

Moti Lal and ors. Vs. Pooranchand

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Court : Rajasthan

Decided On : Jul-18-1961

Reported in : AIR1962Raj100

Judge : I.N. Modi, J.

Acts : [Transfer of Property Act, 1882](#) - Sections 106, 111 and 116

Appeal No. : Second Appeal No. 90 of 1960

Appellant : Moti Lal and ors.

Respondent : Pooranchand

Advocate for Def. : Gumanmal Lodha, Adv.

Advocate for Pet/Ap. : R.K. Rastogi,; Chandmal R.C. Airun,; M.B.L. Bhargava

Disposition : Appeal allowed

Judgement :

I.N. Modi, J.

1. This is a landlords' second appeal in a suit for eviction, which was dismissed by the learned Senior Civil Judge Ajmer in disagreement with the trial court which had decreed the suit.

2. The only question which arises for determination in this appeal is whether the notice of ejectment given by the landlords to the respondent tenant was good in law. It is necessary to state just a few facts in order to appreciate this controversy. It is admitted that the rent-note which was the basis of the suit, Ext 3, (or Ex. A-6) was dated the 8th August, 1962. It is further admitted that the tenancy commenced from the 1st August, 1952. The appellants landlords gave a notice of ejectment Ex. 4 on the 27th June, 1954, whereby they asked the respondent to 'vacate the premises by midnight of 31st July 1954/1st August 1954, when the next month's tenancy would terminate.' The respondent gave a reply to the aforesaid notice, Ex. A-3, on the 10th July 1954, wherein, it may be incidentally stated, no question as to the invalidity of the notice was raised. Eventually, the landlords filed a suit, out of which the present appeal arises, on the 3rd August, 1954, in the court of the Sub-Judge, First Class, Ajmer. The trial court held that the notice of ejectment was good inasmuch as the landlords had mentioned both days namely the 31st July and the 1st August 1954, in their notice as being the point of time when the next following month's tenancy was to terminate. On appeal, the learned Senior Civil Judge put a narrower meaning on the notice holding that what was really, meant by the expression 'mid-night of 31st July 1954"/1st August 1954, was that according to the landlords, the tenancy was to terminate on the mid-night between the 31st July and 1st August, 1954. In that view of the matter, the learned Judge concluded, reading the notice in the light of the provisions contained in Section 110 of the Transfer of Property Act, that the landlords had virtually asked the tenant to vacate the premises twentyfour hours before the actual termination of the tenancy and dismissed the suit on the ground of invalidity of the notice. The present appeal has been filed by the landlords, from that judgment and decree.

3. The only question, as already stated, which in these circumstances arises is as to whether the notice of ejectment Ex. 4 was a good notice in law or, putting it in somewhat different language, the question is which of the two interpretations put on the notice by the two courts below is correct

4. Having heard learned counsel at length and having given my best consideration to the arguments pro and con, I am disposed to agree with the conclusion at which the trial court arrived. It seems to me well established that where a notice of

ejectment can be read in more ways than one, then the proper way to interpret it is to preserve its validity rather than to destroy it. Thus it was held in *Utility Articles* . AIR 1943 Bom 306 that a notice to quit, though not strictly accurate or consistent in the statements embodied in it, may still be good and effective in law. The test of its sufficiency is not what it would mean to a stranger ignorant of all the facts and circumstances touching the holding to which it purports to refer, but what it would mean to tenants presumably conversant with all those facts and circumstances. It was further laid down that the notice should be construed not with a desire to find faults in it which would render it defective but should be construed of *res magis valeat quam pereat*. Reference was made in arriving at this conclusion on a judgment of their Lordship of the Privy Council in *Harihar Banerji v. Bamshashi Roy*, AIR 1918 PC 102. In this case, the same principle was laid down although it was held that the said principle would not apply to inaccuracies deliberately inserted for fraudulent purposes. It is nobody's case, however, that the present is a case of that exceptional character.

5. This being the correct method of interpreting the notice, let us apply it to the facts and circumstances of the present case. What may be laid at the worst against the notice as it was drafted is that it suffered from some kind of an ambiguity inasmuch as it did not make it definitely clear as to whether the tenant was required to vacate the premises by the mid-night of the 31st July 1954, or that of the 1st August, 1954. Accepting that as the infirmity of the notice, I have no doubt that the proper way to read it would be the one which would uphold it and not that which would invalidate it. It cannot be forgotten that a provision of the type with which we are concerned is of a highly technical character, and, to me, it seems quite clear that the dictates of substantial justice, for which purpose, after all, the courts exist, will hardly be served if notices of ejectment are to be read in a hypercritical spirit and to find faults in them on every conceivable ground. Reading the notice, therefore, in the way it should be read in accordance with the principles set out above, it seems to me that what it said was that the tenant respondent was free to vacate the premises on the mid-night of the 31st July, 1954, or that of the 1st August, 1954 when ever the tenant thought his tenancy terminated.

6. Applying, then, the provision contained in Section 110 of the Transfer of Property Act to the present case, as it must be applied inasmuch as the time limited by the lease was expressed therein as commencing from the 1st July, 1954, that day must be excluded from computation in determining the duration of the lease; and that being so, the day on which the month of the tenancy should expire in law would be the mid-night of 1st August, 1954.

As I have shown above, the notice is capable of being read in that manner as it stands worded, and I do not see any valid reason why the court must necessarily read it so that it means only the mid-night intervening between the 31st July, and the 1st August, 1954. The learned Senior Civil Judge seems to have been greatly impressed by the consideration that the notice did not contain any conjunction such as 'or' between the 31st July and the 1st August, 1954. This approach, to my mind, however, is not correct. For, if that was what the drafter of the notice intended to say, he need not have mentioned after the date 31st July, 1954, the next following date viz., the 1st August, 1954, at all in either words, it should have been enough to mention merely one point of time namely the mid-night of 31st July, 1954. The addition of the next following date, namely, the 1st August, 1954, would be rendered more or less meaningless on this way of looking at the matter. It may also be pointed out in this connection that the notice did not clearly say that the tenancy terminated, according to its author, on the mid-night intervening between the 31st July and the 1st August, 1954. In saying all this, I desire to make two points. The first is that the language of the notice is not as precise as one might have wished it to be. The second is that it will be scarcely proper to read the notice as if it was worded with a mastery of language behind it, which there was not. At this place, it would be only fair to learned counsel for the respondent to point out that the plaintiff did not clearly bring this point out and in paragraph No. 5 all that was mentioned was that the plaintiffs had sent a notice calling upon the defendant to vacate the premises by the 31st July, 1954. It may be as well to point out that in the written statement filed on behalf of the respondent, no specific ground as to the validity of the notice was mentioned, and all that was roundly stated was that the notice was bad in law. It hardly needs to be pointed out that the business of a party, according to well-established principles of pleading, is to plead all material facts and not the law. The question in these circumstances is

whether the plaintiffs' suit should be thrown out on the basis of the ground which was subsequently developed but which ground can, in my opinion, be satisfactorily met by a fair interpretation which can be put on the notice Ex. 4. I am therefore not prepared to answer this question against the appellants. I, therefore, hold that the notice was good enough and that it will be unnecessarily straining a technicality to hold it to be bad.

7. There is another answer to the defendant's plea of notice, and that is that the tenancy in this case was a fixed-term tenancy, its term being one year, as stated in the lease itself. It, therefore, expired by mere efflux of time. That being so, the plaintiffs landlords would be perfectly within their right to ask for ejectment of the tenant by a mere demand for possession without being under the necessity of complying with the stringent provisions contained in Section 106 of the Transfer of Property Act. But then the tenant stands protected from ejectment by virtue of the various rent restrictions statutes which are in force in various parts of our country and there was the Delhi and Ajmer Rent Control Act, 1952 in force in the city of Ajmer where the property in suit is situate. The position, therefore, was that even after contractual tenancy came to an end the tenant could not be evicted by force of law as he was turned thereafter into a statutory tenant, and such a tenant could be evicted under the Rent Control Act only when certain conditions were fulfilled but not otherwise. It has been found by both courts below that the tenant in the instant case had lost the statutory protection which would have otherwise benefited him under the Rent Control Act because he had sub-let the premises in question. The correct position in law then is that once the tenant forfeits the statutory protection, the land-lord's right to evict him under the ordinary law at once springs up into action. In other words where a tenancy is for a fixed term as soon as the tenant has forfeited the statutory protection, the landlord's right to evict the former would arise on the efflux of that term and in such a case no notice under S. 106 of the Transfer of Property Act would be necessary at all. Reference may be made in support of this view to *Ganga Dutt v. Kartik Chandra Das*, AIR 1961 SC 1067 which in its turn relied on *Kai Khushroo v. Bai Jerbai*, AIR 1949 FC 124. Learned counsel, however, contended that even in the judgment of their Lordships of the Supreme Court, it is recognised that there can be no prohibition against a landlord entering into a fresh contract of tenancy with a tenant whose right of

occupation is determined and who remains in occupation by virtue of the statutory immunity and that apart from an express contract, conduct of the parties may also justify an inference that after determination of the contractual tenancy, the landlord can enter into such a fresh contract. This, with all respect, is undoubtedly so. But there is nothing in the present case to indicate that there was any fresh contract of tenancy between the landlords and the tenant after the latter had lost his statutory immunity from eviction. Learned counsel for the respondent refers me in this connection to two things. The first is that the landlords in their notice Ex. 4 referred to the respondent as their tenant in paragraph four thereof where it was stated that:

'That my client does not wish to keep you his tenant any longer'.

The second is that the landlords had failed to take action against the tenant for some length of time, i.e., between the time when the landlords had found out that the respondent had sub-let the premises in question and the actual filing of the suit. In my opinion, there is no force in either of these two contentions. The mere fact that the landlords had referred to the respondent in their notice as a tenant cannot possibly be understood as indicative of any conduct on their part justifying an inference that a fresh contractual tenancy had been brought about. The respondent, in any view of the matter, was a statutory tenant and, therefore nothing really turns upon this description of him to enable the Court to come to any positive conclusion that a fresh contractual tenancy had come into existence between the parties after the original tenancy had come to an end by efflux of time.

8. So far as the second contention is concerned, namely, that the plaintiffs had not filed a suit against the respondent as soon as the original tenancy had come to an end and they had come to know that the respondent was guilty of subletting, and even granting that they accepted rent during that period, I am equally strongly of the opinion that that factor is hardly sufficient to achieve the purpose which learned counsel has in view. By mere failure on the part of the plaintiffs for some time to bring an action against the respondent it cannot under the circumstances, be inferred that the former assented to a new tenancy or that the latter acquired

the right of a tenant holding over under Section 116 of the Transfer of Property Act.

9. It must be taken as well settled at this date that where a contractual tenancy to which rent control legislation has become applicable, expires by a notice to quit or by efflux of time, and the tenant continues in possession, the acceptance of rent by the landlord from the tenant cannot afford any legitimate justification for holding that the landlord has thereby assented to a new contract of tenancy, and further, where there is neither assent nor dissent On the part of the landlord to the continuance of occupation of such tenant, the latter becomes in law nothing more than a tenant on sufferance who happens to hold the premises merely through the laches of the landlord, and in such a case by the mere landlord's failure to take action against him, the tenant cannot acquire the right of holding over within the meaning of Section 116 of the Transfer of Property Act, and such tenancy or occupation does not confer any rights on the tenant so that it would fall to be determined by a notice prescribed under Section 106 of the Transfer of Property Act. In this view of the matter, it must follow that the respondent tenant was not entitled to any notice under Section 106 of the Transfer of Property Act, his fixed term tenancy having already expired by efflux of time once it is held that he had forfeited the special protection vouchsafed to him under the Rent Control legislation.

10. Thus, from whichever angle we may look at this cases the conclusion is that there is no force in the plea of the respondent tenant that the plaintiffs' suit must be dismissed on the ground of the invalidity of the notice.

11. In the result, I allow this appeal, set aside the judgment and decree of the learned Senior Civil Judge and restore that of the trial court. Having regard to all the circumstances of the case, the order as to costs should be that the plaintiffs will have three-fourths of their costs in all the courts. The respondent prays that two months' time may be allowed to him to vacate the premises which are in his actual possession, and these are said to be two rooms and one kitchen on the third storey. He is allowed the time prayed for. The respondent also agrees that he will immediately hand over possession of certain apartments which are

lyingunoccupied at present. I Order accordingly,

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