

ORIGINAL CIVIL.

Before Panckridge J.

BAIDYA NATH BASAK

v.

ONKER MULL MANICK LAL.*

1938

Feb. 9.

Landlord and Tenant—Ejectment—Notice to quit—Tenancy at monthly rent—Expiration of notice—Transfer of Property Act (IV of 1882), s. 106.

A tenancy was created by a letter in the following terms :—

Sirs,

We rent the vacant land lying to the east of the front portion of your house No. 25-1, Ratan Sarkar Garden Street on a fixed rent of Rs. 31 per month and declare that we will pay the rent of the above premises by the 5th of each month and when it will be necessary to give *khās* possession of the said premises we will give *khās* possession of the same to you within seven days. If we fail to do so, then we will make good your loss.

Held that the tenancy was a monthly tenancy and it could be determined only by a notice of fifteen days expiring with a month of the tenancy :

Held, further, that even if the document had the effect of reducing the statutory period of notice to seven days, the seven days must expire with the end of a month.

Dixon v. Bradford and District Railway Servants' Coal Supply Society (1) relied on.

ORIGINAL SUIT.

The facts of the case are fully set out in the judgment.

B. C. Ghose and *J. C. Sett* for the plaintiff. The letter constitutes a contract to the contrary within the meaning of s. 106 of the Transfer of Property Act. The tenancy is for an indefinite period and either party may terminate it by seven days' notice. Such notice need not terminate with the end of a month. *Ram Nath v. Badri Nath* (2); *Rure Khan v. Ghulam Muhammad* (3).

*Original Suit No. 756 of 1937.

(1) [1904] 1 K. B. 444.

(2) [1928] A. I. R. (Lah.) 348.

(3) [1924] A. I. R. (Lah.) 643.

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Bachawat for the defendants. The notice to quit is void. The tenancy is from month to month and must be terminated by fifteen days' notice terminating with a Bengali month. Section 106 of the Transfer of Property Act applies and there is no contract to the contrary. The term regarding the giving of *khâs* possession does not in any way affect the question of notice. Even if it be held that there was a contract that seven days' notice will be accepted, such notice must expire with the end of a Bengali month. *Dixon v. Bradford and District Railway Servants' Coal Supply Society* (1).

PANCKRIDGE J. This is a suit in ejectment.

The plaintiffs are the owners of No. 25/1, Ratan Sarkar Garden Street and the defendants are in occupation of the northern portion of those premises. None of the defendants have entered appearance or filed written statements except the first defendants, Onker Mull Manick Lal, a firm having its place of business at 4, Singhi Datta Lane, Calcutta.

The case for the plaintiffs is that on September 19, 1935, they demised the plot of land in suit to Onker Mull Manick Lal in terms of a document dated Aswin 2, 1342 B.S., corresponding with September 19, 1935. This document was signed by one Suraj Mull Tharao on behalf of Messrs. Onker Mull Manick Lal, the signatory describing himself as a manager and partner.

The plaintiffs claim that they duly terminated the tenancy of Onker Mull Manick Lal by a notice in writing dated May 1, 1937.

In the written statement, the defendants Onker Mull Manick Lal put forward a substantive case in which they alleged that they were in occupation under an agreement of lease for a period of eleven years beginning with the Bengali month of Aswin, 1342.

The suit was instituted on May 15, 1937, and there is a claim as against Onker Mull Manick Lal for a sum of Rs. 411-4, being the rent due at the date

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of determination of the tenancy, and for mesne profits thereafter until vacant possession is obtained. The claim for rent is not disputed, and the defendants say it has been tendered to the plaintiffs. The plea of tender, however, has not been accompanied by any payment into Court. The defendants as an alternative defence submit that under the terms of the letter of September 19, 1935, the notice given by the plaintiffs on May 1, 1937, did not effectively terminate the tenancy.

During the course of the trial the defendants have stated through their counsel that they are not in a position to call evidence to support their allegations as to an agreement for a lease of eleven years, and they have also admitted the authority of Suraj Mull to sign the letter of September 19, 1935, on their behalf, and in consequence the only question which I have to decide is whether the tenancy of the defendants was effectively terminated, as the plaintiffs contend by their letter of May 1, 1937. The letter of September 19, 1935, is as follows:—

Sirs,

We rent the vacant land lying to the east of the front portion of your house No. 25-1, Ratan Sarkar Garden Street, on a fixed rent of Rs. 31 per month and declare that we will pay the rent of the above premises by the 5th of each month and when it will be necessary to give *khás* possession of the said premises we will give *khás* possession of the same to you within seven days. If we fail to do so, then we will make good all your loss.

By a letter of May 1, 1937, the attorney for the plaintiffs calls on the defendants to remove certain structures and quit and vacate the land and give vacant possession of the same within seven days from the receipt of the letter.

The defendants rely on the provisions of s. 106 of the Transfer of Property Act. They submit that there is here no contract to the contrary within the meaning of the section, and that, accordingly, the lease must be deemed to be a lease from month to month terminable on the part of either the lessor or lessee by fifteen days' notice expiring with the end of a month of the tenancy. It is clear that the months

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which are contemplated by the document are the months according to the Bengali calendar. Therefore, if the defendants' contention is correct, the plaintiffs can only terminate the tenancy of the defendants by a notice of fifteen days expiring with the end of a Bengali month.

The plaintiffs on the other hand submit that there is a contract to the contrary within the meaning of the section, and that the tenancy created is a tenancy for an indefinite time subject to the right of either party to terminate it by seven days' notice.

The defendants alternatively contend that even if the document has the effect of cutting down the requisite notice from fifteen days to seven days, the requirement of the section that the notice should expire with the end of a month of the tenancy is not affected thereby. Clearly if either of these contentions is correct, the notice is ineffective. In my opinion, the first contention is sound, and s. 106 is applicable to the agreement contained in the letter of September 19, 1935. The promise on the part of the defendants to take the vacant land on a fixed rent of Rs. 31 per month and pay the rent by the fifth of each month is either an express agreement for a monthly tenancy, or if it cannot be so construed, there is certainly no contract to the contrary within the meaning of s. 106. If the letter ended with the words "by the fifth of each month" it could hardly be argued that the provisions of s. 106 as to notice did not apply.

What then is the effect of the remainder of the letter? There is not in terms any stipulation as to notice. The word "notice" is not used. Moreover, nothing is said as to the right of either party to terminate the tenancy. It is true the letter contemplates the tenancy coming to an end but it confers no right upon either the lessor or lessee to put an end to it in a particular way. I consider that the effect of the concluding portion of the letter is that, if the lease is determined in any of the ways contemplated by s. 111 of the Transfer of Property Act, the

defendant's covenant to give *khās* possession within seven days of such determination. Whether this confers upon the lessees a definite right to remain on the premises for seven days after the determination of the tenancy is a question I have not got to decide; but, in my opinion, the only way that either party can determine the tenancy by notice is by observing the provisions of s. 106. If I considered that the document had the effect of reducing the statutory period of fifteen days I should certainly hold on the authority of *Dixon v. Bradford and District Railway Servants' Coal Supply Society* (1) that the seven days must expire with the end of a month of the tenancy. On this point Mr. B. C. Ghose has read to me certain decided cases reported in unauthorised reports and used them as part of his argument. The reports are all of cases decided by the Lahore High Court, and so are not directly in point, inasmuch as the Transfer of Property Act has never been extended to the Punjab. But, apart from this, I do not find the decisions by any means convincing, and I should not be disposed to adopt the reasoning in them. It follows, therefore, that the plaintiff's claim for a decree for ejectment must be dismissed.

The plaintiffs, however, are entitled to a decree for Rs. 411-4 as rent, but under the provisions of the Presidency Small Cause Courts Act, having regard to the amount of such decree, they are not entitled to costs. I think, I should not be justified in awarding costs to the defendants because they have not accompanied their plea of tender by a payment into Court, or indeed proved it.

Suit decreed in part.

Attorney for plaintiff: *P. Basak.*

Attorney for defendants: *M. G. Poddar.*

S. M.

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