(1977) 12 CAL CK 0007

Calcutta High Court

Case No: None

Mira Sen		APPELLANT
	Vs	
Dipak Kumar Ghosh		RESPONDENT

Date of Decision: Dec. 9, 1977

Acts Referred:

- Transfer of Property Act, 1882 - Section 106

Citation: 82 CWN 177

Hon'ble Judges: N.C. Mukherji, J

Bench: Single Bench

Advocate: Ranjit Kumar Banerjee and Abhijit Kumar Banerjee, for the Appellant; Sachindra Chandra Das Gupta and Soumen Das Gupta, for the Respondent

Final Decision: Allowed

Judgement

N.C. Mukherji, J.
This appeal arises against the judgment and decree passed by Shri S.K. Chatterjee, District Judge Hooghly, dated May 31, 1972 in Title Appeal No. 309 of 1971 affirming those of Shri B. G. Chakraborty, Munsif, 1st court, Hooghly, dated June 29, 1970 in Title Suit No. 121 of 1970.

2. The facts of the case, may, briefly, be stated as follows :

The plaintiff brought a suit for eviction of the defendant on the ground that the defendant expressed his intention to vacate while sending the rents for November and December 1968 by Money Order. In the said Money Order Coupon he stated that he was to vacate the suit premises within 6/8 months. The said Money Order containing the notice was accepted by the plaintiff. The plaintiff subsequently wrote a registered letter to the defendant in order to ascertain on what date the defendant would vacate so that the plaintiff might make arrangement. Though the said letter was received by the defendant, the defendant did not give any reply.

3. The defendant contests the suit by stating that he never gave such Money Order coupon is a casual one. That can never amount to a valid notice. Against, the said writing was not by the defendant. The same was written by Ashoke Kumar Ghosh, defendant''s brother, without the knowledge of the defendant and without the knowledge of the defendant and without his authority and consent. The learned Munsif found that the expression in the Money Order Coupon that the defendant would vacate the premises within 6/8 months did not amount to a valid notice. It was also held by the learned Munsif that such a statement was not made by the defendant and defendant''s brother Ashoke had no authority to make such a statement on behalf of the defendant. In that view of his finding the learned Musif dismissed the suit. Being aggrieved, the plaintiff preferred an appeal before the learned District Judge agreed with the learned Munsif on finding that the statement in the Money Order Coupon was not a valid notice. He, however, reversed the finding of the learned Munsif and found that the statement in the Money Order Coupon must be considered to be the statement of the defendant and that Ashoke, defendant''s brother, wrote the same under instruction from the defendant and the defendant cannot shirk the responsibility. As the learned District Judge found that there was no valid notice he found that the learned Munsif was right in dismissing the suit. Being aggrieved, the plaintiff has come up to this court.

4. Mr. Ranjit Kumar Banerjee, learned Advocate appearing for the plaintiff submits that both the Courts were wrong to find that the statement in the Money Order Coupon was not a valid notice. The relevant statement reads as follows :-

(We shall vacate the premises within the next 6/8 months). Mr. Banerjee contends that the essence of notice to quit is to determine the tenancy and this statement is sufficient to determine the tenancy. There is no vagueness or uncertainty in the statement. It has been clearly stated that the defendant would vacate the premises within 6 or 8 months. The maximum limit within which the defendant has expressed his willingness to vacate the premises is 8 months from the date of the notice. It is true that a clear date was not mentioned by the defendant and that being so, the plaintiff sent a registered letter to the defendant on the 9th Parity, 1969. The said letter is exhibit 2. It is admitted that the letter was received by the defendant. In this letter the plaintiff state as follows :- "I also take note of your notice to vacate the said premises within 6/8 months'' time. I shall be obliged if you will kindly let me know precisely the date of which you will vacate the said premises, so that I may arrange my occupation of the said premises accordingly." This letter was not replied to by the defendant. The defendant deposes that Ashoke showed the letter (Ext. 2) to him in June, 1969. He asked Ashoke not to give any reply since he had not talk with Mr. Sen regarding vacating the suit house. In cross-examination, the defendant states that he took no notice of the letter (Ext. 2) since he made no offer of vacating her house. In this connection he also states that such a statement was made by Ashoke without his knowledge and without his authority. If that be the position then it was most natural for the defendant to send a reply tot the plaintiff immediately to the

plaintiff''s letter (Ext. 2) which was shown to him. Considering the evidence on record I agree with the learned appellate court below that the statement in the Money Order Coupon was made under instruction from the defendant. Now, it requires to be seen whether such a statement amounted to a valid notice so as to determine the tenancy. It may be mentioned that the plaintiff waited for along time and it was only on 11th of May, 1970 that the suit was filed when the defendant failed to vacate the premises. In support of the contention that such a notice is valid, Mr. Banerjee first refers to a decision reported in 45 IA 222 (Harihar Banerji & others vs. Ramsashi Roy & others). It has been held in this case that "a notice to quit, though not strictly accurate or consistent in its statement, may be effective, and should be construed ut res magis valeat quam pereat. The test is, what would the notice mean to the tenant who is presumably conversant with the terms and circumstances of the tenancy". Mr. Banerjee submits that the principle laid down in this case will also apply in a case where a notice is served by the tenant on the landlord. The principle laid down in this case has been consistently followed and has been clearly explained in a decision reported in Jatindra Nath Vs. Malai Ram Show, . In this case it has further been held that "the rule is also well established that notices to quit are to be construed not with a desire to find faults with them which would render them defective but they are to be construed at ''res magis valeat quam pereat''. Mr. Banerjee next relies on a decision reported in 170 ER 622 (Doe Ex Dem. Matthewson vs. Wrightman). In this case it was held "a notice to quit on one of two days is good, as an Old or New Lady-day is good, if serve six months before the day on which the tenancy commenced." Mr. Banerjee also relies on another English Decision reported in 1915 (1) King''s Bench Division 830 (May vs. Borup & another). In this case an agreement for a yearly tenancy provided that the tenancy might be determined by six months'' notice to be given on March 1 and September 1 in any year. On December 23, 1913, the tenants wrote to the landlord giving notice to quit the premises "at the earliest possible moment," and stating that if, as the tenants hoped, a satisfactory reorganization of their business was enacted, the notice would be "cancelled". It was held, that the fact that the tenants claimed by the notice to exercise in a certain event a right which they did not possess, namely, to cancel the notice, did not render the notice bad as being conditional, and that the letter constituted a valid notice determining the tenancy at the expiration of six months from March 1, 1914. Mr. Banerjee also relies very much on a decision reported in The Calcutta Credit Corporation Ltd., and Another Vs. Happy Homes (P) Ltd., . In this case it has been held "once a notice is served determining the tenancy or showing an intention to quit on the expiry of the period of he notice, the tenancy is at an end, unless with the consent of the other party to whom the notice is given the tenancy is agreed to be treated as subsisting". It has further been held that a notice which is defective may still determine the tenancy, if it is accepted by the landlord. A notice which complies with the requirement of section 106 of the Transfer of Property Act operates to terminate the tenancy, whether or not the party served with a notice assents thereto.

5. Mr. Sachindra Chandra Das Gupta, learned Advocate appearing on behalf of the respondent, however, contends that the learned courts below were right to hold that the statement made in the Money Order Coupon cannot amount to a notice of ejectment. It was only a causal statement can never determine the tenancy. After considering the facts and circumstances of the case and relying on the decisions referred to by Mr. Banerjee I am of opinion that the statement made in the Money Order Coupon amounts to a valid notice and it has determined the tenancy.

6. In the result, the appeal succeeds. The judgment and decree passed by the courts below are set aside. The suit is decreed. The plaintiff does get a decree for recovery of possession of the suit premises after evicting the defendant therefrom. There will be, however, no order for costs in this appeal. On prayer of the respondent, the respondent is allowed to stay in the suit premises for 3months for the present. If before the expiration of 3 moths, the respondent gives a written under taking then he will be allowed to stay for 3 months more.