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Harish Chand Vs. Ram Chander

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Court : Delhi

Decided On : Jul-18-1984

Reported in : 1984RLR589

Judge : Leila Seth, J.

Acts : Transfer of Property Act - Sections 106

Appeal No. : Regular Second Appeal No. 11 of 1983

Appellant : Harish Chand

Respondent : Ram Chander

Advocate for Pet/Ap. : S.L. Bhatia,; Virender Mehta and; G.N. Aggarwal, Advs

Judgement :

Leila Seth, J.

(1) This is a second appeal by the defendants. The question of law formulated at the time of admission is as follows :

'WHETHER the notice of termination of tenancy giving 15 days' time to vacate the premises is valid when the premises were let for manufacturing purposes ?'

(2) It is the admitted case of the parties that the lease was not registered. The question as posed, as noticed at the time of admission, is not rest Integra. A

decision of this court in Jagat Taran Berry v. Sardar Sant Singh, : AIR1980 Delhi7 has decided this very point.

(3) A brief reference to the facts is necessary. The tenancy commenced on 20.5.59 on the basis of an oral agreement and the monthly rent was fixed at Rs. 91.00. The premises is a shop in property No. 9996-A, Sarai Rohilla, New Delhi.

(4) On 11.5.76 a notice to quit, Ext. P.W.I/3, was served on the tenant. The said notice to quit was dated 10.5.76. The notice specified that the termination would take place w.e.f. 30.6.76.

(5) On 31.12.76 a second notice to quit was sent to the tenant. The notice was served and the apparent reason for sending this notice was, that the termination would become effective from the midnight of 19.2.77. In both the notices it was stated that the tenancy was according to the English calendar month and ended on the 19th of the next following month. Since the earlier notice mentioned the termination date as the midnight of 30.6.76 instead of the midnight of 19.6.76, the subsequent notice was given without prejudice and waiver of the earlier notice.

(6) On 18.5.78. Lala Sri Ram, the tenant died. On 31.7.78, the suit was filed for possession and recovery of rent and damages. The defendants asserted that the 'premises were let out for purpose of sale of cement jellies and were used as such till 1976 when a partnership business of footwear was begun & it became a manufacturing lease and u/s 106 of the T.P.A., 1882 would be a lease from the year to year, terminable by a notice of six months. The notice being for a shorter period was invalid.

(7) However, on 14.5.81, the suit was decreed. An appeal was filed which was dismissed on 10.1.82.

(8) The finding of the trial court is :

'THE tenancy was not exclusive for manufacturing purposes and late Sri Ram has also been carrying on the business of sale of cement jaali. So, it cannot be .stated that dominating business was of manufacturing.'

The appellate court observed :

'IN view of the admission of the appellants/defendants in their written statement referred to above it cannot be said that the premises were let only for manufacturing purpose and the evidence led by them to this effect cannot be believed. The trial court after appreciating the oral and documentary evidence available on record has held that the premises were let for manufacturing purposes as well as for trading purposes. This is a finding of fact, is based on the material available on record and is not unreasonable.....I accordingly affirm the finding of the trial court on this point.'

(10) Both counsels agree that this being a concurrent finding of fact should not be lightly disturbed as has been repeatedly held by the Supreme Court. In a recent decision in E. Mahboob Saheb v. N.S. Chowdhary : [1982]2SCR238 , it has again been reiterated that it is not open to the High Court to reappreciate the evidence and substitute its own conclusions, while exercising jurisdiction u/s 100, Cpc, unless the conclusion is perverse.

(11) But Mr. S.L. Bhatia, learned counsel for the appellants submits, that the finding of the trial court which was confirmed by the Adj is not that the dominating purpose was not 'of manufacting'. According to him, the earlier remarks set out above would indicate that the primary purpose was manufacture and the sale of jellies was subsidiary. He contends that the sale of jellies was necessary concomitant to the manufacture of jellies and it was only in this context that it was held the premises were let for manufacturing as well as for trading purposes.

(12) This does not appear to be the apparent position from what is stated in the judgment. Apart from what has been set out above the Adj has also observed that the burden of establishing that the exclusive or at least the dominant purpose of the lease was for manufacture was on the party which claimed it to be so. This is what he says in this connection :

'THE evidence led. by the defendants is contrary to their pleadings and it cannot be believed that the dominant purpose was manufacturing purpose. Moreover, as is apparent from the pleadings of the parties contained in para 4 thereof the

alleged manufacturing operations have been stopped and a new business of footwear was started in or about October, 1976 and at the time of the second notice the premises were used only for non-manufacturing purposes.'

(13) The court goes on to observe that even if it is assumed for the sake of argument that the tenancy was for manufacturing purposes, the tenancy was terminable at 15 days' notice in view of the decision of this court in Jagat Taran Berry's case (Supra). Thus, in view of the concurrent finding of fact with regard to the purpose of the lease it is necessary to slightly reframe the question : 'Is the notice of termination of tenancy, giving fifteen days' time to vacate the premises, valid, when the premises are let out for manufacturing as well as trading purposes ?'

(14) In order to appreciate the controversy it is necessary to examine sections 106 and 107 of the Transfer of Property Act, 1882 (to be referred to in brief as 'the Act'). The relevant portion reads :

'In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural of manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either Lesser or lessee by six months' notice expiring with the end of a year of the tenancy ; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either Lesser or lessee, by fifteen days notice expiring with the end of a month of the tenancy.'

S. 107. 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 deli- very of possession.'

(15) It is in this context that Mr. Bhatia urges that since the lease was for manufacturing purposes it must be deemed to be a lease from y ear to year and as such could be determined only by six months notice expiring with the end of a year of the tenancy. The fact that the lease was not registered, according to him,

would not effect the position.

(16) To support his proposition, learned counsel relies on Krishna Das V. Bidhan Chandra Roy, : AIR1959 Cal181 . In that case court held that S. 107 of the Act does not control S. 106, so that, not with standing S. 107, S. 106 will apply to a manufacturing lease, whether registered or unregistered so as to make it a lease from year to year for purposes of the section. Thus, it would be terminable with a six months' notice to quite.

(17) This matter would have called for a great deal of research and reflection, but for the fact that this has already been done by my learned brother Mr. Justice T.P.S. Chawla in Jagat Taran Berrey's case (supra). In his usual inimitable manner he has dealt with the proposition in detail and considered all the various decisions including the case of Krisnna Dass Nandy (supra), as also the decision of the Supreme Court in Ram Kumar Das, v. Jagdish Chandra Das, : [1952]1SCR269 on which the Calcutta High Court had relied in the above mentioned case.

(18) In Jagat Taran Berry v. Sardar Sant Singo (supra), the Court without deciding whether the premises were let for a manufacturing purpose has proceeded on the assumption that the lease was a manufacturing one. According to the learned Judge :

'LOGICALLY,S. 107 should be read first because it states how leases are made, whereas S. 106 prescribes by fiction the duration of various kinds of leases' in the absence of a contract or local law or usage to the contrary'.

(19) He has held that S. 106 was not intended to override S. 107. He has suggested a simple solution to avoid a head-on collation of the two sections when a lease for 'agricultural or manufacturing purpose' is not registered. He has opined : 'Under S. 107 the parties have an option. They can negotiate a lease of a duration mentioned in the first paragraph. If they decide upon such a lease, they must execute a registered instrument. Alternatively, they can decide to have a lease for a shorter period. In that event they can create the lease with or without executing a registered instrument. Whenever a lease is created without a registered instrument the inevitable conclusion must be that the parties have, so to

speak, opted out of the first paragraph. They have negatived any intention of creating a lease of the duration therein mentioned. Or, to put it in positive form they have agreed upon a lease of a duration coming within the second paragraph. This is, or must be deemed to be a conscious decision on their part. It is, thereforee, indicative of a contract between them. That contract is that the lease will not be of a duration mentioned in the first paragraph of S. 107. Such a contract will always be a 'contract to the contrary can be implied and need not be express. So, from the single fact that a registered instrument is not executed, one can, and should, immediately deduce a contract to create a lease of the kind that can be created without such an instrument. Thus, if the lease is for 'agaicultural or manufacturing purposes' and there is no registered instrument, that itself is conclusive to establish a 'contract to the contrary'. Considering that it was always open to the parties to execute a registered instrument but they chose not to do so, .this inference accords with their intention, whether actual or ascribed. On this line of reasoning there never can be a conflict between S. 106 and S. 107. For, whenever according to S. 106 a lease is deemed to exist which could only be created by registered instrument according to S. 107 the non-existence of register instrument will of itself invoke the opening words of S. 106 by implying a contract to the contrary. Thus, the two sections become fully reconciled.'

(20) A somewhat similar view has been taken by the Karnatak High Court, though without noticing the above mentioned judgment of this Court, in Suryanarayana M. v. R.K. Rathnam 1983 (1) Rcr 204. That court opined therein, that while examining the scope of S. 106, the provisions of S. 107 of the Act have also to be kept in view. Referring to the decision of the Supreme Court in Rum Kumar Das's case (supra), it observed that according to that decision, if a party to the lease not being a lease for agricultural or manufacturing purposes, pleads that the lease was an annual one and thereforee, requires a six months' notice for its termination, he can succeed in his plea only if he is able to show that such a lease had been brought about as provided u/s 107 of the Act i.e. by registered instrument. Further, that a contract to the contrary as contemplated u/s 106 of the Act, need not be express and may be implied, but must be a valid contract.

(21) The Karnataka High Court noted that since a valid contract bringing about an annual lease could only be by a registered instrument, there was no such valid contract. It further noticed that a monthly lease, does not require to be evidenced by registered instrument, and 'therefore, there is no constraint to plead and prove (if it is possible to prove) that the lease in question, though a lease for manufacturing purposes, is a monthly lease.' Accordingly, since there was no annual lease evidenced by a registered instrument and no bar to plead that even a lease for manufacturing purpose was a monthly lease, the finding of the City civil Judge, that it was a monthly lease, had to be sustained. Since I am in respectful agreement with the view expressed in Jagat Taran Berry's case (supra), it is really not necessary for me to dilate further on the matter. It is also pertinent to note, as has been admitted by counsel for both sides, that a Special Leave Petition . filed in the. Supreme Court challenging the said judgment was dismissed. In the present case there is admittedly no registered instrument and this will amount to a 'contract to the contrary' so that I must hold that the notice of termination giving fifteen days' time to vacate is valid. [The court in para 22 onwards briefly noticed submissions of Respdt].

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