

PRIVY COUNCIL.

BINAYKRISHNA DAS

v.

SALSICCIONI.

P. C.*

1932

July 26.

[ON APPEAL FROM THE HIGH COURT AT CALCUTTA.]

*Landlord and Tenant—Notice to terminate tenancy—Date of expiry of notice—
Monthly tenancy—Rent payable on seventh of each month—Transfer of
Property Act (IV of 1882), ss. 106, 110.*

A lease of property in Calcutta was expressed to be from June 1, 1921, for the ensuing four years, and provided that a monthly rent should be paid on or before the seventh day of the month succeeding that for which it was due. The tenancy continued after the four years, but on February 1, 1928, the tenants gave notice to terminate it; the notice stated that it was one month's clear notice to take effect from that day, and that possession would be given up on March 1. The landlord contended that the notice was invalid, because the month of the tenancy by reference to which the notice had to expire ended at midnight on February 29.

Held that under section 110 of the Transfer of Property Act, 1882, the lease expired at midnight on June 1, 1925, the provision as to the date for payment of the monthly rent not being "an express agreement to the contrary" within the meaning of that section; that consequently the tenancy commenced at that time and the notice was one expiring with the end of a month of the tenancy and was, therefore, valid under section 106 of the Act.

Decree of the High Court on appeal affirmed.

Appeal (No. 107 of 1931) from a decree of the High Court in its appellate jurisdiction (August 13, 1930) reversing a decree of the Court in its original jurisdiction (April 17, 1930).

The respondents were tenants from the appellants of premises in Calcutta, having remained in possession after the expiry of a lease, dated June 29, 1921, for four years. The appeal arose out of suits brought by the appellants against the respondents in the Small Causes Court for the recovery of rent for successive months; the suits were consolidated and transferred

**Present*: Lord Tomlin, Lord Thankerton, Lord Macmillan, Lord Wright and Sir George Lowndes.

1932

*Binaykrishna
Das
v.
Salsiccioni.*

to the High Court. The sole question arising upon the appeal was whether a notice given by the respondents on February 1, 1928, to terminate the tenancy was a valid notice.

The trial Judge (Buckland J.) held that the notice was invalid as it did not expire at the end of a month of the tenancy as required by section 106 of the Transfer of Property Act, 1882. Upon appeal, the decision was reversed by Rankin C. J. and C. C. Ghose J., who held that the notice was valid, and, accordingly, dismissed the suits.

The facts, and the material terms of the Transfer of Property Act, sections 106 and 110, appear from the judgment of the Judicial Committee.

Dunne K. C. and *G. D. McNair* for the appellants.

Sir Thomas Strangman for the respondents was not called upon.

The judgment of their Lordships was delivered by

LORD TOMLIN. Their Lordships do not think it necessary to call upon counsel for the respondents in this case.

The appellants, who are the plaintiffs in the action, are lessors claiming that a notice given by the respondents, purporting to terminate their tenancy, was not a good one.

The notice was given in the circumstances which will shortly be mentioned, but before stating them it may be well to refer to the sections of the Transfer of Property Act which are relevant.

The first is section 106, which is in these terms :—

In the absence of a contract or local law or usage to the contrary, a lease of immoveable 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; and a lease of immoveable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy.

Section 110 is in these terms:—

Where the time limited by a lease of immoveable property is expressed as commencing from a particular day, in computing that time such day shall be excluded. Where no day of commencement is named, the time so limited begins from the making of the lease. Where the time so limited is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences.

1932
*Binaykrishna
Das
v.
Salsiccioni.*

Now the facts of this case are as follows: The respondents became tenants of the appellants under a lease of certain premises dated the 29th June, 1921, expressed to be "from the first day of June, 1921, "for the term of four years thence next ensuing." Then there followed this provision with regard to the payment of rent:—

Yielding and paying therefor the clear monthly rent or sum of Rupees One thousand such rent to be paid on or before the seventh day of the month succeeding the month for which it is due the first payment being the rent for the month of June, One thousand nine hundred and twenty-one, to be paid on or before the seventh day of July, One thousand nine hundred and twenty-one and so on.

That lease expired in due course in the year 1925, but the respondents continued as tenants of the premises, and, under the terms of section 106, which has been read, their tenancy was terminable thereafter by fifteen days' notice expiring with the end of a month of the tenancy.

On the 1st February, 1928, the respondents gave notice to terminate, and the notice was, so far as material, in these terms:—

We hereby give you one month's clear notice to take effect from to-day. By this you must understand that we shall hold possession of the above premises up to the last day of this month and would shift from here just on the 1st proximo. Please take note of the same.

Now it is asserted by the appellants that that notice was bad, because it was a notice which treated the month of the tenancy at the end of which the notice had to expire as midnight of the 1st of March, whereas the month of the tenancy, by reference to which the notice had to expire, ended, as the appellants contend, at midnight of the 29th February, 1928.

1932

*Binaykrishna
Das
v.
Salsicconi.*

The question depends, first of all, on the date of the expiry of the lease. That date determines the beginning of the respondents' tenancy, which was capable of determination by monthly notice in accordance with section 106.

Turning to the terms of the lease of 1921, and applying to it the language of section 110 of the Transfer of Property Act, it would appear that the first day of June, 1921, is excluded from the term, because the section says: "Where the time limited by a lease of immovable property is expressed as commencing from a particular day, in computing that time such day shall be excluded." Therefore the 1st of June is excluded.

It further appears that the 1st of June, 1925, is included, because the second portion of section 110 says: "Where the time so limited is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences." Therefore, the 1st of June, 1925, is included, and the lease ended at midnight on the 1st of June, 1925, at any rate unless the argument advanced by Mr. Dunne to the effect that there exists an express agreement to the contrary is well founded.

Mr. Dunne has said that the provision in the lease, "Yielding and paying therefor the clear monthly rent or sum of Rupees One thousand, such rent to be paid on or before the seventh day of the month succeeding the month for which it is due," is either itself an agreement which excludes the operation of section 110 or, at any rate, is a provision which necessarily involves the implication of such an agreement. It clearly is not an agreement expressly excluding section 110, because it has nothing to do with fixing the period covered by the term. It merely provides for the payment of the rent. Mr. Dunne's argument must really amount to this, that because he suggests there is an inconsistency between the provision with regard to the payment of

rent and the provision with regard to the length of the term, there must be implied an agreement to exclude the operation of section 110.

Now the answer seems to be that the section in terms applies, unless there is an express agreement to the contrary, and no express agreement to the contrary can, in fact, be found in the lease in question.

That being so, it must be taken that the lease ended at midnight on the 1st of June, 1925, and that any notice to determine thereafter given must be a notice to quit expiring with the month ending at midnight on the first day of any month. The notice in fact given on the 1st of February, 1928, clearly is a notice in regard to the 1st of March, 1928, and not in regard to the 29th of February, 1928. It, therefore, is a notice which, in the language of section 106, expired with the end of a month of the tenancy, because the month of the tenancy expired at midnight on the 1st of March, 1928.

The High Court in its appellate jurisdiction decided in the respondents' favour (in their Lordships' judgment rightly), although they have based their conclusion not upon section 110, to which their attention does not appear to have been called, but upon the rule of English law which appears from the cases cited to them.

In the result, therefore, their Lordships are of opinion that the appeal fails, and they will humbly advise His Majesty accordingly. The appellants must pay the respondents' costs of the appeal.

Solicitors for appellants: *T. L. Wilson & Co.*

Solicitors for respondents: *Sanderson Lee & Co.*

1932

*Binaykrishna
Das
v.
Salsiccioni.*