

CHAPTER 3

Tenant at Sufferance, Tenant at Will and Tenant by Holding Over

Q. What is meant by "tenant at sufferance" and "tenant at will"?

Q. What is the difference between "tenant at sufferance" and "tenant at will"?

Q. What do you mean by "tenancy by holding over"?

"Tenant at sufferance" is one who comes into possession of land by lawful title, but who holds it by wrong after the termination of the term of expiry of the lease by efflux of time. The tenant at sufferance is, therefore, one who wrongfully continues in possession after extinction of a lawful title. There is little difference between him and a trespasser. A tenancy at sufferance is merely a fiction to avoid continuance in possession operating as a trespass. It has been described as the least and lowest interest which can subsist in reality. It, therefore, cannot be created by contract and arises only by implication of law when a person who has been in possession under a lawful title continues in possession after that title has been determined, without the consent of the person entitled. A tenancy at sufferance does not create the relationship of landlord and tenant. The act of the holding over after the expiration of the term does not necessarily create a tenancy of any kind. If the lessee remaining in possession after determination of the term, the common law rule is that he is the tenant on sufferance. The expression "holding over" is used in the sense of retaining possession¹. A distinction should be drawn between a tenant continuing in possession after the determination of the lease, without the consent of the landlord and a tenant doing so with the landlord's consent. The former is called a tenant by sufferance in the language of the English law and the latter class of tenants is called 'a tenant holding over' or 'a tenant at Will'. The lessee holding over with the consent of the lesser is in a better position than a mere tenant at Will. The tenancy on sufferance is converted into a tenancy at Will by the assent of the landlord, but relationship of the landlord and the tenant is not established until the rent was paid and accepted. The assent of the landlord to the continuance of the tenancy after the determination of the tenancy would create a new tenancy. The possession of a tenant who has ceased to be a tenant is protected by law. Although he may not have a right to continue to possession after the termination of the tenancy, his possession is judicial; R.V. Bhupal Prasad v. State of Andhra Pradesh, AIR 1966 SC 140."

1. Mulla, Transfer of Property Act, 7th Edn., pp. 633, 769.

There is thus, however a subtle difference resultantly a definite distinction between a 'tenant by holding over' and a tenant at sufferance, as noticed above in Bhupal Prasad's decision (R.V. Bhupal Prasad v. State of Andhra Pradesh, AIR 1966 SC 140). Holding over stands equivalent to the retention of possession after determination of lease, but with the consent of the landlord-whereas, on similar circumstances if the possession is without the consent of the landlord then the same stands out to be a tenant at sufferance. Section 116¹ of the Transfer of Property Act, does let a statutory recognition to the concept of holding over; Kewal Chand Mimani v. S.K. Sen, [MANU/SC/0394/2001](#): AIR 2001 SC 2569.

CASE LAW

1. V. Dhanpal Chettiar v. Yesodai Ammal, [MANU/SC/0505/1979](#): AIR 1979 SC 1745

Question of law decided: (a) Landlord is not under obligation to give notice under section 106 of the Transfer of Property Act, 1882 to the tenant for seeking his eviction under the Rent Control Act; (b) Acceptance by the landlord from the tenant, after the contractual tenancy had expired, of amounts equivalent to rent, or amounts which were fixed as standard rent, did not amount to acceptance of rent from a lessee within the meaning of section 116 of the Transfer of Property Act.

Facts of the case: The respondent filed an application against the appellant under section 10(3)(a) (iii) of the Tamil Nadu Building (Lease and Rent Control) Act, 1960, on the ground of personal necessity. The Rent Controller held that the requirement of the respondent was not genuine and he accordingly dismissed her petition. On appeal by the landlady the Appellate Court held in her favour on the point of her requiring the premises bona fide for her personal necessity but maintained the dismissal of her application on the ground that a notice to quit was necessary and the one given by her was not in accordance with law. The landlady took up the matter in revision to the Madras High Court. A learned Single Judge of that Court following his earlier decision in *K. Sukumaran Nair etc. v. Neelakantan Nair*, (1976) 2 MLJ 84 held that notice to quit under section 106 of the Transfer of Property Act, 1882 was not necessary for seeking an eviction of a tenant under The Tamil Nadu Rent Act. Hence this, appeal by the tenant.

Findings of the Court: A bench of 7 Judges decided the question as to whether to get a decree or order of eviction against a tenant under any State Rent Control Act, it is necessary to give a notice under section 106 of the Transfer of Property Act, 1882. Answering the question in negative, the Court surveyed various judgments on the issue and affirmed the law laid down in *Rawal & Co. v. K.G. Ramachandran*, [MANU/TN/0294/1967](#): AIR 1967 Mad 57, by the Madras High Court. It observed that under the Transfer of Property Act in order to entitle the landlord to recover

1. Section 116. Effect of holding over _ If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lesser or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 106.

possession determination of the lease is necessary as during its continuance he could not recover possession, while under the State Rent Act the landlord becomes entitled to recover possession only on the fulfillment of the rigor of law provided therein otherwise not. He cannot recover possession merely by determination of tenancy. Nor can he be stopped from doing so on the ground that he has not terminated the contractual tenancy. Under the State Rent Control Acts, the concept of the contractual tenancy has lost much of its significance and force.

Q. Can the landlord charge impropportionate rents from the tenants? What is the remedy avail under the Rent Act to the tenant?

The Court further observed that Rent Act is intended to restrict the rights which the landlord possessed either for charging excessive rents or for evicting tenants. But if within the ambit of those restricted rights he makes out his case it is a mere empty formality to ask him to determine the contractual tenancy before institution of a suit for eviction. As pointed out above, this was necessary under the Transfer of Property Act, as mere termination of the lease entitled the landlord to re-cover possession. But under the Rent Control Acts it becomes an unnecessary technicality to insist that the landlord must determine the contractual tenancy. It is of no practical use after so many restrictions on his right to evict the tenant have been put. The restricted area under the various State Rent Acts, has done away to a large extent with requirement of the law of contract and the Transfer of Property Act. If this be so why unnecessarily, illogically and unjustifiably a formality of terminating the contractual lease should be insisted upon? Lastly, the Court also relied upon its decision in *Firm Sardari Lal Vishwanath v. Pritam Singh*, [MANU/SC/0377/1978](#): AIR 1978 SC 1518, wherein the lease had come to an end by efflux of time. The tenant continued in possession and became so called statutory tenant. The argument, that a fresh notice under section 106 of the Transfer of Property Act was necessary, was rejected on the ground that-

"Having examined the matter on authority and precedent it must be frankly confessed that no other conclusion is possible on the first principle. Lease of urban immovable property represents a contract between the lesser and the lessee. If the contract is to be put to an end it has to be terminated by a notice to quit as envisaged under section 106 of the Transfer of Property Act, but it is equally clear as provided by section 111 of the Transfer of Property Act, that the lease of immovable property determines by various modes therein prescribed. Now, if the lease of immovable property determines in any one of the modes prescribed under section 111 the contract of lease comes to an end, and the landlord can exercise, his right of re-entry. This right of re-entry is further restricted and fettered by the provisions of the Rent Restriction Act. Nonetheless the contract of lease had expired and the tenant-lessee continues in possession under the protective wing of the Rent Restriction Act, until the lessee loses protection. But there is no question of terminating the contract because the contract comes to an end once the lease determines in any one of the modes prescribed under section 111. There is, therefore, no question of giving a notice to quit to such a lessee who continued in possession after the determination of the lease, i.e., after the contract came to an end under the protection of the Rent Restriction Act. If the contract once came to an end there was no question of terminating the contract over again by a fresh notice."

Thus, the Court came to the conclusion that determination of a lease in accordance with the Transfer of Property Act, is unnecessary and a mere surplusage because the landlord cannot get eviction of the tenant even after such determination. The tenant continues to be so even thereafter. That being so, making out a case under the Rent Act, for eviction of the tenant by itself is sufficient and it is not obligatory to found the proceeding on the basis of the determination of the lease by issue of notice in accordance with section 106 of the Transfer of Property Act, 1882.

2. Bhawanji Lakhamsi v. Himatlal Jamnadas Dani, [MANU/SC/0703/1971](#): AIR 1972 SC 819.

Q. Explain the theory of Acceptance of Rent within the meaning of section 716 of Transfer of Property Act, 1882.

Question of law decided: Acceptance by the landlord from the tenant, after the contractual tenancy had expired, of amounts equivalent to rent, or amounts which were fixed as standard rent, did not amount to acceptance of rent from a lessee within the meaning of section 116 of the Transfer of Property Act.

Facts of the case: The question was that since a fresh tenancy by holding over was created by the acceptance of rent by the lessors after the determination of the lease by efflux of time, whether the appellants were entitled to 6 months' notice expiring with the end of the year of tenancy, as lease originally granted was for manufacturing purpose. The facts in brief are that a plot of land measuring 2108 sq.yds. belonged to one Jamna Das Chhota Lal Dani, who executed on November 15, 1948, two leases in favour of one Bhawanji Lakhamsi and Maojibhai Jethabhai, defendant Nos. 1 and 2. The subject-matter of the first lease was two plots, the one referred to above and another in the same area measuring 805 sq.yds. The subject-matter of the second lease was a third plot in the same area. The leases were for a period of 10 years and in respect of first plot the rent payable was Rs. 75 per month. In both the cases there was an option clause which entitled the lessees to surrender the leased property by September 30, 1953. The lessees surrendered the plot other than the plot which was the subject-matter of the present case, in pursuance of the above clause on January 15, 1951. Jamna Dass, before his death on 14th August, 1951, made a gift of the lease property in favour of the three respondents. The lease in respect of the plot in question determined by efflux of time of September 30, 1958. But the lessee continued to remain in possession paying rent @ Rs.75 per month. On August 7, 1959, the lessors gave notice purporting to terminate the tenancy by the end of September 1959. Since lessees did not vacate the premises, the suit was filed on October 22, 1959 in the Small Causes Court of Bombay. In this scenario after the High Court took the view that no case was made out on new tenancy by holding over under section 116

of the Transfer of Property Act as the appellant had obtained the status of irremovability under the Act and as there was no contractual tenancy, the tenants were not entitled to any notice. The High Court relied upon the decision of the Supreme Court in *Ganga Dutt Murarka v. Kartik Chandra Das*. The High Court held that the lease which was granted for erecting a Saw Mill was not for manufacturing purpose.

Findings of the Court: The Supreme Court while affirming the decision of *Ganga Dutt Murarka v. Kartik Chandra Das* held that where a contractual tenancy, to which rent control legislation applied, had expired by efflux of time or by determination by notice to quit and the tenant continued in possession of the premises, acceptance of rent from the tenant by the landlord after the expiration or determination of the contractual tenancy will not afford ground for holding that the landlord had assented to a new contractual tenancy. It was further held that acceptance by the landlord from the tenant, after the contractual tenancy had expired, of amounts equivalent to rent, or amounts which were fixed as standard rent, did not amount to acceptance of rent from a lessee within the meaning of section 116 of the Transfer of Property Act, 1882.

The Supreme Court reiterated its observation in *Ganga Dutt Murarka v. Kartik Chandra Das*, (1961) 3 SCR 813 as under:

"By the Rent Restriction Statutes at the material time, statutory immunity was granted to the appellant against eviction, and acceptance of the amounts from him which were equivalent to rent after the contractual tenancy had expired or which were fixed as standard rent did not amount to acceptance of rent from a lessee within the meaning of section 116 of the Transfer of Property Act. Failure to take action which was consequent upon a statutory prohibition imposed upon the courts and not the result of any voluntary conduct on the part of the appellant did not also amount to "otherwise assenting to the lessee continuing in possession". Of course, there is no prohibition against a landlord entering into a fresh contract of tenancy with a tenant whose right of occupation is determined and who remains in occupation by virtue of the statutory immunity. Apart from an express contract, conduct of the parties may undoubtedly justify an inference that after determination of the contractual tenancy, the landlord had entered into a fresh contract with the tenant, but whether the conduct justifies such an inference must always depend upon the facts of each case. Occupation of premises by a tenant whose tenancy is determined is by virtue of the protection granted by the statute and not because of any right arising from the contract which is determined. The statute protects his possession so long as the conditions which justify a lessor in obtaining an order of eviction against him do not exist. Once the prohibition against the exercise of jurisdiction by the Court is removed, the right to obtain possession by the lessor under the ordinary law springs into action and the exercise of the lessor's right to evict the tenant will not unless the statute provides otherwise, be conditioned."

Finally court rejected the contention of the counsel for the appellant to reconsider the decision of *Ganga Dutt Murarka v. Kartik Chandra Das*, which follows the principle laid down by the Federal Court in *Kai Khushrao Bezonjee Capadia v. Bai Jerbai Hirjibhoy Warden*, 1949 50 FCR 262.

3. Shanti Prasad Devi v. Shankar Mahto, [MANU/SC/0404/2005](#): AIR 2005 SC 2905.

Question of law decided: On expiry of period of lease, mere acceptance of rent for the subsequent months in which the lessee continued to occupy the lease premises cannot be said to be a conduct signifying 'assent' to the continuance of the lease even after expiry of lease period.

Q. Can the mere acceptance of rent for the subsequent months, on the expiry of period of lease, be said to be a conduct signifying `assent' to continuance of the lease on the part of lessor within the meaning of section 116 of the Transfer of Property Act, 1882? Explain with the help of relevant statutory provisions and case law.

Facts of the case: The appellant obtained possession on lease of the suit premises for running a petrol pump under a registered lease deed dated

17-7-1962 for a period of fifteen years. It was an annual lease but the rent at agreed rate was payable in monthly instalments. The period of lease expired on 17-7-1977. The registered sale deed contained clauses No. (7) & (9) giving option of renewal for a further period which could be exercised before expiry of the initial period. After the period of lease expired on 19-7-1977, the lessee continued to remit the rent till August 19, 1977. On 23-8-1977 the lessee sent a lawyer's notice exercising his option under clause (7) and seeking renewal of the lease. The lessee thereafter remitted monthly rent of Rs. 345 each for three months from March to May 1978. The rent was accepted by the lessor. Clause (7) of the lease providing option of renewal to the lessee contained two conditions firstly, that the option has to be exercised before expiry of the lease and secondly the terms and conditions of renewal for further period shall be decided either by mutual consent of parties or in case of failure of mutual consent, through the intervention of local Mukhia or Panchas of the village. To the legal notice given by the lessee seeking renewal of the lease, the lesser gave no positive response and instead filed Title Suit No. 59/78 on 16-6-1978 seeking ejectment of the lessee from the suit premises on the ground that the term of lease had expired. The lessee filed a counter suit No. 13/80 seeking specific performance of the alleged agreement of renewal of lease on his alleged right of option of renewal. The two cross suits were tried jointly and decided by common judgment. The Trial Court by common judgment dated 16-3-1987 dismissed the suit for ejectment filed by the lesser by holding that after expiry of the initial period of fifteen years of lease, acceptance of rent by the lesser had resulted in renewal of lease and the lessee would be held to be 'holding over' within the meaning of section 116 of the Transfer of Property Act, 1882. Based on the above finding that the lessee was 'holding over' as a result of the acceptance of rent by the lesser for the period subsequent to the expiry of lease, the Trial Court came to the conclusion that the suit for ejectment could not have been filed without terminating the lease by statutory notice under section 106 of the Transfer of Property Act, 1882. The Trial Court by the common judgment dismissed the counter suit seeking specific performance of renewal of lease by the lessee. It was held that in accordance with clause (9) of the lease deed, the option of renewal was not exercised before expiry of original period. The specific performance of agreement of renewal claimed was also rejected on the ground that the terms and conditions of renewal were vague and incapable of enforcement. Thus, the trial Court dismissed both the suits. The dismissal of two suits by the Trial Court gave rise to two cross appeals one at the instance of lesser and the other at the instance of lessee. The first appellate court allowed the appeal of the lesser and decreed the suit of ejectment. It held that mere acceptance of rent by the lesser sent by the lessee after expiry of lease, in view of specific terms prescribing mode of renewal, did not result in deemed renewal of lease and the doctrine of 'holding over' under section 116 of the Transfer of Property Act, 1882 was not attracted. According to the first appellate court, the period of lease having expired there was no legal requirement of terminating the alleged renewed lease by issuing a statutory notice under section 106 of the Transfer of Property Act, 1882. The cross appeals filed by the lessee were dismissed and the dismissal of suit for specific performance of the alleged agreement of renewal was maintained. The lessee filed two Second Appeals in the High Court. By the impugned common judgment the High Court upheld the common judgment of the first appellate court. The High Court agreed with the reasoning of the first appellate court that mere acceptance of rent by the lesser on expiry of original period of lease, for use and occupation of the leased premises by the lessee, did not signify 'assent' of the lesser to the continuance in possession of the lessee so as to infer deemed renewal of the lease under section 116 of the Transfer of Property Act, 1882. The High Court agreed with the concurrent findings of the Trial Court and the first appellate court that the option of renewal given to the lessee in the lease deed was not exercised before expiry of the original period of lease. The High Court also agreed that conditions stipulated for the renewed period of lease were vague and incapable of specific enforcement. Thus, the dismissal of suit of the lessee for specific performance of contract of renewal of lease was also upheld. Having thus lost her case in the Courts below, the lessee approached Supreme Court in these two appeals.

Findings of the Court: The lesser in the present case had neither expressly nor impliedly agreed for renewal. The renewal as provided in the original contract was required to be obtained by following a specified procedure i.e., on mutually agreed terms or in the alternative through the mediation of Mukhias and Panchas. In the instant case, there is a renewal clause in the contract prescribing a particular period and mode of renewal which was 'an agreement to the contrary' within the meaning of section 116 of the Transfer of Property Act, 1882. In the face of specific clauses (7) and (9) for seeking renewal there could be no implied renewal by 'holding over' on mere acceptance of the rent offered by the lessee. Option of renewal was exercised not in accordance with the terms of renewal clause that is before the expiry of lease. It was exercised after expiry of lease and the lessee continued to remain in use and occupation of the leased premises. The rent offered was accepted by the lesser for the period the lessee overstayed on the leased premises. The lessee, in the above circumstances, could not claim that he was 'holding over' as a lessee within the meaning of section 116 of the Transfer of Property Act, 1882.

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