

(1925) 12 CAL CK 0004

Calcutta High Court

Case No: None

Manicklal Dey Chaudhuri

APPELLANT

Vs

Kadambini Dassi

RESPONDENT

Date of Decision: Dec. 10, 1925

Acts Referred:

- Transfer of Property Act, 1882 - Section 111(h), 113

Citation: AIR 1926 Cal 763 : 94 Ind. Cas. 156

Hon'ble Judges: Buckland, J

Bench: Single Bench

Judgement

Buckland, J.

This is a suit to recover possession from the defendant of the premises No. 16, Prem Chand Boral Street and for damages at the rate of Rs. 130 a month.

2. The plaintiff is a tenant from the superior landlord of the premises in question and the defendant is his sub-tenant. The case made in the plaint is that on the 11th June 1924 the sub-tenant was given notice to vacate premises on 17th July 1924; The defendant failed to vacate the premises and the suit was filed on 28th August 1924.

3. The facts are admitted. The defendant has paid Rs. 130 a month, month by month to the Rent Controller. No question arises under the Calcutta Rent Act and whether this is the proper amount payable as rent is immaterial. Subsequently and after the suit had been filed, the plaintiff withdrew from the Rent Controller the money so deposited by the defendant. The whole point in the case is whether or not by withdrawing from the Rent Controller the amount so deposited, the notice to quit has been waived.

4. It was also suggested by learned Counsel for the plaintiff that as his client had alleged in the plaint that the defendant was a woman of the town and had. been using the premises for immoral purposes and as this is admitted by the defendant

there was no contract at all as the contract was void u/s 23 of the Indian Contract Act. But that is not the case with which the plaintiff came to Court and, in my opinion, he is not entitled to make it upon his plaint. The only question, therefore, is that which I have already stated as to whether or not the notice to quit has been waived.

5. Section 113 of the Transfer of Property Act deals with this point. It provides that notice given u/s 111 Clause (h) which is applicable to the notice given in this case is waived by any act on the part of the person giving it showing an intention to treat the lease as subsisting. Had rent been withdrawn from the Rent Controller prior to the filing of the suit there could be no question that this section would operate and that there would be a waiver of the notice to quit.

6. It is however argued that inasmuch as the money was withdrawn from the Rent Controller after the suit had been filed there was no waiver. Now u/s 112 which deals with a similar position in connection with forfeiture u/s 111 (g) it is expressly provided that where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture such acceptance is not a waiver.

7. It is argued by analogy that in the circumstances there is no waiver. To that I think the answer is that where rent is accepted after the notice to quit whether before or after a suit has been filed the landlord thereby shows an intention to treat the lease as subsisting. One cannot logically say that the fact of accepting rent by itself shows an intention to treat the lease as subsisting if no suit has been filed and a different intention if a suit has been filed. The intention shown by the act itself must be the same in either case. Therefore, by accepting the rent the plaintiff, in my opinion, showed an intention to treat the lease as subsisting and acceptance of rent was a waiver of the notice to quit notwithstanding the fact that a suit had already been filed for the purpose of ejecting the tenant.

8. It has also to be observed that u/s 112 the acceptance of rent after suit has been exactly provided for and it may well be argued that had it been intended that acceptance of rent after suit should not operate as a waiver in the case of a notice to quit one would have expected that a proviso similar to that in Section 112 would have been incorporated in Section 113.

9. In my opinion the plaintiff must fail and the suit must be dismissed with costs on scale No. 2.