

(1919) 08 BOM CK 0017
In the Bombay High Court
Case No : Second Appeal No. 1079 of 1917

Ganapati Nagappa

APPELLANT

Vs

Nagabhatta Shitarambhatta

RESPONDENT

Date of Decision : 13-08-1919

Acts Referred:

Citation : (1920) 22 BOMLR 118 : 55 Ind. Cas. 540

Hon'ble Judges : Shah, J; Norman Macleod, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Norman Macleod, Kt., C.J.—The plaintiff sued in this case to recover Rs. 129-15-0 as three years" rent from the defendants, who he alleged were his Mulgeni tenants. The suit has been dismissed in the trial Court, and an appeal against that order has been dismissed by the lower appellate Court. It is admitted that the plaintiff is the landlord of the lands in question, but the defendants dispute the claim on the ground that there is no privity of estate between themselves and the plaintiff because they claim to be sub-tenants from the original Mulgeni tenants. It has been admitted in argument that a Mulgeni tenant who is a permanent tenant can transfer the whole of his interest, and if he does so, then privity of estate arises between the landlord and the transferee. It is perfectly immaterial whether you call the document of transfer a sublease or an assignment or a transfer. We have only to consider what is the actual effect of the document, and if it leaves no interest remaining in the transferor, then it must follow that the transferee gets the whole of the transferor's interest. In that case the transferee becomes the permanent tenant, and there is privity between him and the landlord. I asked the respondents" pleader whether the document in the defendants" favour left any interest remaining with the previous tenant and he was not able to show us that there was any interest left. I asked whether under that document the defendants had paid any rent to their transferors but that question could not be answered in the affirmative. The result

is that the defendants have been holding as Mulgeni tenants, and disputing the right of the landlord to get rent from them, on the allegation that their transferor as the original Mulgeni tenant is the person who is liable to pay rent. It seems to me that that contention on the part of the defendants is absolutely wrong and that the plaintiff" was entitled to recover. We allow the appeal. There will be a decree for the amount claimed with costs throughout. The lower Court will find what is a reasonable rent to allow for the three years in suit Court within one month.

Shah, J.

2. I agree. I desire to add that even though the permanent tenancy in favour of the defendants 1 and 2 may be in form a sub-lease by the original Mulgenidar, still the lease in favour of the present defendants is a permanent lease, i. e., for the whole term for which the original Mulgenidar held the lands. It is clear that in substance it is an assignment by the original Mulgenidar of a permanent lease in favour of defendants 1 and 2, and that consequently there is a privity of estate between the plaintiff and the defendants.

3. It is not and cannot be disputed that a sub-lease of a tenancy for a definite period for the whole of that period operates as" an assignment thereof. I do not see any reason why the same rule should not apply to a permanent tenancy. On this point I am unable to agree with the view taken by the learned District Judge.