

BHAGABANDAS AGARWALLA

v.

BHAGWANDAS KANU & ORS.

February 25, 1977

[P. N. BHAGWATI AND S. MURTAZA FAZAL ALI, JJ.]

Transfer of Property Act, S. 106, Notice to quit, whether should be construed in a hyper-critical manner.

The appellant filed a suit for evicting his tenant Bhagwandas Kanu etc. after giving them a notice to quit. The Trial Court dismissed the suit but on appeal, the First Appellate Court passed a decree for eviction against the respondents. In second appeal before the High Court, the respondents assailed the validity of the notice to quit, on the ground that it did not conform with the requirements of s. 106 of the Transfer of Property Act. The High Court allowed the appeal holding that the notice to quit did not clearly terminate the tenancy on the expiration of the month of the tenancy, and was invalid.

Allowing the appeal by special leave, the Court,

HELD : A notice to quit must be construed *ut res magis valeat quam pereat*. It must not be read in a hyper-critical manner, nor must its interpretation be affected by pedagogic pendantism or over refined subtlety, but it should be construed in a common sense way. The notice to quit required the respondents to vacate "within the month of October 1962", otherwise they would be treated as trespassers from 1st November, 1962. This makes the intention of the authors of the notice clear that they were terminating the tenancy only with effect from the end of the month of October 1962 and not with effect from any earlier point of time during the currency of that month. [76 D, F, 77-E]

Sidebotham v. Holland (1895) 1 Q.B. 378; *Harihar Banerji v. Ramsashi Roy* 45 I.A. 222, applied.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2080 of 1968.

Appeal by Special Leave from the Judgment and Order dated 11-4-68 of the Assam and Nagaland High Court in Second Appeal No. 98/65.

G. L. Sanghi and K. J. John for the Appellant.

S. K. Nandy and G. S. Chatterjee for the Respondent.

The Judgment of the Court was delivered by

BHAGWATI, J., This appeal by special leave raises a short question relating to the validity of a notice to quit given by the appellant terminating the tenancy of the respondents. The appellant, as landlord, filed a suit for eviction against the respondents as tenants, after giving a notice to quit dated 25th September, 1962. The Trial Court dismissed the suit but on appeal, the First Appellate Court reversed the judgment of the Trial Court and passed a decree of eviction against the respondents. The respondents preferred a second appeal to the High Court and the only question debated before the High Court was in regard to the validity of the notice to quit. There were two grounds on which the notice to quit was assailed as invalid. The first is immaterial since the decision of the High Court negating it has not been challenged before us on behalf of the respondents. The second was

A that the notice to quit was invalid as it was not in conformity with the requirements of section 106 of the Transfer of Property Act. That section says that in the absence of a contract or local law or usage to the contrary, a lease from month to month shall be terminable, "on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy". The argument of the respondents before the High Court was that the notice to quit did not expire with the end of the month of the tenancy and was hence invalid. This argument found favour with the High Court and it held that the notice to quit was not clear and unambiguous and was "open to doubt as to the date of determination of the tenancy" and did not terminate the tenancy on the expiration of the month of the tenancy and was, therefore, invalid and in this view it dismissed the suit of the appellant. The appellant thereupon preferred the present appeal with special leave obtained from this Court.

The only question which arises for determination in this appeal is whether the notice to quit given by the appellant to the respondents was invalid as not being in conformity with the requirements of section 106 of the Transfer of Property Act. The notice to quit, so far as material, was in the following terms :

D "You are hereby informed by this notice that you will vacate the said house for our possession within the month of October 1962 otherwise you will be treated as trespassers from 1st November in respect of the said house."

E The tenancy was admittedly a monthly tenancy and hence the notice to quit could not be said to be valid under section 106 of the Transfer of Property Act unless it expired with the end of the month of the tenancy. The view taken by the High Court was that since by the notice to quit the appellant called upon the respondents to vacate the premises "within the month of October 1962" and not on the expiration of that month, the notice to quit was not in accordance with law and did not operate to determine the tenancy of the respondents. The question is whether this view taken by the High Court can be sustained.

F Now, it is settled law that a notice to quit must be construed not with a desire to find faults in it, which would render it defective, but it must be construed *ut res magis valeat quam pereat*. "The validity of a notice to quit", as pointed out by Lord Justice Lindley, L.J. in *Sidbotham v. Holland*⁽¹⁾, "ought not to turn on the splitting of a straw". It must not be read in a hyper-critical manner, nor must its interpretation be affected by pedagogic pendantism or overrefined subtlety, but it must be construed in a commonsense way. See *Harihar Banerji v. Ramsashi Roy*⁽²⁾. The notice to quit in the present case must be judged for its validity in the light of this well recognised principle of interpretation.

H It is indisputable that under section 106 of the Transfer of Property Act the notice to quit must expire with the end of the month of the tenancy, or in other words, it must terminate the tenancy with effect

(1) [1895] 1 Q.B. 378.

(2) 45 I.A. 222.

from the expiration of the month of the tenancy. If it terminates the tenancy with effect from an earlier date, it would be clearly invalid. Now, here the notice to quit required the respondents to vacate the premises "within the month of October 1962" and intimated to them that otherwise they would be "treated as trespassers from 1st November" in respect of the premises. The question is : what is the meaning and effect of the words "within the month of October 1962" in the context in which they are used in the notice to quit ? Do these words mean that the tenancy of the respondents was sought to be terminated at a date earlier than the expiration of the month of October 1962 and they were required to vacate the premises before such expiration ? We do not think so. When the notice to quit required the respondents to vacate "within the month of October 1962", what it meant was that the respondents could vacate at any time within the month of October 1962 but not later than the expiration of that month. The last moment up to which the respondents could, according to the notice to quit, lawfully continue to remain in possession of the premises was the mid-night of 31st October, 1962. We fail to see any difference between a notice asking a tenant to vacate "within the month of October 1962" and a notice requiring a tenant to vacate latest by the mid-night of 31st October, 1962, because in both cases, the tenant would be entitled to occupy the premises up to the expiration of 31st October, 1962 but not beyond it. This position would seem to follow logically and incontestably, as a matter of plain natural construction, from the use of the words "within the month of October 1962" without any thing more, but here it is placed beyond doubt or controversy by the notice to quit proceeding to add that otherwise the respondents would be treated as trespassers from 1st November, 1962. This makes the intention of the authors of the notice clear that they are terminating the tenancy only with effect from the end of the month of October 1962 and not with effect from any earlier point of time during the currency of that month. If the respondents do not vacate the premises within the month of October 1962, they would be treated as trespassers from 1st November, 1962 and not from any earlier date, clearly implying that they would lawfully continue as tenants up to the expiration of the month of October 1962. The tenancy was, therefore, sought to be determined on the expiration of the month of October 1962 and not earlier and the notice to quit expired with the end of the month of tenancy as required by section 106 of the Transfer of Property Act. It was in the circumstances a valid notice which effectively determined the tenancy of the respondents with effect from the mid-night of 31st October, 1962.

We accordingly allow the appeal, set aside the order of the High Court and restore the decree for eviction passed against the respondents. Since the respondents have been in possession of the premises for a long time, it is but fair that they should have some reasonable time to vacate the premises. Hence we direct that the decree for eviction shall not be executable against the respondents up to 31st October, 1977 on condition that the respondents continue to pay to the appellant regularly from month to month an amount equivalent to the monthly rent as and by way of compensation for use and occupation of the premises. There will be no order as to costs throughout.

M.R.

Appeal allowed.