

CASE NO.:
Appeal (civil) 1906 of 1998

PETITIONER:
SAMIR MUKHERJEE

Vs.

RESPONDENT:
DAVINDER K. BAJAJ & ORS.

DATE OF JUDGMENT: 18/04/2001

BENCH:
Syed Shah Mohammed Quadri & S.N. Phukan

JUDGMENT:

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PHUKAN, J.

In this appeal by special leave the appellant has impugned the judgment of the Division Bench of Delhi High Court passed in R.F.A. No.325 of 1997 by which the High Court upheld the judgment of the Additional District Judge, Delhi.

The respondents filed a suit for eviction of the appellant from the suit land and also for recovery of arrears of rent and damages/mesne profits. According to respondents the appellant was a monthly tenant and, therefore, 15 days notice terminating the tenancy, as required under Section 106 of Transfer of Property Act (for short the Act) was issued, receipt of which was not disputed. The tenancy was created by an oral agreement. The appellant admitted the tenancy but pleaded that the intention of the parties at the time of its creation was to grant tenancy permanently because the lease was granted in favour of the appellant for manufacturing purpose and since the inception of the tenancy, the appellant was carrying on business of manufacturing transmission towers and railway electrification fittings. On these facts it was pleaded that the lease would be deemed to be from year to year as per the provisions of Section 106 of the Act and, therefore, notice to quit ought to have been given for 6 months expiring on last date of the year of the tenancy. Before the Trial Court an application under Order XII Rule 6 C.P.C. was filed which was allowed, as according to the Trial Court in the written statement there was clear admission by the appellant.

Before this court, learned counsel for the appellant, Mr. Jaideep Gupta referring to the provisions of Section 106 of the Act has contended that since the lease was for manufacturing purpose, the legal presumption as envisaged in Section 106 of the Act would apply and, therefore, it was a case of a tenancy from year to year terminable by 6 months notice and not by 15 days notice. The learned counsel has further contended that though under Section 107 of the Act a

lease from year to year can be made only by a registered deed, this section nowhere controls the presumption laid down in Section 106 of the Act and as such the notice to quit in the present appeal is bad in law. In reply the learned senior counsel for the respondents, Mr. Verma has submitted that in view of the law laid down by this court in Ram Kumar Das versus Jagdish Chandra Deo, Dhabal Dev and Anr. [AIR 1952 SC 23 = 1952 (3) SCR 269] and Shri Janki Devi Bhagat Trust, Agra versus Ram Swarup Jain (Dead) By Lrs. [1995 (5) SCC 314], the contention of the learned counsel for the respondents is liable to be rejected.

To appreciate the respective contentions that have been put forward by the learned counsel for the parties we extract below Sections 106 and 107 of the Act: 106. Duration of certain leases in absence of written contract or local usage In the absence of a contract or local law or usage to the contrary, a lease of immovable 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 immovable 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.

Every notice under this section must be in writing signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or if such tender or delivery is not practicable affixed to a conspicuous part of the property.

107. Lease how made A lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.

All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

Where a lease of immovable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee;

Provided that the State Government may, from time to time, by notification in the Official-Gazette, direct that leases of immovable property, other than leases from year to year, or for any term exceeding one year or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession.

Section 106 lays down a rule of construction, which is to apply when the parties have not specifically agreed upon as to whether the lease is yearly or monthly between the parties. On a plain reading of this section it is clear that legislature has classified leases in two categories according to their purposes and this section would be attracted to construe the duration of a valid lease in the

absence of a contract or local law or usage to the contrary. Where the parties by a contract have indicated the duration of a lease; this section would not apply. What this section does is to prescribe the duration of the period of different kinds of leases by legal fiction leases for agricultural or manufacturing purposes shall be deemed to be lease from year to year and all other leases shall be deemed to be from month to month. Existence of a valid lease is a pre-requisite to invoke the rule of construction embodied in Section 106 of Transfer of Property Act.

Section 107 prescribes the procedure for execution of a lease between the parties. Under the first paragraph of this section a lease of immovable property from year to year or for any term exceeding one year or reserving yearly rent can be made only by registered instrument and remaining classes of leases are governed by the second paragraph that is to say all other leases of immovable property can be made either by registered instrument or by oral agreement accompanied by delivery of possession.

In the case in hand we are concerned with an oral lease which is hit by the first paragraph of Section 107 of the Transfer of Property Act. Under Section 107 parties have an option to enter into a lease in respect of an immovable property either for a term less than a year or from year to year, for any term exceeding one year or reserving a yearly rent. If they decide upon having a lease in respect of any immovable property from year to year or for any term exceeding one year, or reserving yearly rent, such a lease has to be only by a registered instrument. In absence of a registered instrument no valid lease from year to year or for a term exceeding one year or reserving a yearly rent can be created. If the lease is not a valid lease within the meaning of the opening words of Section 106 the rule of construction embodied therein would not be attracted. The above is the legal position on a harmonious reading of both the sections.

In Ram Kumar Das (supra), Section 106 was considered by a bench of four judges of this court. This court held that this section 106 lays down the rule of construction which is to be applied when there is no period agreed upon between the parties and in such cases duration has to be determined by the reference to the object for purpose for which tenancy is created. It was also held that rule of construction embodied in this section applies not only to express leases of uncertain duration but also to leases implied by law which may be inferred from possession and acceptance of rent and other circumstances. It was further held that it is not disputed that a contract to the contrary as contemplated by Section 106 of the Transfer of Property Act need not be an express contract; it may be implied, but it certainly should be a valid contract. On the facts of that case, the court held that the difficulty in applying this rule to the present case arises from the fact that tenancy from year to year or reserving an yearly rent can be made only by registered instrument as lays down in Section 107 of the Transfer of Property Act. (emphasis supplied)

In a recent decision of this court in Janki Devi Bhagat Trust, Agra (supra) this court held that under Section 107 of the Transfer of Property Act a lease of immovable

property from year to year or for a term exceeding one year can be made only by registered instrument and any lease of this kind would be void unless it is so created.

In the present case though the appellant has claimed that it was a lease for manufacturing purpose, admittedly there was no registered written lease. Therefore, rule of construction as envisaged in Section 106 would not be applicable as the statutory requirement of Section 107 of the Act has not been satisfied. The plea of the appellant that 15 days notice terminating the present tendency is bad in law would not be sustainable.

The learned counsel for the appellant has very fairly placed before us various decisions of different High Courts. We find that two different views are projected in these decisions. One view is that fiction in Section 106 was not intended to override Section 107.

In Krishna Das versus Bidhan Chandra (AIR 1959 Calcutta 181) and Balwant Singh versus L. Murari Lal (AIR 1965 Allahabad 187) the courts have taken the view that Section 106 was not intended to be controlled by Section 107. Similar view has been expressed by the High Courts of Assam and Nagaland. The contrary view has been expressed by the Calcutta High Court in Sati Prasanna Mukherjee versus Md. Fazel (AIR 1952 Calcutta 320) and Allahabad High Court in Kishan Lal versus Lal Ram Chander (AIR 1952 Allahabad 634). It is not necessary to refer to all the decisions of other High Courts.

On perusal of these decisions we find the view that fiction in Section 106 was not intended to be controlled by Section 107 was due to misunderstanding of the decision of this court in Ram Kumar Das (supra) as we have already indicated that in Ram Kumar Das (supra), this court did not apply rule of construction of Section 106 as there was no registered instrument. The High Courts taking that view have not laid down the law correctly.

In Jagat Taran Beery versus Sardar Sant Singh (AIR 1980 Delhi 7), Delhi High Court considered the views expressed by different High Courts and correctly took the view that there is no conflict between Sections 106 and 107 of the Act and for application of Section 106 a valid year to year lease is deemed to exist when it is created by a registered instrument; the non-existence of a registered instrument will by itself exclude Section 106.

For the reasons stated above, we find no merit in the present appeal and accordingly it is dismissed. Costs on the parties.