

(1946) 01 AHC CK 0009
In the Allahabad High Court
Case No : Second Civil Appeal No. 400 of 1940

Gur Prasad and another	Vs	APPELLANT
Hansraj		RESPONDENT

Date of Decision : 11-01-1946

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, 92
Transfer of Property Act, 1882 — Section 106

Citation : (1946) 01 AHC CK 0009

Hon'ble Judges : Ghulam Hasan, J

Bench : Single Bench

Advocate : B.P. Misra, No. 1, for the Appellant; Bhavam Shankar for R.B. Lal, P.N. Chaudhari and Mr. Raja Bahadur Chaudhri, for Respondent, for the Respondent

Final Decision : Dismissed

Judgement

Ghulam Hasan, J.—This is the Defendants appeal from the concurrent decrees of the two Courts below decreeing the suit for possession.

2. The facts are shortly these; One Ramdayal constructed a Dharamshala along with two houses appertaining thereto near the railway station, Lakbimpur, at a cost of Rs. 10,000 sometime before 1917. On 22nd November, 1917, in a suit filed by the Hindu public against Ramdayal, u/s 92 of the Code of Civil Procedure, a compromise was made whereby the charge of Rs. 10,000 due to Ramdayal was declared. A schema was framed and a committee of management, including himself as a Secretary, was appointed. On 21st June, 1920, the President of this committee, Lala Fateh Chand, made a possessory mortgage in favour of Ramdayal for Rs. 10,000 in respect of the two houses. Ramdayal in his turn sold his mortgagee rights to Ram Adhin who put them to sale and purchased the same in execution of a decree. Ram Adhin sold his mortgagee rights on 20th March, 1939, to Hazari Lal and Mathura Prasad. They in their turn sold the same on 5th March, 1938, to the Plaintiff Hansraj.

3. Ramdayal and after him his two sons continued to occupy one of the houses on a nominal rent of Rs. 1. The Plaintiff did not want to keep them as tenants any longer and filed the present suit for possession on the allegation that the Defendants were tenants from month to month from 1st January, 1939, and that two notices, dated 22nd June, 1939, and 14th July, 1939 had been issued to them to vacate the house but they refused to do so. The defence was flat Hansraj was not entitled to bring a suit as the house belonged to the Dbarmada committee and without following the procedure laid down by Order 1, Rule 8, Code of Civil Procedure. the suit was not maintainable. It was also pleaded that the notices of ejectment were bad as the tenancy did not commence from 1st January, 1939 but from 25th March, 1938. Both the Courts below rejected the defence and decreed the suit. The same contention has been raised in appeal before me.

4. The first question which requires determination is the date from which the tenancy commenced. So far as the plaint is concerned, 1st January, 1939, was mentioned as the date of the commencement of the tenancy. In oral pleadings before the Court upon which great reliance is placed by Counsel for the Appellants it was stated by the Plaintiff's Counsel that the first agreement for payment of rent was made on 25th March, 1938. Prior to this although the Defendants-Appellants were in possession as tenants there was no agreement to pay rent. Plaintiff's Counsel further stated that he did not base his claim on the Kirayanama, Ext. 3, dated 12th January, 1939. The Defendants' Counsel, however based his liability to pay rent to the Dharmada Committee on Ext. 3 and denied that there was any oral agreement to pay the rent month by month. He added:

My clients do not claim any other rights in the house in suit except those of a tenant under Ext. 3 so far as this case is concerned.

5. The trial Court found that Ext. 3, being unregistered, was inadmissible in evidence. Lala Fateh Chand, P.W. 1, the President of the Dharmada Comqittee, stated that the Defendants were asked to execute the Kirayanama several time but they put off the matter. Ultimately in December, 1938, he asked the Defendants to execute Kirayanama failing which a suit will be filed for ejectment. The Defendants, according to him, had agreed to execute the Kirayanama which was to take effect from 1st January, 1939, and asked for remission of previous rent. Ten or twelve days later Ext. 3 was brought by Gur Prasad Defendant to the witness in which contrary to the terms of the agreement rent was recorded to be paid annually. The witness returned Ext. 3 insisting that the rent should be entered as payable from month to month. The Defendants failed to comply. The evidence of Lala Fateh Cband was accepted and it was held that the Defendant had admitted his liability for payment of rent from the month of January, 1939. This finding was accepted by the lower appellate Court. This finding is a finding of fact and cannot be challenged in second appeal.

6. Apart from this if Ext. 3 is excluded from consideration as being inadmissible

in evidence for want of registration, the position of the Defendants is no better than that of tenants at will and in such a case a mere demand for possession is sufficient to determine the lease and no notice u/s 106 of the Transfer of Property Act is required. See *Janki v. Kanhaiya Lal* A.I.R 1936 Oud 102.

7. As regards the next contention that the suit as framed was not maintainable it is sufficient to say that Ext. 2, which was the sale in favour of the Plaintiff, clothed him with the right to maintain the suit. The Plaintiff did not come to Court with the allegation that he was authorised by the Dharmada Committee, an unregistered body, to bring a suit for ejectment. Accepting the position that the Plaintiff was a benamidar there can be no doubt that he was entitled to maintain the suit. In *Gur Narain v. Sheolal Singh* (1919) 46 Cal. 566 at page 574 their Lordships of the Judicial Committee remarked:

As already observed, the benamidar has no beneficial interest in the property or business that stands in his name; he represents, in fact, the real owner, and so far as their relative legal position is concerned he is a mere trustee for him. Their Lordships find it difficult to understand why in such circumstances, an action cannot be maintained in the name of the benamidar in respect of the property although the beneficial owner is no party to it. The bulk of judicial opinion in India is in favour of the proposition that in a proceeding by or against the benamidar, the person beneficially entitled is fully affected by the rules of *res judicata*. With this view their Lordships concur. It is open to the latter to apply to be joined in the action; but whether he is made a party or not, a proceeding by or against his representative in its ultimate result is fully binding on him.

8. This case was followed in *Shafi-Ud-Din and Another Vs. Musammat Hurmat and Others*, and AIR 1934 909 (Lahore) . A similar view was taken in *Durga Din v. Suraj Bakhsh* (1931) 8 O.W.N 660. A benamidar holds the property as a trustee for the beneficiary. The legal title in the property vests in him and the beneficial title in the beneficiaries. As a legal owner a benamidar has the right to sue for possession against a trespasser. In *Rani Chhatra Kumari Devi v. Prince Mohan Bikratn Shah* (1931) 58 I.A 279 the Privy Council remarked that Indian law does not recognise legal and equitable estates. According to that law there can be but one owner, and where the property is vested in a trustee, the owner must be the trustee. The case in *Atma Ram Babaji Chowgale v. Narain Arjun Dera* A.I.R 1922 Bom. 109 has no bearing. There the Plaintiff as president brought a suit for ejectment on behalf of an unregistered body and based his right to sue upon a resolution of that body. In the present case the Plaintiff is suing in his own right, and though a benamidar his right to maintain an action is legally established. There is no warrant for the proposition that a benamidar must obtain the permission of the Court under Order 1, Rule 8, Code of Civil Procedure. in order to maintain a suit for ejectment. I hold, therefore, that the view taken by the Courts below on this point is correct.

9. The appeal fails and is dismissed with costs.