CIVIL RULE.

Before Greaves and B. B. Ghose JJ.

D. D. BARBER

v.

W. C. DEBENHAM.*

1925

July 7.

Fixtures—Fans—Lights—Intention—Agreement—Demise—Standard rent—Rent Controller—Calcutta Rent Act—Bengal Acts (III of 1920), ss. 15 18, and (1 of 1924) s. 2(2) proviso.

Where according to the true intention of the parties, as indicated in their agreement, electric fans and lights, which were attached to the building, formed part of the building for the purposes of the demise :—

Held, that the fans and lights must be taken, according to the intention of the parties, to be part of the demised building for the purposes of the Rent Act, and that it was open to the Rent Controller to fix a standard rent which comprised these.

CIVIL RULE under section 115 of the Code of Civil Procedure obtained by D. D. Barber, the plaintiff.

The petitioner, one D. D. Barber, had rented the lower flat of premises No. 4, Rawdon Street, Calcutta, together with four electric fans, lights, outhouses and the use of the tennis court on alternate days at a monthly rent of Rs. 330 from one W. C. Debenham, who was the lessee of the entire premises No. 4, Rawdon Street under the proprietor one A. M. Arathoon. In November, 1918, the rent of the aforesaid lower flat together with outhouses and four fans and lights and use of tennis court was Rs. 175 a month.

* Civil Rule No. 497 of 1925, from an order of the President of the Improvement Tribunal, dated Feb. 26, 1925, varying an order of the Rent Controller, dated Sep. 18, 1924.

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The plaintiff, D. D. Barber, therefore applied to the Rent Controller, Calcutta, under section 15 of the Rent Act for fixing the standard rent of the aforesaid flat. The learned Controller decided the objections preferred by both defendants in favour of the plaintiff, and by his order, dated 18th September 1924, fixed the standard rent for the lower flat of No. 4, Rawdon Street at Rs. 232 *per mensem* inclusive of taxes, use of the tennis court on alternate days and lights and fans. Thereupon, under the provisions of section 18 of the Calcutta Rent Act, all the parties filed applications before the learned President of the Improvement Tribunal, who modified the order of the Court of first instance by making the standard rent of Rs. 232 *per mensem* inclusive of taxes but exclusive of fans, lights and other services, if any, supplied by the landlord. W. C. Debenham, the lessee landlord, then filed suit No. 5479 of 1925 in the Calcutta Small Cause Court against the tenant, D. D. Barber (petitioner in the Hon'ble High Court) for recovery of the difference between the stipulated rent and the standard rent. Being aggrieved by the aforesaid order of the learned President, dated 26th February, 1925, the tenant moved the Honourable High Court under section 115 of the Code of Civil Procedure and obtained a Rule on both the lessee (landlord) and the proprietor (superior landlord) to show cause why the order of the learned Rent Controller should not be restored.

Sir B. C. Mitter (with him *Babu Sures Chandra Taluqdar*), for the petitioner. The point for decision is of considerable importance. The learned President of the Calcutta Improvement Tribunal is clearly wrong in holding that a standard rent under the Calcutta Rent Act could not be made to cover electric fans and lights. These are really fixtures and consequently the

learned President's construction of the word "Premises" occurring in section 2, clause (*c*) of the said Rent Act is erroneous. Cites *Sewell* v. *Angerstein* (1) and *Smith* v. *Maclure* (2). Reads Foa's Tenancy at page 679. I submit that it depends entirely on the intention of the parties and on the nature of the particular agreement between them whether electric fans and lights are intended to go with and to form part of the premises. The decision in *Wells* v. *John Dickenson & Co.* (3) does not apply to the special facts of the present case in which the intention of the parties was to treat these electric lights and fans as part of the demised premises. The decision of the learned Rent Controller including these electric fans and lights in the standard rent of the premises, lower flat of No. 4, Rawdon Street, Calcutta, is correct and should be restored.

Dr. D. N. Mitter (with him *Babu Satindranath Mukerjee*), for the Opposite Party No. 1 (W. C. Debenham). The term "premises" has been defined in the Calcutta Rent Act. Electric fans and lights cannot therefore form a part of a premises as defined in that Act, because they do not form a part of the building, not being fixtures, for they are removable. The question of "intention" does not arise and is not material in deciding this point. Besides intention cannot be proved unless some evidence is given in the Courts below as to what the parties really meant in settling the terms of the tenancy. Further, the Calcutta Rent Act deals with "pure letting" as distinguished from "mixed letting". In the present case there has been a mixed letting. Standard rent under the Rent Act cannot include fans and lights which involve a mixed letting. I rely upon the decision of Buckland J. in

(1) (1868) 18 L. T. N. S. 300. (2) (1884) 32 W. R. 459.

(3) (1923) 28 C. W. N. 774.

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Wells v. *John Dickenson & Co.* (1) which was followed by Pearson J. in his judgment in original side suit No. 1455 of 1924 [*Rai D. N. Mullick Bahadur* v. *C. J. Leaming and others*(2)]. *Wilkes* v. *Goodwin* (3 is in my favour.

Babu Hiralal Ganguli, for the Opposite Party No. 2 (*A. M. Arathoon*), supported Dr. Mitter in opposing the Rule being made absolute, and submitted that there was no privity of contract between the sub-tenant and the proprietor. These premises, as let out by his client to Debenham, were excluded from the operation of the present Rent Act. His client (the proprietor) was, therefore, not a necessary party to these proceedings for standardization of rent, except that regarding the question of fans and lights forming part of his premises the interest of the proprietor would be affected.

Cur adv. vult.

GREAVES J. By an agreement in writing contained in two letters dated respectively the 29th and 31st August 1923, the first of which was addressed by the petitioner to the respondent Debenham and the second by Debenham to the petitioner, the respondent Debenham, agreed to let and the petitioner agreed to take for a period of 21 months from the 1st September 1923 with an option of renewal as therein mentioned, the Lower Flat No. 4 Rawdon Street comprising the following accommodation, sitting room with one electric fan and lights, three bed rooms with bath rooms, each bed room with one electric fan and lights also lights in the bath room, south verandah with space under stairs with electric lights and other accommodation as therein mentioned at a rental of Rs. 320 per month

(1) (1923) 28 C. W. N. 774. (2) (1925) Unreported
(3) [1923] 2 K. B. 86.

inclusive of taxes and without any other extra charge but excluding the cost of electric current. An application was subsequently made to the Rent Controller by the petitioner to fix the standard rent of the premises, and the Rent Controller on the 20th August 1924 fixed the standard rent at Rs. 232 per month holding that the fans, electric lights and fittings formed part of the premises.

An appeal was preferred against this order to the President of the Tribunal, who held that a standard rent under the Rent Act could not be made to cover fans, lights or any other thing not forming part of a building or hut.

He arrived at the same figure as the Rent Controller for the standard rent of the premises exclusive of fans, lights, etc.

The decision of the President was based on the definition of premises in section 2 (*e*) of the Calcutta Rent Act, and he held that the word premises could not cover fans, lights, etc., as they did not form part of the building.

Against the order of the President of the Tribunal the present rule was obtained on the 24th April 1925. "Premises" in section 2(*e*) of the Calcutta Rent Act are defined as meaning any building or hut let separately for residential, charitable, educational or public purposes or for the purposes of a shop or an office, and by section 15 of the Act the Rent Controller is empowered to certify the standard rent of any premises.

In *Sewell* v. *Angerstein* (1) Willes J. held that gasaliers formed part of the freehold. The finding was arrived at in the case of a lease which was conveyed or assigned by the defendant to the plaintiff.

(1) (1868) 18 L. T. N. S. 300.

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and included in the conveyance or assignment were the fixtures which were held to include the gasaliers attached by screws to the gas pipes.

In *Smith* v. *Maclure*, (1) Pearson J. held that gas fittings, gasaliers and a table lamp screwed to a pipe were fixtures, and that this expression included whatever articles were substantially part of the house so that they could not be removed without depriving the building of that which was intended to be used with it.

I cite these authorities not as authorities for showing what are or are not fixtures, as what are deemed fixtures in England may not be fixtures according to Indian Law and *vice versâ*, but as showing that it depends on the intention of the parties and on the nature of the agreement to be gathered from the same whether such things as fans and lights are intended to go with and to form part of the premises or building demised.

I think that in the present case the fans and lights, which were attached to the part of the building demised, and which were intended to be used with it, must be taken according to the intention of the parties to be part of the demised building for the purposes of the Rent Act, and that it was open to the Rent Controller to fix a standard rent which comprised these.

The case of *Wells* v. *Dickinson*, (2), to which we were referred, has in my opinion no bearing on the present case. In that case a furnished flat was demised, and it was held that, although the Rent Controller had jurisdiction under the Act to fix a rent for the premises apart from the furniture, he had no jurisdiction to fix a standard rent which included the furniture.

That case is distinguishable, as clearly the furniture could by no stretch of imagination have been intended

(1) (1884) 32 W. R. 459. (2) (1923) 28 C. W. N. 774.

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to form part of the building for the purposes of the letting, whereas in the present case the fans and lights which were attached to the building, formed part of the building for the purposes of the demise according to the true intention of the parties as indicated in the agreement. I would make the rule absolute with costs 5 gold mohurs. The matter will now go back to the President of the Tribunal in order that he may consider what is the standard rent of the premises including the fans and lights.

B. B. GHOSE J. I agree.

Rule absolute; case remanded.

G. S.

APPELLATE CRIMINAL.

Before Suhrawardy and Panton JJ.

SAMSERALI HAZI

v.

EMPEROR.*

1925

July 9.

Depositions—Reading over depositions to the witnesses, examined one after another, not on the completion of the evidence of each, but during the midday adjournment or after the close of the day—Illegality vitiating the trial—Criminal Procedure Code (Act V of 1898), s. 360.

Under section 360 of the Criminal Procedure Code the evidence of each witness must be read over to him as soon as it is completed, and before the examination of the next witness is taken up.

Reading over the depositions to the witnesses, examined one after another, not on the completion of the evidence of each witness, but during the midday adjournment or after the close of the day, is not a compliance with the section, and the trial is vitiated by such procedure.

Criminal Appeal 105 of 1925 (1) followed.

*Criminal Appeal No. 187 of 1925 against the order of N. Edgley, Sessions Judge of Faridpur, dated March 7, 1925.

(1) Unrep: decided, on 7th July 1925, by Suhrawardy and Panton JJ.