

(1933) 02 AHC CK 0004
In the Allahabad High Court

Puran	Vs	APPELLANT
Mansukh Ram and Another		RESPONDENT

Date of Decision : 11-02-1933

Acts Referred:

Citation : AIR 1933 All 632

Hon'ble Judges : King, J

Bench : Division Bench

Judgement

King, J.—This appeal and Second Appeals Nos. 62 to 65 of 1930, arise out of certain suits instituted by the plaintiff who is a lessee from the Cantonment Authorities of Agra as against certain persons who were in occupation of portions of the leased property. On 1st April 1924 a lease was granted by the Cantonment Authorities to the plaintiff of a certain area of land within the Agra Cantonment. The terms of the lease were that all the rights of the lessor were transferred to the lessee for the purpose specified in the lease, with certain reservations, and it was further provided that the lessee should build a dwelling house upon the demised premises within the period of 12 months. The defendants are held to be owners and occupiers of certain houses within the demised premises. It is found that they have been in occupation of these houses for a long period of time--it may be for a hundred years and it is found that they have not been paying rent to the Cantonment Authorities. The plaintiff in his capacity as lessee demanded ground rent from the defendants and upon their refusal he instituted the suits from which these appeals arise. The defendants denied that the land in suit upon which their houses are constructed belonged to the Secretary of State. They also denied that the plaintiff as lessee, was competent to demand rent from them. Their case was that they and their ancestors have, for over a hundred years been in possession of the houses and the land connected therewith, as a matter of right, and that they have never paid any ground rent or rent of any sort to any one and they are not liable to pay any rent to the plaintiff.

2. The trial Court found that the land belonged to the Secretary of State and that

the plaintiff as lessee from the Cantonment Authorities was entitled to demand rent from the defendants. The defendants have failed to prove their proprietary title by virtue of adverse possession. As to the amount of rent the trial Court found that it was not improper or excessive. The defendants appealed and the learned Additional Subordinate Judge dismissed the appeals of the defendants, subject to certain modifications as to rent, and the defendants come to this Court in second appeal. We must accept as a finding of fact that the land in suit belongs to the Secretary of State and that it has been within the Cantonment Area from about the year 1857. It must also be held to be a finding of fact in the defendants favour that they have not been paying any rent for their houses to the Cantonment Authorities or to anyone else before the suit. The view taken by the Court below is that the defendants are licencees who were allowed to build their houses with the consent of the Cantonment Authorities.

3. It has been argued for the defendants that on these findings it should be held that the license granted by the Cantonment Authorities has become irrevocable because the defendants acting upon the license have constructed works of a permanent character and incurred expenses in building their houses and therefore the plaintiff is not entitled either to eject them or to demand ground rent. In our opinion this contention is contrary to the pleadings. The defendant's case was not that they had built their houses upon the land in suit with the permission of the Cantonment Authorities and on the understanding that they would never be asked to pay any ground rent. On the contrary the defendants entirely denied the ownership of the Secretary of State and claimed proprietary title in themselves on the ground of adverse possession. It is quite inconsistent with such pleadings to hold that the defendants constructed their houses with the permission of the Secretary of State and on the understanding that no rent would ever be demanded for the land on which the houses were built. On the pleadings of the parties no issue could be framed as to whether the defendants constructed buildings of a substantial nature, and it would not be possible for us to give effect to the appellant's contention without remitting issues of fact. We think it unnecessary to do so because the point raised did not arise out of the pleadings.

4. It has also been argued that the terms of the lease granted to the plaintiff did not transfer to him the right of demanding rent from persons, occupying portions of the demised premises. We think there is no force in this contention. We have examined the terms of the lease and we find that the plaintiff was granted for a period of 30 years all the rights, title and interests of the Secretary of State in the demised premises with the exception of certain rights which were expressly reserved such as, the right to minerals and the right to trees. We think that the lessee was entitled to demand rent if his lessor was so entitled. It has also been objected that the suit was for rent and it has been held that no rent was ever fixed. This objection has no force, as the suit was virtually one for compensation for use and occupation of the Cantonment lands. The sum of money which has been, fixed as rent in each case has been fixed for use and

occupation of the land and the rates have been found to be fair. We consider that the Court below has taken a correct view on the question of law and we dismiss the appeals with costs.