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(1979) 12 BOM CK 0012

Bombay High Court

Case No: Letters Patent Appeal No. 22 of 1975 (In First Appeal No. 497 of 1977)

Akbaralli Hasan Alli (by his heirs) Rukiyabai Akbaralli Hasanalli and Others	APPELLANT
Vs	
Ramchandra Narayan Karande (by his heirs) Lilabai Ramchandra Karande and Others	RESPONDENT

Date of Decision: Dec. 18, 1979

Acts Referred:

- Transfer of Property Act, 1882 - Section 105, 106, 116

Citation: (1979) 12 BOM CK 0012

Hon'ble Judges: V.S. Deshpande, J; P.B. Sawant, J

Bench: Division Bench

Advocate: C.R. Dalvi, for the Appellant; V.P. Tipnis, for the Respondent

Final Decision: Dismissed

Judgement

1. This letters patent appeal is directed against the decision of the learned Single Judge of this Court, dismissing the plaintiffs suit for possession of the suit premises which are a Gala measuring 25"x71/2 in a building which admittedly belonged to the then Thana Borough Municipality. The plaintiff was a tenant in respect of the suit premises and by a registered agreement which according to the plaintiff, was of leave and licence dated the 18th April, 1959, he had inducted the defendant in the same for a period of three years which was to expire on the 17th April, 1962. By his notice dated the 4th February, 1962, the plaintiff revoked the licence with effect from the expiry of the agreement dated the 17th April, 1962. The defendant by his reply dated the 7th March, 1962 contended that what was granted to him was a lease and not a leave and licence. The second notice given by the plaintiff on the 11th March, 1962 asking the defendant to hand over the

possession of the suit premises after the expiry of the alleged licence period also met with the same reply from the defendant on the 27th March, 1962. According to the plaintiff, however, on the expiry of the said agreement on the 17th April, 1962, the suit premises were actually handed over by the defendant to him and, thereafter there was a second agreement, namely of the 14th May, 1962 again creating a licence in favour of the defendant for a further period of three years beginning from the 1st May, 1962. This agreement was not registered. Since this agreement was to expire on the 30th April, 1965, the plaintiff gave another notice dated the 20th February, 1965 calling upon the defendant to quit and hand over the possession of the suit premises after the 30th April, 1965. This notice was not replied to, and, therefore, second notice was given by the plaintiff on the 6th April, 1965. Since the defendant did not comply with this notice, the present suit was filed on the 21st June, 1965. The suit was resisted by the defendant contending, firstly, that he was a tenant in respect of the suit premises, and, therefore, he was protected by the Rent Control Act. He also contended that the Civil Court had no jurisdiction to entertain the suit since the jurisdiction vested exclusively in the Rent Court. His last contention was that since he was a tenant his tenancy could be terminated only by a notice u/s 106 of the Transfer of Property Act. The notice given by the plaintiff landlord terminated his tenancy with effect from the 30th April, 1965. The month of tenancy, however, was from 18th of the last month to the 17th of the current month. Since the period of notice did not coincide with the month of the tenancy, the notice was invalid in view of the provisions of the said section 106.

2. On the basis of this pleading and the evidence led, the trial Court came to the conclusion that the defendant was a tenant in respect of the suit premises. The trial Court, further held that there was a valid notice terminating the tenancy and the provisions of the Rent Control Act did not apply to the suit premises. The trial Court, therefore, decreed the suit of the plaintiff. Against the said decision the defendant preferred an appeal to this Court and the learned Single Judge who heard the appeal dismissed the suit on the ground that there was no valid termination of tenancy as per the provision of section 106 of the said Act. It appears that there was no other contention raised before the learned Judge since we do not find any discussion on the same. It is against the said decision of the learned Single Judge that the present appeal has been preferred.

3. Although as stated above no other contention was raised before the learned Single Judge, Mr. Dalvi appearing for the plaintiff-appellant has raised two contentions other than the contention with regard to the validity of the notice. His first contention is that the finding recorded by the trial Court that the defendant was a tenant and not a licensee, was both factually and legally incorrect. His second contention was that the second agreement dated the 14th May, 1962, which created a licence in favour of the defendant, did not require registration as held by the two courts below and in any case the same could be looked into for a collateral purpose. His last contention was that the notice was valid and the finding recorded by the Court below on that issue is incorrect.

4. As regards the first contention with regard to the nature of interest created in the suit premises, we are of the view that as has been pointed out by the trial Court the defendant was in exclusive possession of the suit premises. Under the terms of the first agreement dated the 18th April, 1959, the rent was reserved and paid in advance for all the three years and the nature of relationship between the plaintiff and the defendant shows that an interest was created in favour of the defendant in the suit premises. Thus the relationship satisfied all the conditions of lease as mentioned in section 105 of the Transfer of Property Act. Hence we find no justification to interfere with the finding recorded by the trial Court that what was created in the said agreement was a lease in favour of the defendant. In view of this, we are unable to appreciate the reliance placed by Mr. Dalvi on the two decisions of this Court, namely, 67 Bom.L.R. page 461 Aninha D''Costa v. Parvatibai, and 68 Bom.L.R page 400 Sohanlal Naraindas v. Laxmidas Raghunath Cadit, to contend that what was created was a licence and not a lease. We are of the view that in view of the evidence on record these two decisions are in favour of the defendant rather than the plaintiff. We, therefore, find no substance in the said contention.

5. As regards the second contention, namely, that the second agreement dated 14th May, 1962 did not require registration, we are unable to appreciate the same. Admittedly under the second agreement the period for which the alleged licence was created was three years and the defendant was required to pay a sum of Rs. 2,500/- as a consideration for being on the premises for the said three years. Out of this sum, Rs. 500/- were paid to the landlord already on the 23rd March, 1959 and a further sum of Rs. 2,000/- was paid on the date of the agreement. There is no dispute that all these amounts were paid as stated in the agreement. In view of this, we are of the view that this document required registration as per the provisions of the Registration Act, and, therefore, the finding recorded by the learned Single Judge in unquestionable.

6. Mr. Dalvi then contended that this agreement through not registered could be looked into for a collateral purpose and his argument in this connection was that as regards the month of tenancy, it was open for the Court to look into the terms of this agreement and come to the conclusion that the tenancy month was not from the 18th of the earlier month to the 17th of the current month as has been held by the learned Single Judge on the basis of the earlier agreement dated the 18th April, 1959. In the first instance, in view of the finding recorded by the trial Court that the defendant continued to remain in possession of the premises even after the expiry of the period mentioned in the first agreement, it will have to be held that the defendant continued to hold over his tenancy on the same terms and conditions on which he came to occupy the said premises under the said agreement of 18th April, 1959. This being the position, it is difficult to understand as why it is necessary to look to any other document, including the said second agreement of 14th May, 1962. Since on the facts of the present case it is not necessary to look into any other documents to find out the terms and conditions on which the defendant continued to hold over, this argument is really beside the point. Even if, therefore, we were to hold that it was necessary to ascertain the terms and conditions on

which the defendant continued to hold over the tenancy, it is the first agreement and not the second agreement which will have to be looked into. Secondly, even assuming that it was open to look into the second agreement for the collateral purpose, the term for which Mr. Dalvi wanted the Court to look into this document relates to the month of the tenancy. It will, therefore, be a direct purpose for which the document will be looked into and not a collateral purpose. It is needless to say that it is not open for the Court to look into a document which is inadmissible in evidence for finding out the term of the relationship that is created between the parties. Therefore, we are unable to accept Mr. Dalvi"s contention that the period of tenancy is a collateral circumstance and it is open for this Court to look into the said agreement to ascertain the said circumstance.

7. Coming now to the third and the last contention, namely, that the notice terminating the tenancy is not invalid. Admittedly under the first agreement dated the 18th April, 1959 between the parties, the occupation of the defendant started on the 18th April, 1959 and three years were to expire on the 17th April, 1962. The consideration was reserved for all the three years and was paid in advance. The trial Court has also found that this relationship was that of landlord and tenant and we have also expressed our view that this finding of the trial Court is unassailable. The relationship being that of landlord and tenant and the defendant having continued to remain in occupation of the suit premises without interruption (the theory put forward by the plaintiff that there was an interregnum between 18th April, 1959 and 14th May, 1962 during which the possession had come back to the plaintiff being unacceptable), it will have to be held looking to the nature of the propose for which the tenancy was created, that the defendant continued to remain in the premises as a monthly tenant under the provisions of section 116 of the Transfer of Property Act, on the same terms and conditions under which he was inducted under the said first agreement of 18th April, 1959. Under the said agreement, the month of the tenancy was from the 18th of the earlier month to the 17th of the current month. The provisions of section 106 of the Transfer of Property Act require 15 days notice ending with the month of the tenancy for the valid termination of the monthly tenancy. In the present case it is undisputed that the notice terminating the tenancy was given on the 20th February, 1965 terminating the tenancy with effect from the 30th April, 1965. The termination of tenancy, therefore, did not coincide with the end of the month of the tenancy. Hence there was no valid termination of tenancy. Mr. Dalvi in this connection relied upon two decisions, namely, Kodali Bapayya and Others Vs. Yadavalli Venkataratnam and Others, and 1926 Allahabad Law Journal page 625 Ram Charan Lonia v. Bhagwan Das Mahashri in support of his proposition that in the case of tenant holding over it is not permissible to look into the earlier agreement on which the tenant was inducted, for spelling out the terms of the tenancy. According to us neither of these two decisions lay down any such proposition of law, and, therefore, they or of no avail to the plaintiff in the present case.

8. There were no other contention raised in this appeal. The appeal is, therefore, dismissed with costs.