

(1970) 12 AHC CK 0007

Allahabad High Court

Case No: Second Appeal No. 204 of 1966

Hakim Ziaul Islam

APPELLANT

Vs

Mohd. Rafi

RESPONDENT

Date of Decision: Dec. 15, 1970

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100, 101
- Transfer of Property Act, 1882 - Section 106, 111

Citation: AIR 1971 All 302 : (1971) 41 AWR 121

Hon'ble Judges: K.B. Asthana, J

Bench: Single Bench

Advocate: N. Kumar, for the Appellant; K.C. Agarwal, for the Respondent

Final Decision: Partly Allowed

Judgement

K.B. Asthana, J.

This is a defendant tenant's appeal from an appellate decree of ejectment and recovery of arrears of rent and damages from the house in suit. The court of first instance had dismissed the plaintiff landlord's suit on the finding that no relationship of landlord and tenant existed between the parties and that the notice terminating the tenancy was invalid. The lower appellate court reversed the finding of the learned Munsif on both the material issues and decreed the plaintiff-landlord's suit,

2. On behalf of defendant-appellant two grounds have been raised in support of the appeal. The first ground was that one Mohammad Razi to whom the defendant had been paying rent was a necessary party to the suit and the suit was bad for non-impleading of the necessary party, the plaintiff having refused to make Mohammad Razi a party. This argument seems to be based on the plea raised in the written statement that Mohammad Razi was not the landlord, and it was Mohammad Razi who was the landlord to whom the defendant had been paying the

rent. A statement was made by the Plaintiffs counsel at the trial that the plaintiff was not prepared to convert the suit into a title suit and implead Mohammad Razi. Art issue then was framed on the question whether relationship of landlord and tenant existed between the parties. Admittedly there was no documentary evidence in support of the case of the plaintiff that the defendant was his tenant. Oral evidence was adduced for establishing the contract of tenancy. The learned Munsif who tried the suit disbelieved the evidence and held that the plaintiff failed to establish the contract of tenancy. The lower appellate Court, however, relied upon the oral evidence of the plaintiff and held that it established, the relationship of landlord and tenant between the plaintiff and defendant. This finding recorded by the lower appellate court has not been shown to be vitiated and is binding in second appeal That being the position there remains no substance in the argument that Mohammad Razi was a necessary party in the suit.

3. The second argument was that the notice sent by the plaintiff to the defendant did not, in law, terminate the tenancy it having failed to comply with the provisions of Section 111(h) read with Section 106 of the Transfer of Property Act. Learned counsel for the defendant-appellant fairly conceded that the validity of the notice was not assailed on such an argument in the courts below but contended that he was entitled to raise this ground even for the first time in second appeal as it involved a pure question of law more so a plea in the written statement having been taken that the notice was invalid and not in accordance with law. Since the legal plea had been raised in the written statement as to the invalidity of the notice, I think it will always be open to the defendant to advance all tenable legal arguments in support of that plea. It will not matter that in the courts below some other legal arguments were advanced but not the one, that is, now being urged. No prejudice is being caused to the plaintiff-respondent as I afforded sufficient opportunity to his counsel to meet the point by adjourning the hearing.

4. The notice, a copy of which is Ex. V on record, is dated 7-10-1963 and was served on the defendant on 8-10-1963. It is a combined notice demanding arrears of rent and calling upon the defendant to vacate the house. The material part of the notice translated by me and relevant for my purposes is as follows:

"Your tenancy of the aforesaid house is determined with effect from today. Therefore, within one month from the date of receipt of this notice after vacating the house deliver its actual possession to me otherwise upon the expiry of the aforesaid period I will be compelled to take action against you in a competent court of law."

The contention of the learned counsel for the appellant was that the notice was invalid inasmuch as it terminated the tenancy, that is, the relationship of landlord and tenant in present and not a month hence from the date of the receipt of it by the tenant, therefore, the notice failed to comply with the statutory requirement of Section 106 of the Transfer of Property Act and will, be invalid. The submission was

that the landlord having terminated the tenancy on the day the notice was written, he manifested an intention to keep the defendant not as a tenant but as a mere licensee or on sufferance for one month then asking him to deliver possession within that period and threatening him with legal action on his failure to do so. To put in other words, the submission was that the notice could not be construed as one terminating the tenancy on the expiry of one month from the date of receipt and then asking the tenant to quit. The learned counsel for the plaintiff-respondent did not seriously contest the interpretation or the construction put on the language of the notice on behalf of the appellant. But he attempted to justify the notice as meeting the requirement of law by submitting that since under the law a tenancy could not be terminated or determined unless a notice of one month is given the first part thereof be ignored as it failed to bring about a legal termination of the tenancy then the second part of it demanding vacation of the premises on the expiry of one month from the receipt thereof would be effective in law as a notice to quit u/s 111(h) read with Section 106 of the Transfer of Property Act.

5. A large number of decided cases have been cited at the bar by the learned counsel for the parties. A notice terminating the tenancy or a notice to quit, it has been held, should not be interpreted and construed pedantically with a view to find fault which it and discovering purposely defects so as to vitiate it. It should be interpreted in a liberal manner and if it were found that a manifest and clear intention was expressed to put an end to the contract of tenancy or relationship of landlord and tenant between the parties on the expiry of one month from the date of receipt thereof then it would be a valid and effective notice complying with the Provisions of law. Here in the instant case howsoever liberally I construe the notice I am afraid I cannot discern a manifest intention therein on the part of the landlord that he intended to terminate the tenancy or put an end to the relationship on the expiry of one month from the date of the receipt thereof by the tenant. Such an intention cannot be interpreted in face of the words "Your tenancy of the aforesaid house is determined with effect from today." The language is as clear as it can be and is capable of only one meaning and one meaning alone that the tenancy was being terminated or determined with effect from 7-10-1963 the day on which the notice was signed. To attribute an intention to the landlord that the notice intended to terminate, the tenancy with effect from 8-11-1963, that is, one month after the receipt thereof on 8-10-1963 by the tenant would amount to contradicting the author himself. I am not aware of_ any rule of construction or reading of a document which will justify an interpretation of the said notice that it manifested an intention to terminate the tenancy at some future date fixed by the notice. If I am correct in my interpretation then the argument of the learned counsel for the plaintiff-respondent that the landlord having demanded vacation of the house by the tenant within one month of the receipt of the notice would be in compliance with law as it would manifest an intention that he wanted to keep the relationship of landlord and tenant for a period of one month more will appear to be hollow and

without substance. For the respondent great reliance was placed on a Division Bench decision of this Court in the case of [Ram Chandra and Another Vs. Lala Dulichand](#), I do not think the respondent can derive any assistance from the ratio of that case. In that case the facts were different. Earlier the notice for termination of the tenancy had been given and the subsequent notice which was the subject-matter of consideration by the Division Bench was a mere notice claiming damages for the period which began after the earlier termination of the tenancy at the end of which the tenant was called upon to vacate the building and deliver possession to the landlord. It was held that the subsequent notice, though not a notice to determine the tenancy was a notice to quit that satisfied one of the requirements of Section 111(h). In the instant case the tenancy was never terminated. It is difficult for me to agree with the submission of the learned counsel for the respondent that the ratio of the decision in the case of [Ram Chandra and Another Vs. Lala Dulichand](#), lays down the law that a notice which terminates the tenancy in "praesenti" and demands possession of the demised premises from the tenant within one month of the receipt thereof, can be justified as a notice to quit manifesting an intention of terminating the tenancy on the expiry of one month from the receipt thereof within the meaning of Section 111(h) read with Section 106 of the Transfer of Property Act. A reference to certain observations of Desai, C. J., in the case of [Ahmad Ali Vs. Mohd. Jamal Uddin](#), may be of some help in this connection. The learned Chief Justice's observation at page 570 of the report is as follows:-

"There is undoubtedly a distinction between terminating the tenancy at once and calling upon the tenant to deliver possession after 30 days and terminating tenancy after 30 days in the former case the relationship of landlord and tenant comes to an end at once and the tenant is given a right to remain in possession for 30 days either as a licensee or as a tenant on sufferance, whereas in the later case he remains a tenant for 30 days."

I hold the notice Ext. V, the material part of which is quoted above, does not meet the requirements of Section 111(h) read with Section 106 of the Transfer of Property Act. It, therefore, failed to terminate the tenancy and the defendant tenant was not liable to be ejected.

6. The result is that this appeal is partly allowed. The decree of the Court below is modified and the suit of the plaintiff in regard to the relief for eviction of the defendant from the house in suit stands dismissed. The defendant-appellant would be entitled to half of his costs throughout.