

## APPELLATE CIVIL.

Before Nasim Ali J.

DEB DAS LALA

v.

ABDUL GANI.\*

1938

Jan. 6.

*Ejectment—Notice to quit, Validity of—Transfer of Property Act (IV of 1882)  
s. 110.*

If a *kabuliyat* for a term of years, commencing from the first day of a certain year, expressly stipulates that the lease is to terminate with the end of the last year of the term, then there is "an express agreement to the contrary" within the meaning of s. 110, para. 2 of the Transfer of Property Act.

Such a lease shall not last during the whole of the anniversary day from which the lease commenced.

*Binaykrishna Das v. Salsicconi* (1) and *Akshoy K. Nandi v. S. C. Das & Co.* (2) distinguished.

APPEAL FROM APPELLATE DECREE preferred by the plaintiff.

This appeal arose out of an action in ejectment. The suit-land was formerly owned by one Kripa Nidhan Banerji, under whom one Jasomati Malain was a tenant for 1318 to 1324 B. S. The interest of Kripa Nidhan was purchased by the plaintiff-appellant on Jaistha 13, 1333 B. S. Jasomati died in the meantime and the defendant-respondent, who is Jasomati's *nikâit* husband, was holding over the tenancy. Thereafter on Jaistha 29, 1340 B. S., the defendant-respondent was served with a notice to quit the holding by the last day of Ashârh, 1340 B.S. The trial Court decreed the suit. But, on appeal, the

\*Appeal from Appellate Decree, No. 1480 of 1935, against the decree of Thakur Das Banerji, Second Subordinate Judge of Hooghly, dated June 26, 1935, modifying the decree of Nripendra Kumar Ghosh, Second Munsif of Serampore, dated April 30, 1934.

(1) (1932) I. L. R. 60 Cal. 389 ;

(2) (1933) 38 C. W. N. 784.

L. R. 59 I. A. 414.

judgment was reversed on the only ground that the notice to quit was invalid and insufficient in law. Hence the present Second Appeal by the plaintiff.

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*Narendra Krishna Basu* for the appellant. The *kabuliyat* of Jasomati clearly shows that the tenancy created by it terminated with the end of 1324 B. S. Hence notice was valid under s. 110 of the Transfer of Property Act.

*A Quasem* for the respondent. Notice is invalid according to the decisions in *Binaykrishna Das v. Salsiccioni* (1) and *Akshoy K. Nandi v. S. C. Das & Co.* (2).

The other material facts of the case and argument in the appeal appear from the judgment.

NASIM ALI J. This appeal arises out of a suit for ejectment after service of notice to quit under s. 106 of the Transfer of Property Act. The defendant admittedly is a tenant-at-will. His defence to the suit, so far as it is relevant for the purposes of the present appeal, is that the notice to quit served on him is bad in law in as much as it did not expire with the end of a month of the tenancy. The Munsif overruled this defence and decreed the plaintiff's suit. The tenant appealed to the lower appellate Court. The learned Subordinate Judge, who heard the appeal, has dismissed the plaintiff's suit for ejectment on the ground that the notice served on the defendant was insufficient. Hence this Second Appeal by the plaintiff-landlord.

The only point for determination, therefore, in this appeal is whether the notice served on the tenant was sufficient in law.

The defendant admittedly held the disputed land under a registered lease which was executed by the defendant on Srâban 2. 1318. From this *kabuliyat* it appears that the lease was for a term of seven years

(1) (1932) I. L. R. 60 Cal. 389 ; (2) (1933) 38 C. W. N. 784.  
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from 1318 to 1324 B. S. The learned Subordinate Judge, on the authority of the decision of the Judicial Committee of the Privy Council in the case of *Binaykrishna Das v. Salsiccioni* (1) and also in view of the provisions of s. 110 of the Transfer of Property Act, held that the term of the lease expired on the midnight of Baishâkh 1, 1325, and, as by the notice to quit the defendant was asked to vacate the land by the end of the month of Ashârh, the notice did not expire with the end of a month of the tenancy. The learned Judge's view is that, after the expiration of the lease for seven years, the defendant held over as a monthly tenant and that this monthly tenancy commenced from the midnight of Baishâkh 1, 1325. Section 110 so far as it is relevant for the purposes of the present appeal 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.

If the time limited by a lease of immoveable property commences from a particular day and is a year or a number of years, in the absence of any express agreement to the contrary, the lease shall last during the whole of the anniversary of the day from which such time commences. In this particular case, it is true that no particular day has been mentioned as the day from which the time limited by the lease commenced. But the intention is clear that the lease commenced from Baishâkh 1, 1318. Ordinarily, therefore, the lease shall last up to the midnight of Baishâkh 1, 1325. But the express stipulation in the lease that the time limited by the lease is up to the end of 1324 clearly indicates that there was an express agreement to the contrary within the meaning of s. 110 of the Transfer of Property Act. The intention of the parties evidently was that the lease was to

(1) (1932) I. L. R. 60 Cal. 389; L. R. 59 I. A. 414.

commence from the beginning of 1318 and was to end at the end of 1324. In view of this express agreement between the parties the lease lasted only up to the last day of the year 1324 B.S. and did not last up to the midnight of the 1st Baishâkh of the next year. This view is not inconsistent with the decision of the Judicial Committee, on which the learned Judge has relied, in as much as in that case there was no agreement to the contrary and there was nothing in that case to show that the lease was to end before the whole anniversary of the day from which the lease commenced had expired. The learned advocate appearing on behalf of the respondent also invited my attention to another decision of this Court in the case of *Akshoy K. Nandi v. S. C. Das & Co.* (1). In that case also there was nothing to indicate that the term of the lease was to terminate before the whole anniversary of the day from the time limited by the lease commenced had expired. The learned Subordinate Judge was, therefore, not right in holding that the lease for seven years which commenced from the beginning of 1318 ended on the midnight of Baishâkh 1, 1325. In view of the terms of this lease, there cannot be any doubt that the terms of the lease expired on the last day of 1324 and, consequently, the monthly tenancy commenced from Baisâkh 1, 1325. The notice asking the tenant to vacate the lands by the end of the month of Ashârh was, therefore, a valid and proper notice.

The result, therefore, is that this appeal is allowed. The judgment and decree of the lower appellate Court are set aside and those of the trial Court are restored. The appellant is entitled to get his costs both in this Court as well as in the lower appellate Court.

*Appeal allowed.*

N. C. C.