
(1933) 10 AHC CK 0017
In the Allahabad High Court

Har Dayal Singh and Others

APPELLANT

Vs

Lal Nauratan Singh and Others

RESPONDENT

Date of Decision : 12-10-1933

Acts Referred:

Citation : (1933) 10 AHC CK 0017

Hon'ble Judges : Bennet, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Bennet, J.—This is a second appeal on behalf of a defendant against the concurring deU33016crees of two lower Courts. The plaintiff as zamindar brought a suit for a declaration that the following two deeds are ineffectual and that the property in question consisting of certain plots within the zamindari of the plaintiff cannot be sold in execution of these decrees : (1) A mortgage-deed of 24th January 1920, by Baji Lal, defendant 5, in favour of Brij Lal, father of defendant 1. (2) A mortgage-deed of 13th May 1919 by Ram Sahai, father of defendant 5, in favour of defendant 1, Hardayal. The plaintiff states that his father Khushal Singh on the 12th December 1914, bought some zamindari property from Ram Sahai, father of defendant 5, and from defendant 5, Baji Lai. The vendors gave a deed of relinquishment of sir plots in favour of the vendee. On the same date the vendee executed a document granting certain rights in certain plots of the sir land to the vendors. The interpretation of this document is in dispute.

2. It is claimed on behalf of the plaintiff that under the terms of this document the rights which were given to the vendors prevent them from mortgaging the plots in question, and that therefore the mortgages are ineffectual, and the decrees obtained on those mortgages cannot be executed. On the other hand the contention for the defendant-appellant is that the rights created were proprietary rights and that u/s 10, T.P. Act, as the property has been transferred subject to conditions or limitations absolutely restraining the transferees from parting with

or disposing of their interest in the property, the conditions or limitations are void. The relevant terms of the deed in question have been set out in the judgment of the Court of first instance. This quotation shows that some of the sir plots were given perpetually to the vendors and they and their heirs were to remain in possession without paying rent and were to cultivate these plots and enjoy the profits, but they were not entitled to transfer the plots to any one except the vendee, and if they transferred to the vendee the price would be Rs. 500 and they were specifically forbidden to mortgage or sell to anyone else. I consider that in accordance with the Agra Tenancy Act then in force, U.P. Act 2 of 1901, this document created the right of rent-free grantees in the vendors, that is, they were entitled to hold without payment of rent. Actually they did not come under the definition of "tenants" as that definition states in Section 4(5) that tenant does not include a rent-free grantee. Chap. 10 of that Act deals with the resumption of rent free grants, and the assessment of Tent on some of such grants (Section 156). It has not been shown that in creating a rent-free grant the provisions of Section 10, of T.P. Act would apply. No case is shown. Learned Counsel referred to the ruling reported in Gomti Singh Vs. Anari Kuar and Others, . This was a case where the owner of zamindari property executed a document which he called a tamliknama under which he made himself and his two wives joint owners of his zamindari property and he introduced the condition that neither he nor his wives could transfer any of the property, and the transfer could only be made by all of them jointly.

3. It was held that the restraint on alienation was absolute and that Section 10, of T.P. Act, would apply. I consider however that the present case is different because in the ruling the owner was dealing with zamindari property and he purported to create absolute restraints on alienation including his own powers of alienation. In the present case the grantor, the zamindar, has given a grant to the grantees, but the grant is not of zamindari property. On the contrary it is a grant of a few specific sir plots. The grant states that the plots are to be held without the payment of rent. If there had been an absolute transfer of the proprietary interest of the grantor in those plots then there would have been no question of the payment of rent because no proprietary interest in the plots would have remained to the grantor by virtue of which the question of payment of rent could arise. The fact that the grant specifies that rent is not to be paid indicates to my mind that the proprietary title in the plots does remain with the grantor. For these reasons I consider that the finding of the two lower Courts was correct, although their finding was somewhat differently expressed. They hold that the grant amounted to a grant of the usufruct alone. I consider that that finding is correct and that the grant does not convey the proprietary title. What is created is a tenancy with the condition that rent is not payable, and therefore the grantees became rent-free tenants. The matter of rent-free grants has been made more clear in the present Tenancy Act, Act 3 of 1926. Section 183 lays down:

A rent-free grant means a grant of a right to hold the land rent-free by a landlord

with or without consideration.

4. Section 184 lays down that where land is held rent-free by a person who is not recorded as a proprietor, mortgagee or thekadar thereof, and in respect of which no liability for rent is recorded in the annual registers, the presumption is that it is held under a rent-free grant. In Section 186 there are certain cases where the Courts may declare that land held rent-free is to be deemed to be held in proprietary right. But it is only in those cases that such a presumption will arise, otherwise it is clear that the Act draws a distinction between land held rent-free and land which is held in proprietary right. I consider therefore that the decisions of the lower Courts were correct and I dismiss this second appeal with costs. Permission is granted for a Letters Patent Appeal.