

ORIGINAL CIVIL.

Before Mr. Justice Fawcett.

MEGHJI VALLABHDAS v. DAYALJI & Co.^o

1924.

January 17.

Transfer of Property Act (IV of 1882), section 116—Lessee remaining in possession after the expiry of the lease—Lessor assenting to the continuance of possession, effect of—Renewal of the lease—Option with the lessor.

If a monthly tenant continues in possession with the assent of his landlord, but without giving a proper notice of his intention to quit on a particular date, then under section 116 of the Transfer of Property Act, however short be the continuation of his possession, the tenant is liable to pay a full month's rent as well as rent for the prescribed period of a notice to quit.^o

The assent referred to in the section is the assent of the lessor and not that of the lessee.

Vadapalli Narasimhan v. Dronamraju Seetharamamurthy⁽¹⁾, followed.

SUIT to recover rent.

The plaintiff owned several cotton godowns at Colaba. By an agreement of lease, dated the 21st October 1922, he leased one of the godowns to the defendants for a period of one year from the 21st October 1922 to the 20th October 1923, at a yearly rent of Rs. 7,000. By clause 6 of the said agreement the defendants covenanted as follows:—"When the term of the lease of the godown abovenamed expires, we shall hand over the godown into your possession without any dispute whatsoever". The said lease having expired the defendants on the 20th October 1923 addressed a letter to the plaintiff stating that they would vacate the premises on the 30th October 1923. In reply the plaintiff through his attorneys wrote calling upon the defendants to give vacant possession of the said godown during the course of the day in accordance with the terms of the lease or if they held over to give

^o Suit No. 4700 of 1923.

⁽¹⁾ (1907) 31 Mad. 163.

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proper legal notice as to the date on which they would vacate, otherwise he would hold them responsible for all damages and consequences. On October 22, the defendants replied denying that the plaintiff was entitled to any notice as claimed.

On the 26th October 1923 the defendants vacated the godown and informed the plaintiff of this fact. On the 12th November 1923 the plaintiff's attorneys wrote to the defendants claiming the sum of Rs. 1,166-10-8 the equivalent of two months rent the first in respect of the month beginning the 21st October 1923, during part of which the defendants continued to be in possession of the godown, and the second in lieu of notice.

The defendants' attorneys replied on the 14th November repudiating the plaintiff's claim and offered a sum of Rs. 117 as compensation for use and occupation of the godown for the 6 days from the 21st October to 26th October 1923 in full satisfaction of all claims. The plaintiff thereupon filed the present suit to recover the whole sum of Rs. 1,166-10-8 as claimed.

Mirza, for the plaintiff.

Kamdar, for the defendants.

FAWCETT, J. :—The facts in this case are all admitted.

The defendants occupied a godown on a lease from the plaintiff which expired on October 20, 1923. On that day the defendants sent a letter to the plaintiff saying that, as the Colaba Cotton Green was being removed to Sewri on November 1, they would vacate the godown on October 30. On the same date the plaintiff's attorneys replied to the defendants saying that if they did not vacate the godown during the course of that day they would have to give a proper notice to quit to the plaintiff, otherwise he would hold them responsible for all damages and consequences, and further that the

plaintiff did not accept their proposal to vacate the godown on October 30. A somewhat similar letter was sent by the plaintiff's solicitors on October 22, in which it was said that the plaintiff would insist upon a proper notice for giving quiet and peaceful possession, otherwise he would hold them responsible for all damages and consequences. On the same day the defendants' solicitors wrote to the plaintiff's solicitors denying that the plaintiff was entitled to any notice to quit as alleged, or that he could hold the defendants responsible for any damages or consequences. It was further said that the defendants would vacate the godown by the end of that month. However, as a matter of fact, the defendants vacated the godown on October 26, and a letter was sent to the plaintiff's attorneys on that date informing them of that fact. Further correspondence ensued in November; on the 12th of that month, the plaintiff's solicitors wrote claiming the sum of Rs. 1,166-10-8 made up of two months proportionate rent under the old lease; one month's rent being rent for the month commencing from October 21, 1923, during part of which the defendants continued to be in possession of the godown; and another month's rent being claimed as an extra month's rent in lieu of giving a proper legal notice. Defendants' attorneys replied on November 14, denying the plaintiff's right to this claim and offering to pay Rs. 117 as compensation for use and occupation for 6 days from October 21 to 26, 1923. The suit was filed on November 23, and the plaintiff claims the amount of Rs. 1,166-10-8 with interest.

The main point for determination is whether the plaintiff is entitled to take up the position that the defendants became tenants holding over under section 116 of the Transfer of Property Act, so that they were under an obligation to pay rent, at any rate,

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for the month in which there was occupation and to give a proper legal notice to quit, that is to say, notice of their intention to quit under section 106 of the Transfer of Property Act, modified as it is by the Bombay usage requiring one month's (instead of 15 days') notice. Mr. Mirza's contention is that the defendants did in fact hold over, although it was only for a period of six days; that this gave the plaintiff the option of treating the defendants either as trespassers or as tenants in accordance with the terms of section 116; that the plaintiff exercised his right of treating them as tenants, and so is justified in demanding the two months' rent claimed in the plaint. On the other hand, Mr. Kamdar's main argument is that there must be not only the assent of the plaintiff to the holding over but the consent of the defendants to their continuing as monthly tenants in accordance with section 116.

If you take the words of section 116 in their ordinary meaning, then, certainly I find it difficult to say that the conditions specified in that section are not fulfilled in the present case. The defendants were lessees and they remained in possession of the property after the determination of the lease granted to them as lessees. The first sentence of section 116 is, therefore, fulfilled. The plaintiff is a lessor, and he, in the correspondence, did assent to the defendants' continuing in possession subject to the condition that has been referred to about their giving a proper notice to quit. Therefore, it seems to me that literally the second condition that "the lessor otherwise assents to his continuing in possession" is complied with. Then the final part of the section provides that "the lease is, in the absence of an agreement to the contrary, renewed", in the present case "from month to month", and the effect is that merely by the defendants remaining in

possession with the assent of the plaintiff to their continuing in possession, by law, the lease which had been given to the defendants was renewed from month to month. If that is so, then clearly there is justification for the position taken up by the plaintiff, although it certainly savours of sharp practice and seems grasping and unfair. However that may be, I am only concerned with what are the strict legal rights of the parties. I cannot accede to Mr. Kamdar's entire proposition that in order to bring the case under section 116 there must also be the assent of the lessee to the lease being renewed from month to month, or from year to year, as the case may be. That would put the person holding over obviously in an unfair position in regard to his relations with the lessor, and I quite accept what has been laid down in *Vadapalli Narasimham v. Dronamraju Seetharamamurthy*^(a) that the option of giving an assent which will convert the holding over into a tenancy is one that is conferred on the lessor and not on the lessee. I was at first inclined to think that a distinction might be made in a case where a person does not remain in possession for a sufficient time to justify his being treated as a tenant holding over from month to month or from year to year, under section 116. The argument which suggested itself to me is this. What is the principle which underlies section 116? As far as I can see, it could only be assigned to two different grounds (1) of contract or (2) of estoppel. One might say that what the section really recognises is that a tenant holding over makes a proposal that the lease shall be renewed from month to month, or from year to year, and that acceptance of rent or other acts of the lessor assenting to his continuing in possession have the effect of communicating the acceptance of that proposal in

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accordance with section 3 of the Indian Contract Act. Again one might say, looking at it from the stand-point of estoppel, that the lessor by accepting rent or doing any other act, which shows that he assents to the lessee remaining in possession, has intentionally caused or permitted the lessee to believe that the lease is renewed from month to month, or from year to year, and to act upon that belief. That would be a case falling under section 115 of the Indian Evidence Act, and that of course would imply that the lessee was asserting that he was a tenant from month to month, or from year to year, and that the lessor was denying that, but was estopped by his act from setting up that defence. So that in either case there must be either a proposal from the lessee regarding it or an allegation by the lessee that he is a tenant from month to month; and here the short time the defendants contemplated remaining, and did in fact remain, in occupation of the godown precludes the idea of any such proposal or allegation. But on a further consideration I do not think, having regard to the very clear terms of the section, that I would be justified in taking that view. As I have already said the effect of that section is that, if there is continuance of possession and if that continuance of possession is assented to by the lessor, that, in law, operates as a renewal of the lease from month to month or from year to year, in the absence of any agreement to the contrary. Here no contract to the contrary is alleged. A further difficulty that arises is that, if one says that section 116 only operates in a case where the continuance of possession lasts for such time as establishes a condition of things in which the lessee can properly be treated as a tenant from month to month, or from year to year, where is the exact line to be drawn? Is it to be said that the lessee can remain in possession for twenty-nine days

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and insist upon the landlord treating him as a trespasser, but that if he stays one day longer then; if the lessor has assented to his continuing in possession, he becomes a monthly tenant? And in the case of a lease for agricultural or manufacturing purposes, over how many months can the occupation extend, before the lease becomes renewed from year to year? I think that there is no sufficient justification for my holding that any days (or months) of grace can be allowed in regard to the tenant's possession in a case under section 116. Finally, it is clear that the defendants' letter of October 20, 1923, contemplates a holding over with the assent of the lessor rather than a continuance of possession without such assent. For these reasons I am forced to the conclusion that, in law, the position taken up by the plaintiff is correct.

There must, therefore, be a decree for the plaintiff for the sum of Rs. 1,166-10-8 with interest at 9 per cent. per annum from November 12, 1923, to judgment. Costs and interest on judgment at 6 per cent.

The plaintiff to withdraw the sum of Rs. 117 deposited by the defendants towards satisfaction of the decretal amount.

Attorneys for plaintiff: Messrs. *Patel and Ezekiel*.

Attorneys for defendants: Messrs. *Dikshit, Maneklal & Co.*

Suit decreed.

V. G. B.
