

Rahmat Ullah Vs. Mohammad HusaIn and ors.

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Court : Allahabad

Decided On : May-01-1940

Reported in : AIR1940All444

Appellant : Rahmat Ullah

Respondent : Mohammad HusaIn and ors.

Judgement :

Iqbal Ahmad, J.

1. The subject of dispute in the suit out of which the present appeal arises was a house in the city of Benares. The house was admittedly let on rent by Shafiullah, one of the plaintiff-respondents to Rahmatullah, defendant-appellant, by means of a written lease dated 10th December 1930. The lease was for a fixed period of three years, and the rent reserved by the lease was payable in accordance with Hindu calendar months. During the continuance of the lease, viz., on 24th November 1933, Shafiullah executed a deed of waqf with respect to the house and appointed Muhammad Husain and four others as mutwallis of the waqf. The mutwallis were co-plaintiffs with Shafiullah and they are also respondents to the present appeal. On the very date on which the deed of waqf was executed Rahmatullah defendant got a lease with respect to certain portions of the house from certain persons who are not parties to the present litigation and subsequently on 6th November 1935 Rahmatullah purchased the alleged rights of certain other persons in the house. It is common ground that Rahmatullah continued in possession of the house till the date of the suit giving rise to the present appeal, viz., till 11th July 1936.

2. On 10th September 1934 the plaintiff-respondents, viz. Shafiullah and the mutwallis, sent a notice to Rahmatullah defendant, asking him to vacate the house by 9th October 1934. Rahmatullah did not comply with the demand contained in the notice and then the suit giving rise to the present appeal was filed in July 1936. The plaintiffs claimed a decree for possession of the house by ejectment of Rahmatullah, for arrears of rent and for mesne profits. The defendant contested the suit on a variety of grounds. The defence found favour with the trial Court and that Court dismissed the suit. But, on appeal by the plaintiffs, the lower Appellate Court reversed the decree of the trial Court and decreed the plaintiff's suit. The lower Appellate Court wrote a remarkably good judgment. It held that the position of Rahmatullah being that of a lessee he was estopped from denying the title of Shafiullah and of the mutwallis. No exception can be or has been taken to this finding of the lower Appellate Court. One of the pleas on which the plaintiff's suit was contested by the defendant was that the notice given by the plaintiff's was not in compliance with the provisions of Section 106, T.P. Act. This contention had found favour with the trial Court but was repelled by the lower Appellate Court. The

conclusion of the lower Appellate Court as regards the validity of the notice given by the plaintiffs is assailed by the learned Counsel for the appellant.

3. The lower Appellate Court rightly held that the lease being for a period of three years expired on 10th December 1933 and thereafter the tenancy must be deemed to be a tenancy from month to month in accordance with the English calendar. Having arrived at this conclusion, it held that the notice given by the plaintiffs was in compliance with the provisions of Section 106, T.P. Act. I am unable to agree with this conclusion of the lower Appellate Court. It is clear from the provisions of Section 110, T.P. Act, and the decision of their Lordships of the Privy Council in Benoy Krishan Das v. Salsiccioni that where the time limited by a lease is a year or a number of years, then, in the absence of an express agreement to the contrary, the lease must be deemed to last during the whole anniversary of the day from which the time commences. In the present case the lease in favour of Rahmatullah, defendant, commenced from 10th December 1930 and therefore the period of three years must be deemed to have expired on the midnight of 10th December 1933. After the expiry of the term of the lease the tenancy must be deemed to be a monthly tenancy ending with the midnight of the 10th of each subsequent month. By the notice the plaintiffs called upon the defendant to vacate the house by 9th October 1934. The monthly tenancy however must be deemed to have continued till 10th October 1934. But the notice given by the plaintiffs did not require the defendant to vacate the house on a date on which the tenancy ended and was therefore invalid in law.

4. But even though the notice was invalid the lower Appellate Court was, in my judgment, perfectly right in holding that the plaintiffs were entitled to a decree for ejectment of the defendant from the house. The lease, as already stated, expired on 10th December 1933. Thereafter, the defendant never paid rent to the plaintiffs nor was there any material on the record to show that the defendant's continuance of possession was with the plaintiff's consent. On the contrary the defendant had begun to set up a title adverse to the lessor from 24th November 1933, when he took the lease of a portion of the house from some third persons. The position of the defendant was therefore not that of tenant at will after 10th December 1933. His position was that of a tenant on sufferance. The defendant after the termination of the lease, continued in possession of the house without the consent of Shafiullah and therefore his position was no better than that of a mere trespasser and he could be turned out of the house at any time without any notice to quit. The lower Appellate Court was therefore right in holding that even though the notice was invalid the plaintiffs were entitled to a decree. For the reasons given above, I dismiss this appeal. In considering the question of costs the case that the possession of the defendant was that of a tenant on sufferance was not formulated in the plaint. The allegation in the plaint was that the tenancy continued till 9th October 1934 and the defendant was liable to ejectment from the house as a notice was served on him on 10th September 1934. This basis of the plaintiffs' claim has failed and the plea of the defendant as to the invalidity of the notice has prevailed. I therefore consider it just to order the parties to bear their own costs in all the Courts.