

(1930) 01 AHC CK 0012
In the Allahabad High Court

Ram Dass and Another

APPELLANT

Vs

Secretary of State and Another

RESPONDENT

Date of Decision : 23-01-1930

Acts Referred:

Citation : AIR 1930 All 587

Hon'ble Judges : Boys, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Boys, J.—This case is of considerable importance both to Government and owners or licensees of property in cantonment areas, as in many cases concerning rights in property in cantonment or civil station areas the documentary evidence as to the nature of the rights of the parties concerned is very scanty. Within the limits of the present bazaar area of Meerut Cantonment, there is a plot of land which has been known since 1870 as "Ehata Mandi." Along portions of its sides are a number of shops which together with some boundary walls make the area practically into an enclosure with open gate-ways. The plaintiffs are admittedly the owners of the shops and receive rents from their tenants. The cantonment authorities, in the two or three years immediately preceding the institution of this suit, had commenced letting out portions of the open space in the centre of the enclosure to various persons. The leases for these areas they auctioned and in view of the circumscribed nature of the spaces in dispute, it was to be expected, as proved to be the case, that the only persons willing to rent the land were apparently those who were already tenants of the shops. It is difficult indeed to see, in view of the existence of the shops, how anybody else could have made use of any portion of the area otherwise than by merely passing to and fro without prejudice to the rights of the tenants of the shops.

2. The plaintiffs apparently at first endeavoured to maintain their rights by negotiation with the cantonment authorities, for on 25th May 1923 they wrote a

letter to the cantonment authorities claiming rights for themselves in the whole enclosure, including the area not built over and inviting the cantonment authorities to inspect their records, in which event, as the plaintiffs suggested, the justice of the plaintiffs' claim would become apparent. We are not informed what answer the cantonment authorities sent, if any. But the fact that this suit has been filed indicates sufficiently clearly that no result was arrived at by negotiation.

3. In their plaint, the plaintiffs claimed to be the proprietors or owners of the whole Ehata. Later, they conceded that when the cantonment was established Government acquired ownership in the whole of the land within the cantonment area, and the plaintiffs do not now claim to be more than licensees of the whole area. The case for the Secretary of State, who is represented by the cantonment authorities, is that the plaintiffs are licensees of so much of the area as is covered by their shops and that they have no right of any sort or description over land which is not actually covered by the shops. It is claimed for the Secretary of State that the whole area is owned by Government, that no license was ever granted to the plaintiffs in respect of the open area, that they were permitted to build the existing shops and thereby became licensees as to so much of the area only as is actually covered by the shops. We may say parenthetically that in any event, the claim of the cantonment authorities as stated, could not be supported. The plaintiffs must at least have the necessary easements of access, light and air in respect of the open area. But in view of the opinion at which we have arrived, this need not be considered further.

4. As we have said, the evidence as to the nature of the rights in this area is scanty, but the following facts and law are now not in dispute. The cantonment was established in about 1810 or 1811. The whole ownership of the land within the cantonment area then became vested in the Secretary of State. The prior owners of the land were compensated for the loss of such rights as they may actually have suffered. It is not so expressly stated, but it is a fair presumption that the amount of the compensation would vary according to whether the prior owner was deprived wholly of ownership and possession or whether he was deprived only of ownership and given a lease or whether he was deprived only of ownership and allowed to remain in possession as licensee without the payment of any rent. It is not till 1860 that we have the first documentary evidence in the case. There is a map of that date showing the area in question as one single enclosure without any divisions or further indications of the nature of the enclosure. In 1870 an application for mutation was filed by Ram Prasad, grandfather of the present plaintiffs, in which he stated that, as he was getting old, the name of his son Sheo Paltan, might be substituted for his own name as "malik" in regard to all the shops and houses detailed in the following schedule within the cantonments of Meerut whether ancestral or self-acquired property. In the schedule, he described the property at present in suit as "baghicha No. 3203" and to that added the note that in the baghicha shops were in process of being built. Next, it is not disputed that the present plaintiffs Ram Das and Ram Saran

Das are the sons of Sheo Paltan, grandsons of Ram Prasad, the applicant of 1870. It is not disputed that the shops were built with the permission of the cantonment authorities, nor that up to two or three years before the suit the plaintiffs and their predecessors-in-title were leasing the shops to tenants and receiving the rents therefor, there being no suggestion that any separate rent was taken from the tenants for the use which of necessity they had to make of the open space or part thereof in front of their shops.

5. The evidence, though scanty, gives rise in our opinion to no real difficulty once the case is approached from the proper standpoint. The learned Judge of the lower appellate Court declined to look at the history of this baghicha or ehata prior to the year 1870. He then dealt with the case as follows: All the land within the boundaries is owned by the Government. In 1870 the cantonment authorities gave permission to the predecessors of the plaintiffs to build shops on a part of this area. That permission the lower appellate Court treats as the grant of a license to use the sites on which the shops were built, but in its view that did not confer any right of any sort on the plaintiffs over the open area of the enclosure in front of the shops.

6. If we were of opinion that it was not necessary to consider the history of the ehata prior to 1870 we should still have had to differ from the learned Judge's view that the permission to build the shops conferred no right of any sort or description on the plaintiff with regard to the open space in front of the shops. It is manifest, that the permission to build shops must have carried with it the right to the natural easements in respect of the adjoining area, rights of access, light and air. It would then have been necessary to determine whether anything that the cantonment authorities were now doing in regard to the open space interfered improperly with such rights. As however we view the case, it is not necessary to consider the plaintiffs' rights to such easements as against the cantonment authority or, at present, the tenants' rights as against the plaintiffs. Admittedly the plaintiffs were in possession of these shops and nobody other than the plaintiffs or their tenants was exercising up to two or three years ago any other rights, at any rate any other rights than those of passage over the open space. It was therefore most material to consider the original rights of the plaintiffs' predecessors-in-title in order to determine how much of those rights they lost and how much remained to them.

7. It would have been permissible for us to send down an issue for determination as to the nature of the rights of the plaintiffs or anybody else over this open area prior to 1870. It is also permissible for us to arrive at a determination of this question on the evidence on the record, if we do not consider it necessary to send down an issue. We invited both sides to indicate to us whether there is any reasonable probability of any further evidence being available. Neither side could suggest that there is. If there was such reasonable probability, we should have had to consider whether either of the parties who wanted to produce such further evidence to justify the failure to produce it at the trial. Neither side was able to

suggest to us that there was likely to be any further evidence forthcoming, and the evidence such as it is, being very simple in its nature, we thought it advisable, in order to terminate the litigation as speedily as possible, to determine the necessary questions for ourselves and gave both counsel time to consider the evidence produced.

8. The map of 1860 is not helpful to either side except so far as it helps the plaintiffs, in that it shows that the area was even at that date one single unit, apparently a compound, baghicha or enclosure of some sort. But the document of 1870, the application for mutation, is most illuminating. In that document Ram Prasad describes this whole baghicha, No. 3203, as belonging in respect of one-third to other persons. It is further not disputed that such rights as the other persons had in the two-thirds, the present plaintiffs or their predecessors bought from the owners of those rights. We may therefore treat the application of Ram Prasad of 1870 as the document by which rights may be tested in regard to the whole area and the whole of the rights in such area. Now the present plaintiffs are admittedly the grandsons of Ram Prasad and have all along been treated by everybody as his successors to such rights as he had and it is therefore a matter of fair presumption that application of Ram Prasad was well founded and was allowed. In that application he referred to the existing entry in the records as being an entry of himself as "malik." It is admitted that after the cantonment area was formed, Ram Prasad could not be. "malik," but it shows at any rate that according to him nobody had any rights to the ehata but himself and the other persons from whom he or his descendants later purchased the remaining two-thirds. It further shows clearly that the area in question was a garden or orchard. Further, the note attached to the item "bagicha" that shops were being built, shows how his compound came to be known as "Ehata Mandi." Ram Prasad's intention, and an intention carried out with the approval of the cantonment authorities, was to establish a grain market in this compound and such a grain market was in fact established and continued for many years. How could it possibly be then suggested even that Ram Prasad had no interest whatever in the open area of the compound. In our view, it is most manifest that while Earn Prasad's predecessors-in-title must be held to have lost their rights of ownership of the land in 1810, they remained licensees of the whole area with every right, consistent with any other law in force, except that of ownership. They were, then, in 1870. licensees of the whole area, It was at the beginning of 1870 in use as an orchard.

9. The authority by reason of which they were able to convert it into a grain market was in no sense the grant of a license, as they were already licensees of the whole area. But before they could build houses on that area or any portion of it the permission of the cantonment authorities was required and that permission, it is not denied, was given. There is nothing to show that from that period onwards, the position was in any way altered. The plaintiffs are licensees of the whole area. They have built houses on that area or a portion of it, with the permission of the cantonment authorities. There is no question of any grant of a

license of the site of the houses in 1870. The application for mutation itself manifestly suggests that not only was Ram Prasad with his co-sharers, in possession of the whole area in 1870, but that he must have been in possession for at least some appreciable time previously, for it is his own name which he desires to have removed as a result of that application. We have already noted that he describes himself as a "malik." He no doubt did not appreciate that rights of ownership no longer existed in his predecessors-in-title after 1810. But the fact that he was described in the official records as "malik" of the whole area itself indicates the wide extent of the rights which he still had got in the whole area land he could not possibly have been anything else than a licensee. The conclusions that we draw from this application are supported by the oral evidence of the plaintiffs and there is nothing to rebut those conclusions.

10. Holding as we do, that on the evidence on the record this is the manifest position of the plaintiffs, the suit must succeed.

11. We should not conclude this judgment without a reference to the evidence of Col. Knowles, Deputy Inspector and Adviser of Lands and Cantonment, in the Northern Command. He has apparently had very considerable experience for very many years and for many different provinces in cantonment matters and more particularly in matters concerning land and buildings in cantonments. Col. Knowles has stated in evidence that:

The Government of India thinks that I am an expert in the matter of cantonment lands.

12. The lower appellate Court has been much impressed by Col. Knowles's qualifications as an "expert" and has decided the case almost wholly on the basis of Col. Knowles's dicta as to what the law and the situation in regard to this particular property is. We do not for a moment doubt the qualifications of Col. Knowles to advise Government in regard to cantonment lands. He has no doubt had very valuable experience and the Government of India may well be justified in regarding him as its expert outside the Courts. But in law and as applied to a witness, the term "expert" has a special significance and no witness is permitted to express his opinion unless he is an "expert" within the terms of Section 45, Evidence Act, or in special cases is permitted to express such "opinion by some special law. Col. Knowles's evidence in regard to this case extends over no less than 18 manuscript foolscap pages and it is hardly an exaggeration to say that hardly one line in ten of it is admissible in evidence from the mouth of a witness in this case. We have no doubt that for purposes of advising counsel on the lines to pursue, Col. Knowles's views would be of great assistance, but as a witness, his statement carries the case nowhere, and we are constrained to note that as regards the merits of the particular case, he has apparently made no endeavour to search for any particular records. He suggests that there are records which possibly might be relevant, but he has admittedly made no attempt to search for and examine them if found.

13. The result is that we set aside the decree of the lower appellate Court and restore the decree of the trial Court with certain modifications. The trial Court declared the plaintiffs' ownership. In that it was in error. It also declared in unqualified terms the perpetual injunction for which the plaintiffs asked. That again must be modified. It further gave the plaintiffs a decree for damages. The damages were assessed at the amount of the rent which the cantonment authorities had admittedly levied from the plaintiffs' tenants. But in view of the plaintiffs' statement that they are still obtaining the same rent from their tenants that they obtained before the cantonment authorities took upon themselves to lease out some of the open land it is impossible to hold that) he has suffered any damages on this basis from the action of the defendants. He will obtain his ordinary costs in the suit.

14. In the plaint, a further claim was made to a certain culvert or bridge over a drain, and a declaration was asked for that the bridge was the private property of the plaintiffs. There is nothing to indicate-that the plaintiffs have any rights of ownership over the bridge at all. There is nothing to show that they have done more than build the bridge or culvert over a drain, which drain the plaintiffs cannot show to be within the property of which they are licensees. The mere building of the bridge can give them no rights of ownership in it. It is, however, not necessary, in view of our decision as to the open area, to deal with this matter any further. We have held the plaintiffs to be licensees of the whole area and we may, we feel with confidence, trust that the cantonment authorities will view the matter of the bridge or culvert from a reasonable standpoint.

15. We feel that we may add one further suggestion. The cantonment authorities have admittedly collected the sum of Rs. 839 from the tenants of these shops in respect of the land leased in the open area. In view of our finding that the cantonment authorities had no right to lease this land to the tenants in question, we consider that in our opinion Government might well consider the propriety of returning the rent collected without the necessity of further litigation.

16. The result is that, setting aside the decrees of both the Courts below, we grant the plaintiffs a decree declaring that they are licensees of the whole area known as the "Ehata Mandi," and further a perpetual injunction restraining the cantonment authorities from interfering with their rights as licensees otherwise than in accordance with law. Other reliefs in so far as they are not granted by the above decree are dismissed. The plaintiffs are not however responsible for this litigation and as they have been in substance successful they will have their whole costs in all Courts.