

PETITIONER:  
SHRI JANKI DEVI BHAGAT TRUST, AGRA

Vs.

RESPONDENT:  
RAM SWARUP JAIN (DEAD) BY LRS.

DATE OF JUDGMENT 14/08/1995

BENCH:  
MANOHAR SUJATA V. (J)  
BENCH:  
MANOHAR SUJATA V. (J)  
PUNCHHI, M.M.

CITATION:  
1995 AIR 2482                      1995 SCC (5) 314  
JT 1995 (7) 185                  1995 SCALE (4) 709

ACT:

HEADNOTE:

JUDGMENT:

#### J U D G M E N T

Mrs. Sujata V. Manohar. J.

The appellant-trust had given shop premises No. 1930/1 situated in Mohalla Ghatia Azam Khan, Agra belonging to the appellant to the original respondent on lease at a monthly rent of Rs. 75/- sometime in 1954. The terms relating to the tenancy which were agreed upon between the parties were reduced to writing. This document is Ex.12. It is, however, not registered. As the respondent did not pay any rent to the appellant since 1.1.1960 the appellant served a notice to quit dated 27.3.1961 on the respondent and filed a suit for ejectment and recovery of arrears of rent. The suit was decreed by the Trial Court but was dismissed by the appellate court on the ground that the appellant was not a registered body and all the trustees of the trust had not joined in the suit. The appellant-trust thereafter got itself registered on 8.5.1963. The appellant served a notice to quit on the respondent which is dated 30th of May, 1963. The notice period is 30 days. As the respondent failed and neglected to comply with the notice the appellant filed a suit against respondent for ejectment & recovery of arrears of rent and other consequential reliefs. The suit was filed before the Munsif's Court at Agra. The suit was decreed by the trial court. The respondent filed an appeal before the Additional Civil Judge, Agra.

The only point which was raised by the respondent in appeal was that the notice dated 30.5.1963 terminating the tenancy of the respondent was invalid because the lease in favour of the respondent was a manufacturing lease; and six months' notice under Section 106 of the Transfer of Property Act was necessary in order to terminate the tenancy of the respondent. The appellate court rejected this contention and held that in view of the agreement which was entered into between the parties (Ex.12) there was an express term of the contract that a notice in writing of fifteen days only was

necessary for the termination of tenancy.

In second appeal, however, before the High Court at Allahabad, a learned Single Judge has come to the conclusion that the terms of the lease which are recorded in Ex.12 cannot be relied upon in view of the provisions of section 107 of the Transfer of Property Act. Hence the term in the agreement relating to giving fifteen days' notice of termination cannot be looked at. He held that as the lease was a manufacturing lease, six months' notice was required under the deeming provision of Section 106 of the Transfer of Property Act. In its absence, the suit must fail. He, therefore, allowed the appeal and dismissed the appellant's suit for ejectment. Learned Single Judge, however, decreed the claim of the appellant for arrears of rent. The present appeal is from this judgment of the High Court.

Under Section 107 of the Transfer of Property Act a lease of immoveable property from year to year or for any term exceeding one year can be made only by a registered instrument. Any lease of this kind would be void unless it is created by a registered instrument. All other leases of immoveable property may be made either by a registered instrument or by an oral agreement accompanied by delivery of possession. All the courts below have held that there was a valid lease. The high Court has also recorded that it was not the contention of the respondent that his lease was from year to year. The contention was that the lease was for a term exceeding one year and was, therefore, compulsorily registerable under the first part of section 107 of the Transfer of property Act. This contention has been negatived by the High Court as also by both the courts below. The High Court has held that the lease was not for a term exceeding one year, and so was not compulsorily registerable under the first part of Section 107. It, however, held that since the lease was for a manufacturing purpose, six months' notice to quit was required under section 106. In its absence, termination was not valid.

This reasoning is fallacious. It is true that Ex.12 which is not registered, cannot be looked at because it is not registered. But the factum of lease is not in dispute. All the courts have held that it was a lease from month to month and was not for a term exceeding one year. In view of this finding, the deeming provisions of the first part of section 106 of the Transfer of property Act cannot be attracted in the present case.

Section 106 provides, inter alia, that in the absence of a contract between the parties, a lease of immoveable property for manufacturing purposes shall be deemed to be a lease from year to year terminable by six months' notice. In the present case there is a clear finding to the effect that the lease in question was not from year to year or for a period exceeding one year. Therefore, even though the lease may be for a manufacturing purpose, since the lease was not from year to year, six months' notice was not required. A manufacturing lease which is not from year to year, six months' notice was not required six months' notice of termination. It will fall in the second half of section 106, requiring fifteen days' notice of termination. A lease from month to month or a lease other than a lease from year to year is terminable by fifteen days' notice. Hence the notice in the present case is a valid notice to quit. The High Court, having come to the conclusion that the lease was not for a period exceeding one year, and was not a lease from year to year erred in holding that six months' notice to quit was required. Such a notice is required, provided there is no contract to the contrary, only when a manufacturing

lease is, or is deemed to be, from year to year. This not being the case, the lease is terminable by fifteen days' notice even if the lease is a manufacturing lease.

The appeal is, therefore, allowed with costs. The order of the High Court is set aside and the order of the first appellate court is restored.

JUDIS