

**(1925) 05 CAL CK 0005****Calcutta High Court****Case No:** None

Chandi Charan Mitra

APPELLANT

Vs

Ashutosh Lahiri

RESPONDENT

**Date of Decision:** May 26, 1925**Acts Referred:**

- Transfer of Property Act, 1882 - Section 106

**Citation:** 94 Ind. Cas. 684**Hon'ble Judges:** N.R. Chatterjea, J; Cuming, J**Bench:** Division Bench**Judgement**

N.R. Chatterjea, J.

This appeal arises out of a suit for ejectment of the defendant after notice to quit. The Court of first instance gave a decree to the plaintiff and that decree has been affirmed on appeal by the lower Appellate Court.

2. The defendant has appealed to this Court and four contentions have been raised before us.

3. The first is that the land in suit was taken settlement of for the purpose of enlarging the compound of the house in which his predecessor-in-title was residing, that he had a permanent tenancy in the house; and that the incidents of that tenancy would apply to the disputed land also as it was taken for the purpose of enlarging the compound of the house. We do not, however, think that that would follow. A man may have a permanent right to a piece of land, but he would not necessarily have the same right to another piece of land adjoining it.

4. The next point taken is, that the two holdings were amalgamated because one rent-receipt was granted in respect of both. But they have been mentioned as two distinct jamas and we do not think there was any amalgamation of these two tenancies.

5. The third point is that the lease was for an indefinite term and that, therefore, it enures for the life of the grantee and it cannot be put an end to by a notice to quit. Whether it is so or not, depends upon the terms of the document and in this particular case there is nothing to show that it comes within that principle. An annual rent was payable and in the absence of anything to show the contrary it indicates that it was a yearly tenancy. Section 106 of the Transfer of Property Act lays down that "in the absence of a contract or local law or usage to the contrary, a lease of Immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months" notice expiring with the end of a year of the tenancy". There is nothing in this case to show that it does not come within Section 106 of the Transfer of Property Act.

6. The last contention is that the notice to quit is bad as it did not expire with the end of the year of the tenancy. The lease was granted on the 28th Pous, 1306 corresponding to 11th January 1900. The notice to quit was served on the 9th July, 1919, to vacate the land within the 11th January. The suit was instituted on the 9th October 1920. The Court below found that the tenancy commenced on the 11th January and the year of the tenancy extended to the 10th January of the next year.

7. The learned Advocate for the appellant has relied upon some rent receipts showing that rent was paid according to the Bengali year and has contended that that being so the year of the tenancy did not extend to the 10th January but to the last day of the Bengali year. It is not clear that this question was raised in the Court below, because there is no reference to it in the judgment of the lower Court; and, if we were to direct a remand to the Court below for a determination of this question it would lead to further litigation; and if the notice is found to be bad the defendant will have ultimately to quit after pro per service of notice to quit. In these circumstances the learned Advocate for the respondent has agreed to give up costs and also to give the appellant time to vacate the land in question within six months from this date.

8. We accordingly dismiss the appeal and direct that each party do bear his own costs in all the Courts. There will be a direction in the decree that the defendant must vacate the land in suit within six months from this date.

Cuming, J.

9. I agree.