Patel Chunibhai Dhanjibhai Vs Patil Vallabhbhai Ambalal

Court: Gujarat High Court

Date of Decision: June 26, 1974

Acts Referred: Transfer of Property Act, 1882 â€" Section 106, 107, 116, 116, 13(1)(b)

Citation: (1975) 16 GLR 481

Hon'ble Judges: S.H. Sheth, J

Bench: Single Bench

Judgement

S.H. Sheth, J.
The plaintiffs who are the landlords filed the present suit against the defendant-tenant for recovery of possession of suit

premises. An open piece of land was let out by the plaintiffs to the, defendant originally on an annual rent of Rs. 91/-. The plaintiffs alleged four

grounds of eviction against the defendant. They were as follows:

(1) The defendant had been in arrears of rent for more than four years;

(2) The plaintiffs required the suit land for putting up a construction thereon;

(3) The defendant had been causing nuisance and annoyance to neighbouring occupiers; and

(4) The defendant had been causing waste in the suit premises.

2. The learned trial Judge negatived all the grounds of eviction and dismissed the plaintiffs" suit. The plaintiffs appealed to the District Court. The

District Court granted an amendment to the plaint and a fresh ground for recovery of possession was inserted. The District Court, therefore, set

aside the decree of the trial court and remanded the suit to the trial court for a fresh trial. The new ground of eviction which was inserted in the

plaint by amendment alleged that the defendant had constructed a permanent structure on the suit land. The learned trial Judge, after remand, heard

the suit, upheld the new ground of eviction alleged by the plaintiffs and passed in their favour decree for possession and for recovery of Rs. 180/-.

3. The tenant appealed to the District Court. The learned appellate Judge who heard the appeal found no substance in the contention raised by the

defendant and, therefore, dismissed the appeal. The plaintiffs had filed cross objections in the appeal. They related to arrears of rent and the

plaintiffs" reasonable requirement for putting up a construction on the suit land. The cross objections were also negatived by the learned Appellate

Judge and dismissed.

4. It is that appellate decree which is challenged by the defendant in this revision application.

5. Mr. Patel, who appears for the defendant has raised before me the following two contentions:

(1) The notice to quit served by the plaintiffs upon the defendant was invalid and, therefore, the courts below ought to have dismissed the suit; and

(2) The courts below were in error in holding that the defendant had constructed a permanent structure on the suit land and rendered himself liable

to be evicted from the suit land.

6. So far as the first contention raised by Mr. Patel is concerned, he has relied upon the rent note ex. 61. On the strength thereof he has contended

that the tenancy which the plaintiffs created in favour of the defendant was an annual tenancy and that, therefore, the plaintiffs ought to have

terminated the tenancy with effect from the expiry of the year of tenancy. The rent note Ex. 61 inter alia states that the suit land had been let out by

the plaintiffs to the defendant for the purpose of tethering cattle and that its annual rent was fixed at Rs. 91. It further states that the tenancy had

commenced from December 13, 1952 and that the rent would become payable on the expiry of every year commencing from December 13,

1952. Rs. 91/- which was fixed as rent has been described as an annual rent. It does not represent the aggregate of 12 months, rent. Secondly, the

commencement of the tenancy has been specified as from December 13, 1952 and it has been stated in the context thereof that the rent would be

payable annually on the expiry of every year commencing from December 13, 1952. Taking into account these facts, I am of the opinion that the

rent note Ex. 61 created in favour of the defendant an annual tenancy. The rent note, however, further states that the suit land was let out for a

period of one year and that the defendant was liable to hand over vacant possession thereof to the plaintiffs after the expiry of one year from

December 13, 1952. In fact it states that December 12, 1953 would be the date on which the defendant was obliged to deliver vacant possession

of the suit land to the plaintiffs. Mr. Patel has argued that on the expiry of the rent note which created an annual tenancy, presumption arose u/s

116 of the Transfer of Property Act that the tenancy was continued on the same terms and conditions on which it was granted under rent note Ex.

61. There is no dispute about the fact that the rent was accepted by the plaintiffs after the expiry of the period of rent note. Therefore, the

relationship of landlord and tenant or lessor and lessee continued between the parties after the expiry of the period of the rent note.

7. Now Section 116 of the Transfer of Property Act provides as follows:

If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his

legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of

an agreement to the contrary, renewed from year to year, or from month to month according to the purpose for which the property is leased, as

specified in Section 106.

8. In other words, Section 116 provides that if there was no agreement between the parties to show anything to the contrary, the lease would be

renewed either from year to year or from month to month according to the purpose for which the property was leased. So far as the purpose is

concerned, the court has to look at Section 106. Mr. Shah has argued that Section 106 contemplates annual leases for agricultural and

manufacturing purposes and monthly leases for all other purposes. The first question which 1 am, therefore, required to examine is whether there

was any agreement to the contrary between the parties after the expiry of the period of lease evidenced by rent note Ex. 61. The rent note Ex. 61

which records the terms of the transaction states that the rent for the suit premises was fixed at Rs. 91/- per year. The plaintiffs have alleged in the

plaint that the rent in respect of the suit premises was later on fixed at Rs. 60/- per year or Rs. 5/- per month. This fact has been admitted by the

defendant in paragraph 5 of his written statement Ex. 30. Since the material term as to the rent was admittedly modified later on, it must be stated

that there was a fresh, agreement between the parties in so far as that term was concerned. There is no evidence to show that there was any fresh

agreement which varied the terms of the tenancy particularly the term relating to the duration of the tenancy. In absence of any agreement to show

that the aforesaid term of tenancy was modified or varied by the parties, what is the presumption which I am required to draw? Section 116

requires in such cases that the court should presume that the lease was renewed either from year to year or from month to month depending upon

the purpose for which the property was leased. Admittedly the property was not leased either for agricultural purpose or for manufacturing

purpose. Therefore, no presumption of an annual tenancy can be made u/s 106 of the Transfer of Property Act in respect of the suit premises.

Section 106 which enables the court to raise a presumption as to the duration of tenancy requires that the court should presume in all such cases

that the duration of tenancy was from month to month. There is no evidence on record to show that after the expiry of the period of rent note Ex.

61 there was a fresh agreement between the parties to continue the lease in respect of the suit premises from year to year. In light of this fact and in

light of the fact that the suit premises were originally let out for a purpose other than the agricultural or manufacturing purpose, I must hold that the

lease was renewed after the expiry of the period of rent note Ex. 61 from month to month. Merely because the plaintiffs have stated that the annual

rent was fixed at Rs. 60/- per year, it does not mean that the parties had agreed to the renewal of lease from year to year after the expiry of the

period of original rent note Ex. 61.

9. It has been held by the Supreme Court in Ram Kumar Das Vs. Jagadish Chandra Deb Dhabal Deb and Another, that the rule of construction

embodied in Section 106 of the Transfer of Property Act applies not only to express leases of uncertain duration but also to leases implied by law

and inferred from possession, acceptance of rent and other circumstances. It has been further laid down by the Supreme Court that the contract to

the contrary, contemplated by Section 106, need not be an express contract. It may be implied but it certainly should be a valid contract. If there is

no contract in law, the Section will be operative and will regulate the duration of the lease. The facts of that case show that the defendant executed

a registered kabuliyat dated December 9, 1924 in favour of the Receiver who was in charge of the plaintiff''s estate by which he purported to take

a settlement of land for building purposes for a period of 10 years at an annual rent. The first payment of annual rent was made on March 8, 1925

and the second payment was made on March 16, 1926. Thereafter no further payments were made. The kabuliyat not being an operative

document u/s 107 of the Transfer of Property Act, the question which arose was whether the tenancy created by implication of law was a monthly

tenancy u/s 106. On the aforesaid facts of the case, the Supreme Court held that the tenancy was from month to month since its inception in 1924.

Since that tenancy was not for manufacturing or agricultural purposes, it could be regarded as a tenancy from month to month u/s 106 unless there

was a contract to the contrary. The stipulation as to payment of annual rent would no doubt raise a presumption that the tenancy was from year to

year but since it was contained in an inoperative document it could not come in the way of raising a presumption u/s 106. A lease for one year

certain could not be inferred from the payment of annual rent because to do so would be to substitute a new agreement for the parties which they

never intended to do. In taking the view which I have taken, I am supported by the abovesaid decision. The first contention raised by Mr. Patel is

therefore without any substance and rejected.

10. The next aspect which has been canvassed by Mr. Patel is whether the impugned action of the defendant which is otherwise hit by Section

13(1)(b) is saved by the Explanation to it. The Explanation provides thus: ""for the purposes of Clause (b), no permanent structure shall be deemed

to be erected on any premises merely by reason of the construction of a partition wall, door or lattice work or the filling of kitchen-stand or such

other alterations made in the premises as can be removed without serious damage to the premises."" In my opinion Section 13(1)(b) will ordinarily

render the defendant liable to be evicted from the suit premises for having constructed the room in question on the suit premises because it is a

permanent structure. Is his impugned action, however, saved by the Explanation? On analysis of the language used in the explanation, I find that

construction of a partition wall, door or lattice work or the filling of kitchen-stand are not permanent structures. They have been legislatively

excepted from the connotation of permanent structure used in Section 13(1)(b). A partition wall produces an alteration in an existing building.

Similarly the opening of a door or lattice work in an existing building produces an alteration therein. Similarly filling of a kitchen-stand in an existing

building also produces alteration therein. These four specified categories of structures which have been mentioned in the Explanation are all

alterations in an existing building. They do not contemplate the construction of any independent additional structure. In my opinion, it is in that

context that the legislature has used the expression ""such other alterations"" in Explanation to Section 13(1)(b). The construction of a partition wall,

door or lattice work or the filling of kitchen-stand is an alteration. The legislature has proceeded to say in that context that if there are any other

similar alterations in the premises which can be removed without serious damage to them they should not be regarded as permanent structures.

Examining the concept of ""such other alterations"" in light of the aforesaid legislative intention I am of the opinion that the other alterations

contemplated by the Explanation are mere alterations not amounting to independent additional structures. Therefore, the construction of the room

in question which, is an independent structure on the suit land is not excepted either by any of the specific expressions used in the Explanation or by

the residuary expression ""such other alterations""-used in the Explanation. In this view of the matter, since the Explanation does not apply to the

instant case, the question whether the room in question can be removed without serious damage to the suit premises is not necessary in order to to

be considered to uphold any of the contentions raised by Mr. Patel. Since both the contentions raised by Mr. Patel are without any substance and

are rejected, the revision application must fail. It is, therefore, dismissed. Rule is discharged with costs.