
(1935) 02 AHC CK 0009
In the Allahabad High Court

Maula Dad Khan and Others

APPELLANT

Vs

Sri Thakur Radha Kaulji and Others

RESPONDENT

Date of Decision : 22-02-1935

Acts Referred:

Agra Tenancy Act, 1926 — Section 45
Agra Tenancy Act, 1926 — Section 45
Agra Tenancy Act, 1926 — Section 45

Citation : AIR 1935 All 629 : 158 Ind. Cas. 36

Hon'ble Judges : Ganga Nath, J

Bench : Division Bench

Judgement

Ganga Nath, J.—This is a defendant's appeal and arises out of a suit brought against them by the plaintiffs-respondents for a declaration that the perpetual lease, dated 12th February 1904 granted by the late mahant Narain Das was ineffective and not binding on the plaintiffs. The plaintiffs further prayed for possession and mesne profits, against, the defendants. The plaintiffs' case was that Narain Das was the mahant. He granted a perpetual lease of the property in dispute to defendant 1 and the deceased ancestor of defendants 1 to 6. Narain Das died on 18th November 1923, and was succeeded to by Ram Kishan Das, plaintiff No. 4, as mahant and. manager of the temple. The plaintiffs' further stated that Narain Das had no power to execute the lease and it did not and could not enure beyond the lifetime of Narain Das. The trial Court found that the lease was without legal necessity and void and decreed the claim. In appeal, the Sub-ordinate Judge upheld the findings of the trial Court as regards the lease being void and without any legal necessity, but modified the decree for the amount of mesne profits. Against this decree, this appeal has been filed by the defendants.

2. On the concurrent finding's of both the Courts below that the lease was without any legal necessity and Narain Das had no power to give a perpetual lease, there can be no doubt about the lease being void and ineffective after the death of Narain Das. The plaintiffs are therefore entitled to the declaration

prayed for. The next question is whether the plaintiffs' suit for possession and mesne profits lay in the civil Court. As already stated the lease was given by the plaintiffs' predecessor, who was as good a mahant as the plaintiffs themselves, and was the manager of the property. He had every right to give leases of the property in the ordinary course of management, and there would have been nothing to prevent his granting an ordinary lease to the present lessees. It was only by granting a permanent lease that he exceeded his power. The lessees were admitted by the manager to the occupation of the land as long ago as 1904. They were allowed to remain in possession even after the death of Narain Das for a number of years. The lessees have presumably been in possession since 1904, and have been paying rent regularly. As already stated, the manager Narain Das had legal authority to admit the lessees to the occupation of the land. In these circumstances, it is altogether wrong to regard the lessees as trespassers. Section 45, Agra Tenancy Act, of 1926, lays down:

Whenever any person, who has been admitted to the occupation of land, or permitted to retain possession of land, by any one having a right to admit or permit him with the intention that a contract of tenancy should thereby be effected, but without any rent being fixed, either he or the person so admitting or permitting him may at any time during the period of his occupation or within three years after the expiry of such period sue to have rent fixed thereon.

3. The position of the lessees is analogous to that of persons, who have been admitted to the occupation of the land in this way. There is no doubt that the lessees were admitted to the occupation of the land by a written contract which has been held to be void. This fact does not affect the position of the lessees which is not that of a trespasser but is that (of a tenant. This view is supported by *Basdeo Narain v. Mohammad Yusuf* 1928 All. 617. There the brother of the minor plaintiff, acting as the manager of the joint Hindu family, executed a perpetual lease of a portion of the ancestral property at a rental of Rs. 70 a year, whereas it had previously been leased and at any time might have been leased at a rental of Rs. 125 a year and the lessees gave the lessor a nazrana of Rs. 1,200, but there was not shown to have been either any advantage in giving a permanent lease or in realising the ready money. It was held that the permanent lease was null and void and ineffectual as against the plaintiff, but inasmuch as the lessees had occupied the property for a number of years and had been paying rent regularly and as the lessor had legal right to admit them to the occupation of the land, it would be altogether wrong to regard the lessees as trespassers merely because the lessor exceeded his power in executing the permanent lease and therefore the lessees could not be ejected. The relationship of landlord and tenant had been established between the parties and it was open to them, to settle their rights and liabilities in the revenue Court.

4. The result is that; the appeal is allowed in part. The plaintiffs-respondents' declaration that the permanent lease is null and void and ineffectual as against them shall be confirmed but their suit, in regard to possession and mesne profits

shall be dismissed. It will be for the parties to settle their rights and liabilities as to post-session and rent in the Revenue. Court. The parties shall get and pay costs in all the Courts in proportion to their success and failure. Permission to file a Letters Patent appeal is rejected.