

LAW LEANS AGAINST FORFEITURE, LAW HATES FORFEITURE

Priyanka*

WHAT IS LEASE

A lease is a transfer of enjoyment, not ownership. *Sec 105*¹ defines lease as a lease as a transfer of enjoyment not ownership in some immovable property for a certain period which can be in express or implied form or in perpetuity. It renders the right to enjoyment to the lessee and consideration to the landlord. Consideration can be paid or promised. It can be in the form of money, a share of crops, service, or any other thing. A lease is a transfer of only a partial interest. It contemplates the separation of the right of possession from ownership².

ESSENTIAL ELEMENTS OF LEASE

The essential elements of the lease are-

1: Two parties:-

For the execution of a lease, two parties are required lessor and lessee. Both parties must be competent to contract and fulfill all the requirements of sec 7. A minor cannot be a lessee because he is not competent to enter into a lease contract.

2: The demise:- Journal of Legal Research and Juridical Sciences

A lease is the transfer of enjoyment, not ownership. It is just a separation of possession from ownership. It provides the lessee to enjoy the property for a fixed period. Property must be immovable and the person must be competent to lease out the property.

3: The term:-

The term must be certain. It can be expressed or implied. It must be mentioned in the lease deed. It is necessary to mention any fixed date, but it should be for a fixed period. There can be perpetual leases also. If both the lessor and lessee fail to mention the period of lease then it can be presumed to be a perpetual lease.

*BA LLB, UNIVERSITY OF ALLAHABAD.

¹Transfer of Property Act, 1882.

²R. K. Sinha, the transfer of property act, central law agency, 21st edition, p. 499.

4:The consideration:-

Consideration can be in the form of premiums or rent. It must be mentioned in the lease deed. It can be paid or promised in any form such as money, share of crops, and providing services.

DETERMINATION OF LEASE BY FORFEITURE

Sec 11 describes the various ways of determining a lease. And *sec 11(g)*³ defines determination by forfeiture.

WHAT IS FORFEITURE?

Forfeiture is another mode of determination of leases. It means the omission of a legal breach of condition. In forfeiture of the lease, the lessee can lose his right due to his own fault. It totally depends on the lessee's negligence. Lessee shall be personally liable for his default. On the following grounds, a lease can be determined by forfeiture.

1. Mention of any express conditions by the landlord and breach of such conditions by the lessee.
2. Denial of the title of the landlord by the lessee.
3. In case of insolvency of the lessee.

1: Mention of any express conditions by the landlord and breach of such conditions by the lessee.

If the lessee fails to perform the condition imposed by the lessor, then he shall be liable for breach of condition. On such breach, the lessor shall have the power to exercise his right of forfeiture and determine the lease. Two elements are necessary for the forfeiture:

- Only the lessor has the right to impose conditions on the lessee so it is important that express conditions must be laid down by the lessor and such express conditions must be breached by the lessee.
- The Landlord must have reserved the right of re-entry to resume possession in case of breach of condition. If he fails to do so, he shall not be entitled to use this right.

³Transfer of Property Act, 1882.

In the **Raghuram Rao v Eric P. Mathias** case, Supreme Court held that Section 111(g) itself provides that for the forfeiture of a lease, there must be a breach of express condition by the lessee, and on such breach, a lessor may re-enter.

2: Denial of the title of the landlord by the lessee.

If the lessee denies the position of the lessor as his landlord it would be treated as a denial of the landlord's interest. Lessee can claim himself or his relatives as the owner of the property. Such denial must be clear and intentional and the lessor must have the knowledge of such denial. The principle of forfeiture is based on the principle that a man cannot approbate and reprobate at the same time.

In the case of **Guru Amarjit Singh v. Rattan Chand**⁴, In this case, the Supreme Court held that denial of the landlord's title by the lessee or claiming himself or any other party as a landlord is a valid ground for forfeiture of a lease but, such denial must be clear and intentional and before the issuance of the notice regarding the determination of the lease.

In the case of **Munisami Naidu v. C Ranganathan**,⁵ the court has held that if the lessee says that he has no knowledge of who is the landlord then this declaration will not amount to a denial of the landlord's interest because denial must be clear and intentional.

In **Deonandan v. Meghu**⁶ case, the court held that mere omission and refusal to pay rent by the lessee does not constitute forfeiture.

3: In case of insolvency of the lessee:-

For the determination of a lease on the ground of insolvency, there must be an agreement between the parties that the lessee shall lose his right in case of his insolvency. For the exercise of his right under this ground, the landlord must have reserved the right of re-entry to resume possession on such insolvency. If he fails to reserve his right of re-entry he shall not be entitled to forfeit the lease. The Landlord must serve a notice to the lessee regarding the forfeiture without serving a notice he can not avail of this right.

⁴AIR 1994 SC 227.

⁵AIR 1991 SC 492, (1991) 1 MLJ 42 SC, (1991) 2 SCC 139.

⁶ILR 34 Cal 57

HOW DOES THE LAW LEAN AGAINST FORFEITURE?

a: Waiver of forfeiture:-

Waiver means complete relinquishment of a known right. In *Surendra v. Smt. Panchi Bibi*⁷ it was held that for waiver the person must have knowledge about his right there cannot be a waiver in ignorance. If the landlord has no knowledge about his right he cannot waive his right. Under *sec 12*⁸ the landlord has a right to waive his right of forfeiture. It can be done by him in the following ways :

- By acceptance of rent;
- Distress for rent;
- By any other act of the lessor showing his intention to waive his right.

Acceptance of rent:- Forfeiture can be waived by the acceptance of rent by the lessor or his agent having the authority to collect the rent. Rent must be accepted before the institution of a suit to eject the lessee on the ground of forfeiture. The landlord loses his right of waiver on the institution of suit for ejectment. The election to forfeit is complete and irrevocable once the suit for ejectment is instituted.

Distress for rent:- Forfeiture of the lease can be waived by distress for rent. The landlord can cease the movable property of the lessee in order to compel him for payment of rent. Generally, this shows that the landlord wants to continue the lease and he compels the lessee for the same. There is no waiver after the time of distress. Distress is regulated by the Presidency Small Causes Courts Act.

Any other intention of the lessor:- If the Landlord does any act which shows that he wants to continue the lease then it would be treated as a waiver of forfeiture. If the lessor files a suit for payment of rent and not for the ejectment, this act of the lessor shows that he wants to continue the lease.

b: Relief against forfeiture for non-payment of rent:- Sec 114

⁷83 CLJ 327

⁸Transfer of Property Act., 1882

Sec 114⁹ provides equitable relief to the lessee. It provides an opportunity for the lessee that he can prevent the lessor from determining the lease by payment of rent. If forfeiture occurs due to non-payment of rent, and the lessor has filed a suit for ejectment of the lessee. Then if at the time of hearing of the suit the lessee pays or tenders to pay the arrears of rents together with compensation, then the court may not pass a decree of ejectment against him. The Court may order that the lessee may continue possession after making such payment and compensation. It depends on the discretion of the Court and the conduct of the lessee. The landlord is not required to serve any notice to the lessee before filing a suit for forfeiture. He can forfeit the lease either by judicial proceedings or by re-entering the premises. He can also waive his right.

Although this section does not apply to agricultural leases, the Court has the power to apply the provisions of this section also to such leases on the ground of equity, justice and good conscience.

c: Relief against forfeiture in certain other cases:-Sec 114 A

This section was introduced in the Act by Amending Act of 1929. It provides relief to the lessee against forfeiture in certain other cases such as breach of an express condition with a proviso for re-entry attached to it. The suit for ejectment shall lie only after-

- Notice is given to the lessee. The Landlord has no right to file a suit for ejectment without giving notice to the lessee.
- If the breach is capable of being remedied, the lessee fails to remedy it after service of such notice.

If a breach is not capable of being remedied then this section shall not apply. This section gives an equitable relief to a lessee whose lease may be determined by forfeiture. If the landlord fails to give notice to the lessee he has no right to exercise his right of forfeiture. Notice is important to give the lessee an opportunity to remedy the breach. Even if the breach is incapable of remedy, the landlord should still wait a short time (eg 14 days). This section applies to the breach of conditions against:

1. Assignment

⁹Transfer of Property Act, 1882.

2. Subletting
3. Parting with possession
4. Disposing of the leased property.

The landlord can also recover the dilapidations, to cover the cost of putting the property back into repair. The successful recovery of such an amount depends upon the financial position of the lessee.

If the relief from forfeiture is granted and the landlord grants a new lease then the original lease will be reinstated. It means the interest of the new tenant would be subject to the original lease. If the new tenant has no knowledge that relief from forfeiture can be granted then he can claim damages from the landlord. The same applies if the landlord sells his interest in the property. In this case, the new owner will become the landlord of the reinstated lease and depending on the terms of the sale, he may claim damages from the seller.

CONCLUSION

To conclude we can say that the basic aim of a lease is to provide the right of enjoyment to the lessee. And by forfeiture, the lessor has given a right to determine the lease on the fault of the lessee. But the law leans against forfeiture. The law promotes the continuation of the lease. It protects the right of the lessee to enjoy his right without any interruption of the lessor. He can enjoy his right by payment of rent, distress for rent. The lessor can also waive his right under sec 112 by accepting rent and by showing any other intention to do so. Law provides many rules to protect the right of the lessee and to promote the rule the law leans against forfeiture. The lessee has provided many remedies to save his right he can follow any of the ways to protect his tenancy right.