

Benoy Krishna Das and others - - - - - *Appellants*

*v.*

Salsiccioni and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 26TH JULY, 1932.

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*Present at the Hearing :*

LORD TOMLIN.

LORD THANKERTON.

LORD MACMILLAN.

LORD WRIGHT.

SIR GEORGE LOWNDES.

[*Delivered by* LORD TOMLIN.]

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Their Lordships do not think it necessary to call upon Counsel for the respondents in this case.

The appellants, who are the plaintiffs in the action, are lessors claiming that a notice given by the respondents purporting to terminate their tenancy was not a good one.

The notice was given in the circumstances which will shortly be mentioned, but before stating them it may be well to refer to the sections of the Transfer of Property Act which are relevant.

The first is section 106, which is in these terms :—

“ In the absence of a contract or local law or usage to the contrary, a lease of immoveable 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 immoveable 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.”

Section 110 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.”

Now the facts of this case are as follows : The respondents became tenants of the appellants under a lease of certain premises dated the 29th June, 1921, expressed to be “ from the first day of June, 1921 for the term of four years thence next ensuing.” Then there followed this provision with regard to the payment of rent :—

“ Yielding and paying therefor the clear monthly rent or sum of Rupees One thousand such rent to be paid on or before the seventh day of the month succeeding the month for which it is due the first payment being the rent for the month of June One thousand nine hundred and twenty-one to be paid on or before the seventh day of July One thousand nine hundred and twenty-one and so on.”

That lease expired in due course in the year 1925, but the respondents continued as tenants of the premises, and under the terms of section 106, which has been read, their tenancy was terminable thereafter by fifteen days' notice expiring with the end of a month of the tenancy.

On the 1st February, 1928, the respondents gave notice to terminate, and the notice was, so far as material, in these terms :—

“ We hereby give you one month's clear notice to take effect from today. By this you must understand that we shall hold possession of the above premises up to the last day of this month and would shift from here just on the 1st proximo. Please take note of the same.”

Now it is asserted by the appellants that that notice was bad, because it was a notice which treated the month of the tenancy at the end of which the notice had to expire as midnight of the 1st of March, whereas the month of the tenancy by reference to which the notice had to expire ended, as the appellants contend, at midnight of the 29th February, 1928.

The question depends, first of all, on the date of the expiry of the lease. That date determines the beginning of the respondents' tenancy, which was capable of determination by monthly notice in accordance with section 106.

Turning to the terms of the lease of 1921, and applying to it the language of section 110 of the Transfer of Property Act, it would appear that the first day of June, 1921, is excluded from the term, because the section says : “ 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.” Therefore the 1st of June is excluded.

It further appears that the 1st of June, 1925, is included, because the second portion of section 110 says : “ 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." Therefore, the 1st of June, 1925, is included, and the lease ended at midnight on the 1st of June, 1925, at any rate unless the argument advanced by Mr. Dunne to the effect that there exists an express agreement to the contrary is well founded.

Mr. Dunne has said that the provision in the lease, "Yielding and paying therefor the clear monthly rent or sum of Rupees One thousand such rent to be paid on or before the seventh day of the month succeeding the month for which it is due," is either itself an agreement which excludes the operation of section 110 or, at any rate, is a provision which necessarily involves the implication of such an agreement. It clearly is not an agreement expressly excluding section 110, because it has nothing to do with fixing the period covered by the term. It merely provides for the payment of the rent. Mr. Dunne's argument must really amount to this, that because he suggests there is an inconsistency between the provision with regard to the payment of rent and the provision with regard to the length of the term, there must be implied an agreement to exclude the operation of section 110.

Now the answer seems to be that the section in terms applies unless there is an express agreement to the contrary, and no express agreement to the contrary can, in fact, be found in the lease in question.

That being so, it must be taken that the lease ended at midnight on the 1st of June, 1925, and that any notice to determine thereafter given must be a notice to quit expiring with the month ending at midnight on the first day of any month. The notice in fact given on the 1st of February, 1928, clearly is a notice in regard to the 1st of March, 1928, and not in regard to the 29th of February, 1928. It, therefore, is a notice which, in the language of section 106, expired with the end of a month of the tenancy, because the month of the tenancy expired at midnight on the 1st of March, 1928.

The High Court in its appellate jurisdiction decided in the respondents' favour (in their Lordships' judgment rightly), although they have based their conclusion not upon section 110, to which their attention does not appear to have been called, but upon the rule of English law which appears from the cases cited to them.

In the result, therefore, their Lordships are of opinion that the appeal fails, and they will humbly advise His Majesty accordingly. The appellants must pay the respondents' costs of the appeal.

In the Privy Council.

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DELIVERED BY LORD TOMLIN.

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