
(1940) 03 AHC CK 0007
In the Allahabad High Court

Jumma and Others

APPELLANT

Vs

L. Madhusoodan Dayal and Others

RESPONDENT

Date of Decision : 01-03-1940

Acts Referred:

Citation : AIR 1941 All 306 : (1941) 11 AWR 515 : (1941) 11 AWR 191

Hon'ble Judges : Iqbal Ahmad, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Iqbal Ahmad, J.—This is a defendants' appeal arising out of a suit brought by the plaintiff-respondents for possession of certain houses and for the recovery of a certain amount on account of rent and meane profits. The houses are situated in a sarai in the town of Hapur in the District of Meerut. The defendants are Bhatiaras who ordinarily make their living by lodging guests in the houses in their occupation. The plaintiffs' case was that they were the owners of the houses in dispute and had let out the same by means of a registered instrument dated 23rd June 1911, to Chhanga, father of defendants 1 and 2, on an annual rental of Rs. 6. Chhanga died about 20 years before the date of the suit and it was alleged in the plaint that defendants-1 and 2 were in possession in his place (uske bajai). The fact that a notice to terminate the tenancy was given to the defendants was also recited in the plaint. On these allegations the plaintiffs prayed for the reliefs mentioned above.

2. Defendants 1 and 2 contested the suit. They denied that the plaintiffs were the owners either of the houses or of the site thereof and maintained that the relationship of landlord and tenant did not subsist between the parties. They went on to allege that they were in possession of the house for about 80 years in the capacity of permanent reyayas (reyaya mustakil). They alleged that the plaintiffs were not in possession within 12 years of the date of the suit and the suit was barred by limitation. The validity of the notice given by the plaintiffs and the right of the plaintiffs to a decree for possession or for the rent claimed was

also denied by the defendants. The rest of the pleas embodied in the written statement are immaterial for the decision of this appeal. On the pleadings of the parties the trial Court framed the following issues:

1. Are defendants 1 and 2 tenants of the plaintiffs" in respect of the property in suit?
2. Were the plaintiffs in possession of the houses in suit within the last 12 years as landlords? If not, is the suit barred by limitation?
3. Did the plaintiffs serve the defendants with a valid notice to quit?
4. To what relief, if any, are the plaintiffs entitled?

3. It decided issues 1 to 3 in the plaintiff's favour and accordingly granted a decree to the plaintiffs in terms of the reliefs prayed for in the plaint. The defendants appealed in the lower appellate Court and only two points were argued by the defendants in that Court. The first point related to the validity of the notice given by the plaintiffs. The lower appellate Court held that the notice was valid, and this finding of the lower appellate Court has not been called in question in the present appeal.

4. The main point argued on behalf of the defendants in the lower appellate Court was that the suit was barred by Article 139 of Schedule 1, Limitation Act. In the discussion of this, question the lower appellate Court after noting the terms of the rent deed dated 23rd June 1911 observed that "the contract; does not disclose any intention to grant a hereditary interest." I take it that what the lower appellate Court meant by this observation was that the grant in favour of Chhanga, father of defendants 1 and 2, was limited in its operation to his life-time and the defendants did not inherit the right that Chhanga got by means of the rent deed. The lower appellate Court however observed that "in view of the pleadings of the parties," it was not necessary "to consider this question further." It then referred to para. 3 of the plaint in which it was alleged that the defendants after the death of Chhanga were in occupation "in his place." This paragraph was admitted in the written statement and the lower appellate Court therefore concluded that the defendants had admitted their position as that of tenants. After making reference to para. 3 of the plaint and the written statement the lower appellate Court summarized its conclusions as follows:

In my opinion the position is that Chhanga being a tenant, the tenancy being for an indefinite period, and admittedly the defendants being in possession in place of Chhanga, the tenancy continued through them for an indefinite period until determined according to law.

5. I am unable to agree with this conclusion of the lower appellate Court. The admission by the defendants of para. 3 of the plaint implied no more than this, that the defendants were in possession of the houses in dispute after Chhanga. The defendants never admitted that their possession was in the same capacity as was the possession of Chhanga. They, in the written statement, denied in clear

terms that they were the tenants of the plaintiffs. The written statement must be read as a whole, and, when so read, it shows that the defendants denied the plaintiffs' ownership of the houses and further did not admit that they were the tenants of the plaintiffs. The admission of para. 3 of the plaint by the defendants did not therefore amount to either express or tacit acknowledgment by them of their position as tenants. The position of the defendants can be ascertained firstly by reference to the terms of the rent deed and secondly by their conduct after the death of Chhanga.

6. Now so far as the rent deed is concerned it created a tenancy in favour of Chhanga for an indefinite period. By the deed Chhanga was allowed to occupy the houses on payment of Rs. 6 a year on account of rent, but the tenancy was terminable at the will of the plaintiffs. No period of tenancy was fixed by the deed and the deed was styled as a "kerayanama bila miyadi," i.e., as a rent deed for an indefinite period. In view of the terms of the deed, it must be held that at best it created a tenancy for life in favour of Chhanga, and that the interest acquired by Chhanga was not heritable. This was the view taken in (Duming Rosario) Saldanha and Others Vs. Roman Catholic Church, . It was held in that case that if a lease be given to a man for an indefinite period, it enures, generally speaking, as far as his life-time, and passes no interest to his heirs unless there are words showing an intention to grant a hereditary interest. In the rent deed there are no words granting hereditary interest and therefore defendants 1 and 2 did not inherit the rights of Chhanga as lessees. The lease in favour of Chhanga therefore came to an end on his death. The suit giving rise to the present appeal was not brought within 12 years of the death of Chhanga, and, as such, in my judgment, it was barred by Article 139, Limitation Act. That article deals with a suit by a landlord to recover possession from a tenant and the period prescribed for the suit is 12 years from the date when the tenancy is determined. As in the present case the tenancy was determined on the death of Chhanga, the suit was barred by limitation.

7. It was argued by Mr. Mital that, if the defendants did not inherit the rights of Chhanga as lessees, their position was not that of tenants and the suit against them could not therefore be governed by Article 139. I am unable to agree with this contention.

8. It was held in Sudalaimuthu Thevan (dead) and Others Vs. Sappani Thevar, that Article 139 applies even to suits brought against the representatives of the original tenant after the determination of the tenancy to recover the property leased. The defendants are no doubt the representatives of Chhanga and the suit against them therefore fell within the purview of Article 139. In this view of the matter the plaintiffs' claim so far as it was based on the tenancy created by the rent deed was time-barred. But I do not consider it just to pin down the plaintiffs to the allegations contained in the plaint, and it appears desirable to me to finally determine the rights of the parties by ascertaining the requisite facts. It may very well be that notwithstanding the fact that the tenancy in favour of Chhanga

was limited in its duration to his lifetime, the defendants, after the death of Chhanga, acknowledged their position as tenants of the plaintiffs and remained in possession of the houses in that capacity. If, for instance, the defendants paid rent to the plaintiffs it would follow that the defendants' occupation of the houses was in the capacity of tenants. In such a case the plaintiffs would be entitled to a decree, provided the possession of the defendants as tenants is traced within 12 years of the date of the suit. This aspect of the matter was not considered by either of the Courts below and it is therefore necessary to remit the following issues to the lower appellate Court for findings: (1) Whether after the death of Chhanga the defendants remained in possession of the houses in dispute in the capacity of the plaintiffs' tenants, e.g., by payment of rent or by acknowledgment of the plaintiffs' title as landlords? (2) Were the defendants in adverse possession of the houses in dispute for more than 12 years before the date of the suit? Parties will be allowed to adduce additional evidence. The lower appellate Court is requested to return its findings to this Court within four months from today's date. On receipt of the findings the usual ten days will be allowed for filing objections.