. In the case of *Mohan Lal v. Ganda Singh*, AIR 1943 Lah 127 (FB), it was held that a rent deed executed by a tenant in favour of a landlord, can be relied upon to establish the relationship existing between the parties for, it contains an admission or an acknowledgment by the person intended to be made liable and should be the very best evidence that one can possibly have as to the oral agreement of a lease.

9. In *Ram Nath v. Neta*, 1962 All LJ 773 a learned Single Judge of this Court held that a Kabuliyat can be looked into as a corroborative evidence of a lease for a period of less than a year as such a lease is permitted to be made by Section 107 by oral agreement.

10. In the case of *Smt. Koka Devi v. Budhi Prakash*, 1963 All LJ 1005, I held that a tenancy from year to year of immoveable property as enjoined by Section 107 of the Transfer of Property Act must be created by a registered document and in the

absence of a registered lease deed the only inference which could legitimately be arrived at was that the lease was monthly lease.

11. In *Asa Ram v. Mst. Ram Kali* : [1958]1SCR988 it was held that where no lease deed had been executed by landlords in favour of the lessee, but the latter had executed a *Kabuliyat* in favour of the former and the lessors accepted the *Kabuliyat* and received rent as proved therein, the lessee cannot be denied the status of tenant.

12. The ratio of the decisions of the cases cited above support the submissions of Sri Bhargava for the respondent that an oral lease was created on 6th December, 1958 and that lease was from month to month. The *Kabuliyat* clearly supports it.

13. Sri Saksena for the appellant, however, laid much emphasis on a Division Bench decision of this Court in the case of *Dau Dayal v. Brij Mohan* : AIR1952 All344 , in support of the proposition that the defendant was a licensee as the plaintiff cannot build up a case of lease merely on the *Kabuliyat*. No doubt the observations in paragraph 7 of the report do support Sri Saksena but I do not think that is the ratio of that decision. The learned Judges held that the executant of the *Kabuliyat* was to pay a certain amount every month in lieu of the occupation of the house and as it was executed by one of the parties only it was not a lease but a licence. On the facts and circumstances of that case the further question did not arise as to whether an oral lease was created as the suit from which the appeal arose was one for recovery of certain sum as arrears of rent and the ultimate decision of the High Court was that such a sum could be recovered as compensation for use and occupation. All the observations relied upon by Sri Saksena were made by the learned Judges in connection with an argument raised before them that what the plaintiff claimed in the suit could not be said to be rent under the law.

14. It was then contended by Sri Saksena that it was only at the option of the defendant that the lease could be terminated and the plaintiff had not reserved to himself any right to terminate the lease. Reliance was placed on the terms of the *Kabuliyat* which gave a right to the defendant to vacate the premises whenever he wished and a right to the plaintiff to terminate the tenancy only if the defendant

committed any breach. Learned counsel assailed the finding of the court below that the defendant was guilty of breach of the terms of the lease in having defaulted in regular payment of rent. I do not think it necessary for the purpose of deciding this appeal to examine the evidence on record in order to find out whether the finding of the court below which is one of fact was vitiated by any error of law or procedure. On his own showing under the terms of the Kabuliyat (Ext. 6) the defendant was at liberty to quit at his sweet will whenever he liked thus the tenancy was terminable at the will of the tenant. Then it must be held that it was terminable at the will of the landlord also. There is good authority for this proposition in the case of Ramlal Sahu v. Mt. Bibi Zohra, AIR 1941 Pat 228. A Division Bench of that Court held that when a tenancy is terminable at the will of the tenant it must be held to be terminable at the will of the landlord also. Moreover, on the facts of this case it does not appear that the lease was given for the purpose of erection of building or raising of any factory for manufacture. The plaintiff had already installed a power machine run by electricity in a portion of the building and the defendant took on rent the machine together with the building in which it was installed. What appears from the recitals in the Kabuliyat is that the defendant was only allowed to erect other fixtures by even digging the walls of the room but he undertook to restore the building in the same condition as let out when vacating the same. There is nothing in the evidence that the defendant was given any piece of land to erect buildings and factories. Merely because the defendant invested a large sum of money and installed some other machinery would not prevent the plaintiff as landlord from exercising his rights under Section 111(h) of the Transfer of Property Act. The lease not being a permanent lease or for any fixed term, there was no fetter on the power of the plaintiff landlord to terminate the tenancy by serving upon the defendant a notice to quit within the meaning of Clause (h) of Section 111 of the Transfer of Property Act. Since the notice served on the defendant was made effective on the expiry of six months from the date of the receipt thereof in any case that being more than one month, whether one month's notice was required or a six months' notice was required under the law is a question which merely remains of academic interest.

15. It has been found by both the courts below that the building and the machine were erected in 1956 and were not subject to the provisions of U. P. Act III of

1947. That finding has not been challenged in second appeal.

16. The result is that I find this appeal to be without force and dismiss it with costs.

17. Since the defendant has installed machineries and made other erections during the period of his occupation and was running his business. I direct that the decree for eviction shall not be executed for six months from the date of the receipt of the record by the court below to enable the defendant to conveniently shift his machineries and business to some other place but always subject to the deposit of mesne profits for a period of six months.

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