

(1982) 03 AHC CK 0036
In the Allahabad High Court
Case No : Second Appeal No. 3940 of 1965

Jagdish Rai and Others

APPELLANT

Vs

Abdul Wahab

RESPONDENT

Date of Decision : 25-03-1982

Acts Referred:

Specific Relief Act, 1963 — Section 38

Citation : AIR 1982 All 301 : (1982) RD 27

Hon'ble Judges : Deoki Nandan, J

Bench : Single Bench

Advocate : V.K.S. Chaudhari and Yatindra Singh, for the Appellant; P.H. Zaidi and A.N. Bhargava, for the Respondent

Final Decision : Allowed

Judgement

Deoki Nandan, J.—This is a plaintiff's Second Appeal. The suit was for a permanent injunction restraining the defendant from making any constructions on the land in dispute or from, in any other manner, interfering with the plaintiff's right thereon. The relief for possession was also claimed in the alternative in case the court found that the plaintiffs had been dispossessed of any part of the land in suit.

2. The land in suit is a triangular plot of land bearing No. 23/20 of Maua Qila Kohna, Pargana Sikandarpur East, District Ballia. The plaintiffs are nine in number. Eight of them had appealed and the 9th was a pro forma respondent in this Court. The plaintiffs are admittedly some of the zamindars of the Mahal and co-sharers in the proprietary rights in the land in suit. The land is part of Abadi of the Muza and is a Brham Asthan with a Bargad tree and Chabutra in the center. It is triangular in shape with public roads on two of its sides and a public drain on the third side. The defendant claims to have acquitted (acquired) a part of the land under two deeds dated the 7th Oct., 1956 and the 19th Jan., 1959 from different co-sharers in the proprietary rights on payment of premium of Rs. 175/- and further claimed that he had to pay 50 P. per year as rent. The trial court

decreed the suit, but the lower appellate court reversed the same and dismissed the suit; hence this Second Appeal.

3. It is not necessary in this case to refer to the facts in any great detail.

4. The point which arises for determination in this case is whether some of the co-sharers or any one of them could have settled the land with the defendant under the two deeds dated the 7th Oct., 1956 (Ext. A-18) and 19th Jan., 1959 (Ext. A-19) and the decision of that question turns on the interpretation of a term of the Wajib-ul-arz, and the terms on which some of the co-sharers purported to settle the land with the defendant.

5. The relevant term of the Wajib-ul-arz relied on by the defendant runs as follows:--

"Mahal Haza mein parti quabi aabadi ki hai to shaksh minjumaal hissadaraan ke aabad kerega legan uska hasb mobaada jo barwaqt aabad karne ki tankih javega vasul kar jumla milkian ke sarfa mein aavega."

6. I do not propose to enter into the dispute raised by Mr. V.K.S. Chaudhary, learned counsel for the appellant, that this clause of the Wajib-ul-arz did not authorize a co-sharer to let in strangers on the land, and only authorized a co-sharers to himself settle on the land, for it appears to me that on a plain interpretation of the terms it authorized each one of the co-sharers to permit a person to reside on vacant land fit for Abadi purpose in the village on payment of rent, the rent settled between the co-sharer and the person of admitted being divisible on realization, among the several co-sharers for their use. As I read this term, it was open to any one among the co-sharers to allow a person to build a house on vacant land fit for Abadi purposes in the village on payment of rent by the person so permitted to reside on the land. The term envisaged settlement of a fair rent by the co-sharers with the person so admitted to occupy the land for purposes of residence. It was assumed that co-sharers would act reasonably in settling the rent for the benefit of the general body of the co-sharers. A co-sharer could not, in exercise of that power let out any land for agricultural purposes or admit any one on payment of a premium and pocket the same entirely for himself, and, in any case, no co-sharer could, in exercise of that power, grant any such rights in land which was already occupied or not reserved for purposes of Abadi in the village. In the present case, the plot of land admittedly has a bayan tree and a Chabutra in its middle. The plaintiffs claim that there was a Brham Asthan on it. It is undisputed that Ram Leela was celebrated on the land. The whole plot was a single unit and the area of it was only 10 acre. The defendant claims to have taken the land under the two deeds. Both these deeds purport to transfer .05 acre of land. The consideration shown in Ext. A-15 is a premium of Rs. 50/- only and the deed authorized the defendant to cultivate the land or to sublet it or to build a house thereon and to dig a tank or to put it to any use whatsoever whether for cultivation or for buildings. The consideration for the deed (Ext. A-19) is again a premium of Rs. 128/- only and

the purpose for which the land purports to have been settled was for building or planting a grove or for any purpose whatsoever. The premium was, on the fact of these deeds, pocketed by the co-sharers who had executed the deeds. One of the plaintiffs, namely, Ram Cheez Rai, who was the pro forma respondent No. 2, appears to have joined in the execution of both these deeds. The deeds did not reserve any rent. The defendant has, however, produced some rent receipts showing payment of a rent of 50P. per year. From a document filed by the defendant himself, namely, Ext. A-17, he had permitted one Mohammad Bashir to park his taxi on a part of the land on payment of Re. 1/- per month as rent and further the defendant had left out a Gumti on the land on payment of rent of Rs. 3/- per month. There is still another rent note (Ext. A-15) in favour of the defendant for another portion of the land. All these three rent notes are before 1959 and show that having paid a premium of Rs. 50/- to some of the co-sharers, the defendant earned rental income of at least Rs. 6/- per month from the land in suit.

7. The two deeds (Exts. A-18 and A-19) were, in my opinion, beyond the scope of the authority given by the aforesaid term of the Waji-ul-arz. First, land could not have been settled for premium taken by the co-sharers, and that too without reserving any rent. Secondly, land could not be let out for agricultural purpose. Only the lambardar could admit a person to land for agricultural purpose. The two deeds were, therefore, clearly invalid, being outside the scope of the authority given by the said terms of the Wajib-ul-arz and the co-sharers, who were not parties to those deeds, could certainly challenge the alienation of land by those deeds to the defendant. There is one more reason why the attempted transfer of the land in suit by the two deeds must be held to be invalid. The consideration shown in the second one of the two deeds, namely, the deed dated the 19th January, 1959, (Ext. A-19) is Rs. 125/-. The deed did purport of create an interest in immovable property. The lower appellate court was, in my opinion, wrong in treating it as a mere licence. The term of the deed clearly make a permanent grant, and in my opinion, it clearly required registration u/s 17(1) of the Registration Act, 1908. As to the deed dated the 7th Oct. 1956 (Ext. 18), the consideration shown is Rs. 50/- only, and, although the two deeds (Exts. A-18 and A-19) relate to .05 area of land and it is not clear whether the area of .05 acre settled by each one of these two deeds constituted separate portions of plot No. 23, it was stated before me that the whole area of plot No. 23 was .10 acre only and that the two deeds related to the same area of .05 acre only. The consequence is that reading both the deeds together, the total consideration for the settlement of the same 0.05 acre of the land by the two deeds in question amounted to Rs. 175/-. That was more than Rs. 100/-. Indeed, both the deeds were treated by the defendant himself to be parts of the same transaction. The result is that both the deeds must be deemed to be inadmissible in evidence for want of registration. I must add that except for the plaintiff No. 9, Ram Cheez Rai, who is not one of the appellants in this Court, none of the other plaintiffs were executants of the two deeds. The defendant did not have any title to the

land. No question of applying the doctrine of part performance could arise in this case for the appellants are not the transferors, and, as already observed above, some of the co-sharers only could not have lawfully granted the licence without reserving a reasonable rent and the co-sharers, who were not parties to the grant, could surely repudiate the grant treated as a licence. Under the circumstances, even if the defendant had succeeded in entering into possession over the land, the plaintiffs were clearly entitled to a decree for possession. It is not necessary to pass any decree for demolition. In case any construction has been raised in the meanwhile, the defendant may, if he so likes, remove the Malba from the land at any time before the decree for possession is executed through the process of the court.

8. No other point survives for consideration.

9. The appeal is allowed with costs. The judgment and decree of the lower appellate court are set aside. The plaintiffs' suit is decreed for possession from that part of the land of plot No. 23/20 of Mauza Qita Kohna Pargana Sikandarpur East, district Ballia over which the defendant may claim to be in possession at the time of execution of the decree, leaving it open to the defendant to remove the Malba of the building or buildings constructed by him thereon within two months from to-day. In case, however, the defendant fails to remove the Malba of his building or his material from the land in suit within two months from to-day, it shall be open to the plaintiffs to obtain possession and to appropriate the same to their own use absolutely, while taking possession over the land through the process of court. The plaintiff-appellants shall be entitled to their costs throughout against the defendant.