
(1946) 06 CAL CK 0033
In the Calcutta High Court

Ganeshi Lal Sharma

APPELLANT

Vs

Sm. Snehalata Dassi

RESPONDENT

Date of Decision : 18-06-1946

Acts Referred:

Stamp Act, 1899 — Section 36
Transfer of Property Act, 1882 — Section 110(2)

Citation : AIR 1947 Cal 68

Hon'ble Judges : Sharpe, J;B.K. Mukherjea, J

Bench : Full Bench

Judgement

B.K. Mukherjea, J.—This appeal is on behalf of the defendant, and it arises out of a suit commenced by the plaintiff for recovery of khas possession of the land in suit on the allegation that the defendant was a tenant in respect of the same for a period of 4 years and that the term of the tenancy expired on 31-5-1943.

2. The disputed property is a plot of land measuring 12 cottas and 1 chittak which is the southern portion of a 18 cotta plot situated at Ramesh Mitter Road, Bhowanipore, and belonged admittedly to one. Jibon Krishna Ghosh. After the death of Jiban, it devolved upon his two sons, - Prafulla and Jnanendra - and Jnanendra having subsequently transferred his share to Prafulla, the latter became the sole owner of the property. There was originally one Kshetra Nath Banerjee in possession of the land as a tenant, under the proprietors, but he having vacated the land, the present defendant took lease of the property from Prafulla at a rental of Rs. 80 per month for a period of 4 years beginning from June, 1939, and ending with May, 1943. The indenture of lease is dated 13-7-1939, and it provides inter alia that on the expiry of the term, it would be open to the lessor to take khas possession of the property or to grant fresh lease to the lessee himself at an enhanced rent, and in case he wanted to take khas possession of the property or let it out to a third party, he would be bound to give two months' notice to the tenant before the expiry of the lease.

3. On 4th August 1940, Prafulla executed a deed of declaration of trust whereby

his wife, the present plaintiff, was constituted a trustee for a certain period and for certain purposes in respect to this property as well as certain other properties of the settlor. The plaintiff as trustee served a notice on the defendant on 17th March 1943, asking him to vacate the land on the expiry of the term on 31st May following. As the defendant did not quit the land, the present suit was instituted on 18th June 1943. The plaintiff prayed for khas possession of the property and also for damages or mesne profits, both before and after the suit - which were claimed at the rate of Rs. 4 per diem from 1st June 1943.

4. The defendant in his written statement traversed the allegations of the plaintiff and set up a number of pleas. It was averred that the plaintiff had no title to the property, and that the indenture of lease was not binding on the defendant and that its terms were illegal and inoperative. It was further contended that there was no sufficient and valid notice by which the tenancy could be determined and that the subtenants were necessary parties to the suit.

5. The trial Court negatived all the defence contentions, and made a decree in favour of the plaintiff. The prayer for eviction was allowed, and the plaintiff was given damages on the rental basis of Rs. 80 a month. The amount of damages, calculated on that rate from 1st June 1943, to the date of the decree, was found to be Rs. 1784 and the learned Munsif gave the plaintiff a decree for that amount on payment of excess court-fees. It was further directed that the plaintiff would have damages at that rate up to the date of delivery of possession. Against this decision there was an appeal taken by the defendant to the Court of the District Judge of 24 Pergannas, and the learned Subordinate Judge who heard the appeal affirmed the judgment of the trial Court and dismissed the appeal. The defendant has now come up on second appeal to this Court.

6. Three points have been taken by the learned Advocate for the appellant in support of this appeal. It is contended in the first place that the decree made by the trial Court contravenes the provision of Order 20, Rule 12, Civil P.C. and as the value of the suit was raised to Rs. 2724 at the date when the decree was passed, it was beyond the pecuniary jurisdiction of the Munsif to pass the decree at all. The second point taken is that as the lease was not expressed to commence from any particular date, it would be taken to begin from 13th July 1939, when the indenture was executed and registered, and as the period of four years could not, in that event, expire on 31st May 1943, the suit was premature. Alternatively, it is argued that even if the lease is taken to commence from 1st June 1939, the period of four years would end on 1st June 1943, and consequently the notice to quit that was served upon the defendant asking him to quit the land on 31st May 1943, was legally insufficient. Lastly, it is urged that by the deed of declaration of trust executed by Prafulla on 24th August 1940, no valid trust was created in law, and the property not having legally vested in the present plaintiff as trustee, she was not competent to institute the suit. We will take up these three points one after another.

7. So far as the first point is concerned, Order 20, Rule 12(1), Civil P.C., lays

down that

Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree-

- (a) for the possession of the property;
- (b) for the rent or mesne profits which have accrued on the property during a period prior to the institution of the suit or directing an enquiry as to such rent or mesne profits:
- (c) directing an enquiry as to rent or mesne profits from the institution of the suit until (i) the delivery of possession to the decree-holder, (ii) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court, or (iii) the expiration of three years from the date of the decree, whichever event first occurs.

It appears, therefore, that as regards the mesne profits which accrued prior to the institution of the suit the Court can pass a decree fixing the amount, or it can if it so chooses pass a preliminary decree directing an enquiry as to the quantum of profits and postponing the passing of the final decree till the enquiry is held. But with regard to the mesne profits occurring after the date of the suit, it is argued on behalf of the appellant that the Court has got no option but to direct an enquiry under Clause (c) mentioned above. We have no doubt whatsoever that under normal circumstances it is usual for the Court to pass a preliminary decree regarding mesne profits which accrued after the commencement of the suit, but we do think that the Court would be quite within its rights if it passes a decree for mesne profits payable subsequently to the suit if, in the circumstances of the case, an enquiry is unnecessary or waived by the parties.

8. It has been observed by Sulaiman, C.J. in *A.P. Bagchi Vs. Mrs. F. Morgan* that a preliminary decree becomes necessary only when the exact amount has to be ascertained after examination of fresh evidence. If the plaintiff claims mesne profits on the basis of rent which is fixed and agreed upon between the parties, or if the Court decides that mesne profits ought to be allowed on that basis, the amount being definitely ascertained, there would be no occasion for passing a preliminary decree so that there may be another ascertainment of the amount due to the plaintiff.

9. The same view has been taken in *Veeran Chetti v. Veeran Chetti* ("38) 25 AIR 1938 Mad. 727 which dissented from an earlier decision of the same High Court in *In re Ekanathalingaswami Koil* ("37) 24 AIR 1937 Mad. 46 where it was held, as regards future mesne profits, that the Court had no option but to pass a preliminary decree in the first instance. The matter is one of procedure and not of jurisdiction of the Court, and unless the defendant satisfies us that the decision is wrong on the merits, we are not inclined to interfere with the decree for mesne profits made by the trial Court in the present case.

10. Mr. Ganguli further argues that the Munsif in the present case was competent

to try suits up to the value of Rs. 2000 and he had no jurisdiction to pass a decree for khas possession as well as for mesne profits amounting to RS. 1784 which had the effect of raising the value of the suit to Rs. 2744 an amount admittedly beyond the pecuniary jurisdiction of the Court. We do not think that this contention is sound. On the principle enunciated by a Full Bench of this Court in Bidyadhar Bachar and Others Vs. Manindra Nath Das and Others, the jurisdiction of a Court to; entertain a suit for recovery of possession of immovable property and for mesne profits would depend upon the value of the property which is the subject-matter of the suit and not on future mesne profits which must vary according to the period for which the defendant remains in possession of the property. In the present case, the value of the suit for purposes of eviction was rightly taken at Rs. 960, and even if we add to that the amount of mesne profits claimed by the plaintiff up to the date of the institution of the suit, the value would not certainly exceed the Court's pecuniary jurisdiction, pendente lite mesne profits, whatever their amount might be would not affect the jurisdiction of the Court if the value of the suit at the date of its institution was within its jurisdiction. The first contention of Mr. Ganguli must, therefore fail.

11. As regards the second point, we are definitely of opinion that the indenture of lease executed between Prafulla and the defendant on 13-7-1939, created a tenancy for a period of four years commencing from the beginning of June 1939 and ending with May 1943. There is no ambiguity whatsoever in the language and on a proper construction of document we would hold that the lease was expressed to begin from 1st of June 1939. It is not a case where no date of commencement being mentioned, time is to begin from the making of the lease. As the lease commenced from 1-6-1939, it should last under para. (2) of Section 110, T.P. Act, up to the midnight on 1st June 1943, but the stipulation in the document that the lease would end with May 1943, would certainly constitute an express agreement to the contrary within the meaning of para. (2) of Section 110, T.P. Act, and consequently the lease, in our opinion, would expire on 31-5-1943, and the notice to quit that was served upon the defendant was quite a valid and proper notice.

12. The last point raised by Mr. Ganguli relates to the validity of the document of declaration of trust executed by Prafulla in August 1940. u/s 5, Trusts Act, (II [2] of 1882):

No trust in relation to immovable property is valid, unless declared by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered, or by the will of the author of the trust or of the trustee....

Section 6 further lays down that

Subject to the provisions of Section 5, a trust is created when the author of the trust indicates with reasonable certainty by any words or acts (a) an intention on his part to create thereby a trust, (b) the purpose of the trust, (c) the beneficiary, and (d) the trust property, and...transfers the property to the

trustee....

The provision of Section 5 was certainly complied with in the present case as there was a non-testamentary instrument in writing signed by the settlor which declared trust and was registered in law. The settlor also indicated with sufficient precision the three certainties which are indispensable to a trust. The only question is whether the trust property has been transferred to the trustee as is required u/s 6. In our opinion the word arpan as used in the document is sufficiently comprehensive to signify transfer, and we think that there was a transfer of the trust property to the trustee as contemplated by Section 6. Whether the document is properly stamped or not is a question that does not arise for our consideration in the present case. The deed of declaration of trust was admitted into evidence in the trial Court without any objection by any side, and u/s 36, Stamp Act (2 [II] of 1899), no further question relating to the admissibility of the document can be raised at the appellate stage. The result, therefore, is that we dismiss this appeal with costs.

Sharpe, J.

I agree.