

**Ajit Kumar Roy and ors. Vs. Sm. Satya Bala Dutt and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/859894](http://sooperkanoon.com/859894)

**Court :** Kolkata

**Decided On :** Aug-03-1972

**Reported in :** AIR1973Cal339,78CWN19

**Judge :** Arun K. Mukherjea and ;M.M. Dutt, JJ.

**Acts :** [Transfer of Property Act, 1882](#) - Section 106

**Appeal No. :** Appeal from Original Decree No. 598 of 1965

**Appellant :** Ajit Kumar Roy and ors.

**Respondent :** Sm. Satya Bala Dutt and ors.

**Advocate for Def. :** Bhupendra Kumar Panda, Adv.

**Advocate for Pet/Ap. :** Mahindra Nath Ghose and ;Satish Chandra Roy, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**M.M. Dutt, J.**

1.This appeal is at the instance of the defendants and it arises out of a suit for ejection.

2. The suit premises consists of three floors in premises No. 8/1, Baithakkhana First Lane now known as Debendra Nath Roy Lane. The plaintiff purchased the said premises on September 30, 1959. She instituted the suit on March 22, 1962. The case of the plaintiff is that the plaintiff with the members of her family have been residing in a rented house and that she reasonably requires the suit premises for the use and occupation of herself and the members of her family. It has been alleged by the plaintiff that the defendants are defaulters in payment of rent. The tenancy of the defendants were determined by the plaintiff by the service of a notice to quit, but the defendants not having vacated the suit premises, the plaintiff instituted the suit.

3. The suit was contested by some of the defendants. It has been alleged by the defendants that the plaintiff is not the owner of the suit premises, but she is the Benamdar of her husband and that she does not reasonably require the suit premises for the use and occupation of herself and the members of her family. The defendants have challenged the legality and validity of the notice to quit and have denied the service thereof on the defendants.

4. At the trial of the suit, the plaintiff abandoned her case for ejectment on the ground of default. The learned Judge has found that the members of the family of the plaintiff consists of herself, her husband, her four sons, one unmarried daughter, the wife of one of her sons Ganesh and his son and her husband's elder brother. There are, therefore, nine members in the family of the plaintiff. It has also been found that the plaintiff's husband and her son Ganesh carry on fish business. The learned Judge has observed that the plaintiff has been living a miserable life in the rented house. Ganesh sleeps with his wife and son in one room and the other members of the family sleep in a passage. It is not disputed that in the ground floor, there are three bed rooms, one kitchen, two bathrooms and one latrine; the first floor consists of four bed rooms, one kitchen, one latrine and a roof and the second floor consists of one bed room, one stair-case room. The learned Judge has come to the finding that the plaintiff reasonably requires the suit premises, but the requirement of the plaintiff will be substantially satisfied by partial eviction of the defendants. It has also been found and now there is no dispute that excepting the defendant No. 2, the other defendants do not live in the

suit premises. Upon considering the number of members in the family of the defendant No. 2, the learned Judge holds that the defendants' requirement will be substantially met if they are given two big rooms, one kitchen, one bed room and one latrine in the ground floor of the suit premises. The contention of the defendants that if they are given the first floor rooms they may give up possession of the ground floor and the second floor has been rejected by the learned Judge. The learned Judge has overruled the plea of the defendants that the plaintiff is only a Benamdar of her husband.

5. Regarding the question as to the service of the notice to quit and the legality thereof, it may be stated, that it has not been disputed before us that the notice to quit had been served on the defendants Nos. 1, 2, 7 and 8. Regarding the other defendants, the notice to quit came back undelivered with the remark of the postal peon 'left'. The learned Judge has held that the defendants were joint tenants and that the service of notice on one joint tenant is sufficient. In that view of the matter, the learned Judge has held that the plaintiff has been able to prove service of notice to quit on the defendants. He has further found that the notice to quit is legal and valid.

6. It appears from order No. 90 dated April 5, 1965, that the defendants were not agreeable to a partial eviction as suggested by the learned Judge. Accordingly, the learned Judge decreed the suit directing eviction of the defendants from the whole of the suit premises. Hence, this appeal by the defendants.

7. The findings of the learned Judge on the question of benami and also on the question of reasonable requirement of the plaintiff of the suit premises have not been challenged before us on behalf of the appellants. The only point that has been argued by Mr. Ghose, learned Advocate appearing on behalf of the appellants is that the notice to quit not having been served on all the defendants, it should be held that the tenancy of the defendants has not been determined. Mr. Ghose submitted that the learned Judge proceeded on the erroneous view that the defendants were joint tenants and not tenants in common. It was contended by him that the defendants were tenants in common and that as the notice to quit was not served on all the defendants the tenancy of the defendants in respect of the

suit premises did not terminate.

8. In *Harihar Banerji v. Ramshashi Roy*, 45 Ind App 222 = (AIR 1918 PC 102) it has been laid down by the Privy Council that service of notice to quit upon one joint tenant is prima facie evidence that it has reached the other joint tenants. In *Kanji Manji v. The Trustees of the Pott of Bombay*, : AIR 1963 SC468 , the Supreme Court has observed that once it is held that the tenancy is joint, a notice to one of the joint tenants is sufficient.

9. Mr. Ghose submitted that in *Harihar Banerji's* case 45 Ind App 222 = (AIR 1918 PC 102) and in *Kanji Manji's* case : AIR 1963 SC468 the tenants were joint tenants and hence it was held that the service of notice on one joint tenant was sufficient, but in the present case, the defendants were tenants in common and consequently, the rule laid down in the aforesaid Privy Council and Supreme Court decisions would not apply. Mr. Ghose drew our attention to the fact that one Debendra Nath Roy, the predecessor-in-interest of the defendants was the sole tenant of the suit premises and that on his death the defendants being his heirs and legal representatives, inherited the tenancy. Mr. Ghose submitted that under Section 19 of the Hindu Succession Act, 1956, the defendants inherited the tenancy as tenants in common and not as joint tenants. Section 19 of the Hindu Succession Act provides that if two or more heirs succeed together to the property of an intestate, they shall take the property, save as otherwise expressly provided in the Act, per capita and not per stirpes; and as tenants in common and not as joint tenants.

10. There can be no doubt that except in the case of coparceners of a joint Hindu family governed by the Mitakshara School of Hindu Law, persons inheriting a property, take the same as tenants in common and not as joint tenants. There is also no doubt that the estate of a lessee or a monthly tenancy is property within the meaning of Section 19 of the Hindu Succession Act. The defendants, therefore, inherited the property, namely, the monthly tenancy of their predecessor-in-interest as tenants in common and not as joint tenants. At this stage, it will be profitable to refer to the following passage from Mulla's Transfer of Property Act, 5th Edition, page 641--

'The estate of the lessor and lessee are estates of inheritance, and the interest of the lessor and the lessee after their death vest in their heirs, executors or devisees. This is not so expressly stated in the Act for the Act does not deal with the subject of succession. A person who obtains a share of a leasehold either by assignment or by inheritance becomes a co-tenant in the whole tenure; and so far as the relations between him and the landlord are concerned he cannot be held to hold any estate in severalty. Each such person becomes a tenant in common of the whole estate by reason of the rule of the indivisibility of the estate without the landlord's consent, and has privity of estate with the landlord in respect of the whole estate. Each tenant is liable to the landlord for the whole rent and all covenants running with land.'

11. It is clear from the above statement of law that as between the heirs themselves they are tenants in common and not joint tenants in the sense that on the death of one, his interest will not pass by survivorship to the other tenants, but will devolve on his heirs under the law of inheritance. In the case of joint tenants on the death of one, his interest in the tenancy will pass to the other joint tenants by survivorship. Similarly, when the sole tenant dies, his heirs inherit the tenancy as tenants in common, but so far as the relations between the heirs of the deceased tenant and the landlord are concerned, none of the heirs hold any estate in severalty.

12. The question, however, is whether each of the tenants has to be served with a notice to quit. Under Section 106 of the Transfer of Property Act, the notice must be in writing signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or to be tendered or delivered personally to such party, or to one of his family or servants at his residence, or if such tender or delivery is not practicable affixed to a conspicuous part of the property. Under Section 106, the notice has to be served on the party who is intended to be bound by it. The expression 'the party who is intended to be bound by it' is important. Section 106 does not say that the notice need not be served on all the tenants. In Harihar Banerji's case, the Privy Council has referred to Section 106 and has observed that service of notice to quit upon one joint tenant is prima facie evidence that it has reached the other joint tenants. Therefore, under the

Privy Council decision when the notice is served on one of the tenants, it is prima facie evidence of service on the other tenants 'also. The use of the expression 'joint tenants' by the Privy Council seems to have been made in a wider sense and not in any special sense. There is pre-ponderance of judicial opinion that a notice must be addressed to all the tenants (See *Rajoni Bibi v. Hafisonnessa Bibi*, (1900) 4 Cal WN 572; *Bejoy Chand Mahatab v. Kali Prasanna Seal*, (1925) 29 Cal WN 620 = (AIR 1925 Cal 752); *Bodardoja v. Ajijuddin Sircar*, ILR 57 Cal 10 = (AIR 1929 Cal 651). In our view the intention to bind the party must appear from the notice itself. Unless the name of a tenant appears in the notice it cannot be said that he is intended to be bound by the notice. Therefore, the notice should contain the names of all the tenants so as to bind them all. In other words, the notice should be addressed to all the tenants. But the service of the notice is not required to be effected on all the tenants. It would be sufficient if the notice is served on one of the tenants, for, under the Privy Council decision in *Harihar Banerji's case* AIR 1918 PC 102, service of the notice on one of the joint tenants is prima facie evidence that it has reached the other tenants. In *Kanji Manji's case* : AIR 1963 SC468 before the Supreme Court, the joint tenancy was created in favour of two persons, namely, Kanji Manji and Rupji Jeraj. Those two persons were joint tenants in the true sense of the term, namely, on the death of one the tenancy would pass to the other by survivorship. What happened in that case is that the notice to quit was served on both Kanji Manji and Rupji Jeraj. The suit for ejectment was filed against both Rupji Jeraj and Kanji Manji, but later, the plaint was amended by striking out the name of Rupji Jeraj, who died much earlier. It was contended before the Supreme Court that the notice to quit was invalid, inasmuch as it had been served only upon one of the lessees (Kanji Manji) and not upon the heirs and legal representatives of Rupji Jeraj and that the suit was bad for non-joinder of the heirs and legal representatives of Rupji Jeraj, who were necessary parties. The Supreme Court held as follows:--

'The argument about notice need not detain us long. By the deed of assignment dated February 28, 1947, the tenants took the premises as joint tenants. The exact words of the assignment were that '.....the Assignors do and each of them doth hereby assign and assure with the Assignees as Joint Tenants.' The deed of assignment was approved and accepted by the Trustees of the Port of Bombay,

and Rupji Jeraj and the appellant must be regarded as joint tenants. The trial Judge, therefore, rightly held them to be so. Once it is held that the tenancy was joint, a notice to one of the joint tenants was sufficient, and the suit for the same reason was also good.'

13. It is evident from the aforesaid observations of the Supreme Court that on the death of Rupji Jeraj the tenancy passed on to Kanji Manji by survivorship, otherwise the suit would not have been held to be maintainable.

14. In our view, the principle that a notice to quit addressed to all the tenants but served on one of them is sufficient, applies to the case of joint tenants as also to the case of tenants in common. The same view has been taken by a learned single Judge of the Kerala High Court in Valiyaveetil Konnappan v. Kunniyil Manikkam AIR 1968 Ker 229.

15. In the instant case, the notice to quit is addressed to all the defendants and it was served on some of the defendants. For the reasons stated above, we hold that the notice is sufficient and it is also legal and valid.

16. It has been already stated that the learned Judge, before decreeing the suit for eviction of the defendants from the suit premises, offered them a portion of the ground floor but the defendants refused to accept the same. Before us it has been submitted by Mr. Ghose that if the defendants are given the first floor rooms, they are agreeable to the passing of a decree for eviction from the rest of the suit premises, A similar submission was made on behalf of the defendants before the learned Judge, but the learned Judge, for cogent reasons could not accept the same. In view of the size of the plaintiff's family, we are also unable to accept the contention of the defendants. In the circumstance, we have no other alternative than to uphold the decree passed by the learned Judge for the eviction of the defendants from the entire suit premises.

17. In the result, the judgment and decree of the learned Judge are hereby affirmed and the appeal is dismissed, but in the facts and circumstances of the case, there will be no order for costs in this Court.

Mr. Ghose prayed for some time so as to enable the defendants to vacate the suit premises. After having considered the said prayer, we direct that the decree shall not be executed for four months from date. After the expiry of four months, the plaintiff shall be entitled to execute the decree and recover khas possession of the suit premises if the defendants do not vacate the same within the period allowed. ,

**Arun K. Mukherjea, J.**

18. I agree.

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