

Ajay Purwar Vs Suman Yadav

Court: ALLAHABAD HIGH COURT

Date of Decision: Dec. 11, 2014

Acts Referred: Transfer of Property Act, 1882 " Section 106, 111(a)

Citation: (2015) 1 ADJ 513 : (2015) 2 ALJ 105 : (2015) 109 ALR 16

Hon'ble Judges: Pankaj Mithal, J

Bench: Single Bench

Advocate: R.U. Ansari and Reyaz Ahmad, Advocates for the Appellant; Shiv Nath Singh, Pradeep Verma, Satyam Singh, Ravikant and Santosh Yadav, Advocates for the Respondent

Judgement

Pankaj Mithal, J.

Heard Sri R.U. Ansari, learned counsel for the defendant-revisionist (tenant) and Sri Ravikant, Senior Advocate assisted

by Sri Santosh Yadav, learned counsel for the plaintiff-respondent (landlady). Counsel for both the parties agree for final disposal of the revision at

the outset at the stage of admission by referring to the documents which have been annexed with the revision and stay application as well as the

supplementary affidavit.

2. The suit of the landlady for eviction of the tenant from the shop in dispute which is situate on the ground floor of the house No. 89/A/1, North

Malaka (wrongly mentioned as Hashimpur Road in paragraph 1 of the plaint), Allahabad has been decreed by the impugned judgment and order

28.10.2014 passed by the Additional District Judge in exercise of powers as a Small Causes Court.

3. The aforesaid shop was let out to the tenant under a registered agreement dated 17.1.2012 at a monthly rent of Rs. 15,000/- for a period

slightly over 11 months. The said agreement is Annexure-1 to the supplementary affidavit.

4. In view of the fact that the agreed rate of rent of the shop is Rs. 15,000/- per month, the provisions of the U.P. Act No. 13 of 1972 are not

applicable to the shop.

5. The submission of Sri R.U. Ansari, learned counsel for the tenant is that the tenancy of the aforesaid shop is on month to month basis and unless

the tenancy is determined by a valid notice no suit for eviction could have been filed and decreed.

6. On the other hand, Sri Ravikant, Senior Advocate submits that under the lease deed the tenancy is for a fixed period of time and on the expiry

of the said period the tenancy stand automatically determined in which case no notice determining the tenancy is necessary. The tenancy is not on

month to month basis. The tenant in the written statement accepts the execution of a previous agreement which was also for a fixed period of time

and the parties all through acted and proceeded as if the tenancy was for a fixed period only.

7. Admittedly, before instituting the suit no notice determining the tenancy was issued and served upon the tenant.

8. In view of the aforesaid facts and circumstances, the crucial question which arises for consideration in the present revision is whether the tenancy

of the shop in dispute is on month to month basis or is for a fixed period which had expired with efflux of time.

9. Section 106 of the Transfer of Property Act provides that in the absence of a contract to the contrary, a lease of immovable property for any

purpose other than agricultural or manufacturing shall be a lease on month to month, terminable, on the part of either lessor or lessee, by notice of

fifteen days (thirty days in its application to the State of U.P.).

10. A plain reading of Section 106 of the Transfer of Property Act, reveals that the tenancy of a shop which is for a purpose other than agricultural

or manufacturing, shall be deemed to be on month to month basis, unless the contract provides to the contrary. Accordingly, the tenancy of the

shop in dispute which is neither for agricultural nor manufacturing purposes shall be deemed to be on month to month basis unless the contract of

tenancy provides otherwise.

11. Now let me examine the contract to ascertain if it provides something contrary to Section 106 of the Transfer of Property Act.

12. The lease deed in clause 2 provides as under:

At the same time, clauses 7 and 8 of the lease deed as under:

13. Clause 2 and 7 of the lease deed appear to run contrary to one another but a plain and simple reading of the lease deed as a whole, specially

clauses 2, 7 and 8 as quoted above indicate that the lease is on month to month basis commencing from the first day of every month and ending

with the last date of the month for a period commencing from 1.1.2012 to 25.12.2012. The conflict, if any, between clauses 2 and 7 of the lease

can be resolved by following the statutory fiction rather than going against the statute. Thus, a harmonious reading of the above clauses of the lease

deed, establishes that the lease of the shop in dispute is on month to month basis though it may also be for a fixed period up to 25.12.2012. A

distinction has to be made between the nature of the lease and its duration. A lease for a fixed duration at the same time can be from month to

month. And as soon as its nature is from month to month, it attracts provisions of Section 106 of the Transfer of Property Act.

14. The conditions of the lease deed does not provide anything contrary to the legal fiction created by Section 106 of the Transfer of Property Act,

rather it reasserts that the lease is from month to month.

15. The lease in question specifically provides that the tenancy is month to month in which case Section 106 of the Transfer of Property Act gets

attracted irrespective of the duration of the lease fixed therein. It is the nature of the lease which is more important than the duration of the lease for

applying Section 106 of the Transfer of Property Act.

16. A stipulation that the rent is payable monthly also raises a presumption that the tenancy is from month to month.

17. A tenancy from year to year or from month to month does not come to an end by efflux of time even if its duration is fixed.

18. Once the tenancy is on month to month basis, may be for a fixed period of time, Section 106 of the Transfer of Property Act immediately

comes into play and the said tenancy cannot be determined unless a notice determining the same, as stipulated under Section 106 of the Act is

issued and served upon the tenant.

19. It is only in case of fixed time tenancy which is not on month to month basis that it has been settled that the tenancy stands determined by efflux

of time on the expiry of time provided in the lease deed as contemplated under Section 111(a) of the Transfer of Property Act. In this class of case

no fresh notice determining the tenancy is mandatory but this is not the position where the tenancy is on month to month basis.

20. In the instant case, admittedly no notice determining tenancy was issued and served upon the tenant as contemplated by Section 106 of the

Transfer of Property Act. In the absence of notice determining the tenancy the suit for eviction could not have been decreed. In view of the

aforesaid facts and circumstances, the impugned judgment and order dated 28.10.2014 is set aside and the revision is allowed.