

(1965) 01 PAT CK 0008

In the Patna High Court

Case No : Letters Patent Appeal No. 17 of 1960

Ramkrishna Singh

APPELLANT

Vs

Mahadei Haluai and Another

RESPONDENT

Date of Decision : 30-01-1965

Acts Referred:

Transfer of Property Act, 1882 — Section 107, 3, 53A

Citation : AIR 1965 Patna 467

Hon'ble Judges : R.L. Narasimham, C.J;G.N. Prasad, J

Bench : Division Bench

Advocate : Dinesh Charan, Rama Raman, Rajani Kant Verma and Devendra Prasad, for the Appellant; Ganga Charan Mukherji, Nripendra Narain Roy and N.N. Mukherji, for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, C.J.—This is an appeal from the judgment of a single Judge of this Court dismissing the plaintiff's suit for eviction.

2. The property consists of 2 kathas and 10 dhurs of land in plot No. 965 within Jugsalai Thana in which a residential house has been constructed. The previous owner of the plot, namely Sardar Amrit Singh granted a palta of the same to respondent No. 1 on 8-6-1936 (Exhibit A) in which he stated that after obtaining salami of Rs. 500 from her he leased out the property to her on the basis of payment of an annual rental of Rs. 2/2/-. The patta was, however, not signed by the lessee and was also not registered. But it has been found as a fact by all the Courts that in pursuance of the patta the lessee obtained possession of the plot and has been paying rent to the landlord. The said Sardav Amril Singh sold the property to the plaintiff appellant by a sale deed (Exhibit 2) dated 10-10-1953. The plaintiff then, after giving usual notice to quit, sued defendant No. 1 for eviction, impleading his vendor as pro forma defendant No. 2. Though the plaintiff's suit was decreed in the two lower courts, the learned single Judge dismissed the suit holding that the defendant was entitled to the protection of

Section 53-A of the Transfer of Property Act. The sole question for decision in this appeal is whether this view of the learned single Judge is correct.

3. Mr. Mahabir Prasad for the appellant raised the following two contentions. Firstly he urged that for the purpose of taking the help of Section 53-A of the Transfer of Property Act, the defendant must show that there was a completed contract in writing. According to him the patta, exhibit A, being a unilateral document signed only by the lessor, will not complete the contract inasmuch as Section 107 of the Transfer of Property Act requires that a lease must be signed both by the lessor and the lessee. Secondly, he urged that the burden was on defendant No. 1 to show that the plaintiff had notice of the lease executed in the defendant's favour by the plaintiff's predecessor, namely, Sardar Amrit Singh. Each of these will be dealt with in turn.

4. Mr. Mahabir Prasad is undoubtedly right in his contention that one of the first conditions to be fulfilled before Section 53-A of the Transfer of Property Act can be taken recourse to is the existence of a completed contract, but it is not necessary that that contract should be signed by the lessor and the lessee. In fact, the opening words of Section 53-A quoted below repel any such argument:

"Where any person contracts to transfer for consideration any Immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty."

All that the law requires is (1) that there should be a contract to transfer any Immovable property, (2) that the contract should be signed by the transferor, and (3) that the terms necessary to constitute the transfer can be ascertained with reasonable certainty from such document. In the present case, all these three conditions are fulfilled. It is true that neither party has led oral evidence to show that there was a completed contract between the parties. but this is easily inferable from the recital in the document and the evidence adduced by the Parties Exhibit A shows that defendant No. 1 requested Sardar Amrit Singh to grant settlement of the property and then he acceded to her request and granted her the lease on taking salami. It is also not denied that in pursuance of this document she obtained possession and has been paying rent for several years. From these facts and circumstances it can be reasonably inferred that there was a completed contract between the Parties which was embodied in writing by the lessor when he executed the patta. exhibit A.

5. In this connection I may refer to the decision of the Supreme Court in *Sheth Maneklal Mansukhbhai Vs. Hormusji Jamshedji Ginwalla and Sons*, where it was held that for the purpose of attracting the provisions of Section 53-A of the Transfer of Property Act a formal lease is not necessary and all that is required is "that an agreement in writing signed by the transferor can be gathered from the evidence". It is true that in that case from the series of correspondence between the parties the learned Judges held that there was completed contract in writing signed by the transferor. Here, there is no document in writing signed

by the lessee (defendant No. 1) from which we can infer that the contract was completed. But even in the absence of such a document, from the very recital in the patta, exhibit A, and the previous and the subsequent conduct of the parties as proved by the oral evidence of defendant No. 1's son, D. W. 1. such a contract may be inferred, I am, therefore, of the opinion, in agreement with the learned single Judge, that though exhibit A is invalid as a lease because it has not been signed by the lessor and the lessee, nevertheless it is sufficient for the purpose of attracting the provisions of Section 53-A of the Transfer of Property Act.

6. The next question for consideration is whether the appellant can take advantage of the proviso to Section 53-A of the Transfer of Property Act which runs as follows:

"Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof".

Neither party has led any evidence on the question of notice and the applicability of the proviso solely depends on a decision on the question of burden of proof. The learned single Judge thought that it was the duty of the plaintiff to establish affirmatively that he had no notice of the contract. Mr. Mahabir Prasad urged that this view was wrong and in support of his contention he relied on the decision of the Rangoon High Court in *Ko Mar v. Ma May* AIR 1935 Rang 12 which was also cited before the learned single Judge. I would, with respect, agree with the learned single Judge that the Rangoon decision cannot be accepted in view of Explanation II to Section 3 of the Transfer of Property Act which says that

"any person acquiring any Immovable property or any share or interest in any such property shall be deemed to have notice of the title if any, of any person who is for the time being in actual possession thereof".

Admittedly defendant No. 1 was in actual possession of the property when the plaintiff purchased it from defendant No. 2. He will, therefore, be deemed to have notice of the title, if any, of defendant No. 1.

Mr. Mahabir Prasad, however, urged that the word "title" here refers to completed title and not a mere equitable interest which might accrue to the transferee under the provisions of Section 53-A of the Transfer of Property Act. He could not, however, cite any authority in support of this contention. On the other hand, the principles gathered from English decisions indicate to the contrary. Thus, in the well-known case of *Daniels v. Davison*. (1809) 33 ER 978, it was held that

"possession of a tenant is notice to a purchaser of the actual interest he may have, either as tenant, or, farther, as in this instance. by an agreement to purchase the premises".

This has been followed in *Allen v. Anthony* (1816) 35 ER 679, where also it was held that "possession of a tenant is notice to a purchaser of the whole actual

interest he may have in the estate". In *Barnhart v. Greenshields* (1853) 14 ER 204, the same principles were applied and it was further held that "where a tenant is in possession of land, a purchaser is bound by all the equities which the tenant could enforce against the vendor". It was also observed that "this equity of the tenant extends not only to interests connected with his tenancy, but also to interests under collateral agreements". Thus, the English decisions are unanimous to the effect that the possession of a tenant, even though his full title as a tenant may not be established, is sufficient notice to the purchaser of all the equitable interests including interest arising out of a collateral agreement. These decisions have been relied upon in *Noor Zahur Mian v. Islam Mian* 1958 BLJR 466, which dealt with a case u/s 27(b) of the Specific Relief Act.

It is true that the equitable interest which the transferee has by virtue of Section 53-A of the Transfer of Property Act may not give him full title to the property, but nevertheless it is an interest which would attract the provisions of Explanation II to Section 3 of the Transfer of Property Act by virtue of the definition of "a person is said to have notice" occurring in that section. It will be the duty of the purchaser to make diligent enquiries with a view to find out what was the nature of the equitable interest of the tenant in possession. Had the plaintiff made such an enquiry, he would easily have known the terms of the patta under which defendant No. 1 was in occupation of the land. His omission to make such an enquiry shows gross negligence on his part and he must be deemed to have notice of the contract between the defendant No. 1 and the defendant No. 2 as evidenced by the patta. exhibit A.

7. For these reasons, I affirm the judgment and decree of the learned single Judge and dismiss the appeal with costs.

G.N. Prasad, J.

8. I agree.