
(1918) 06 AHC CK 0007
In the Allahabad High Court

Ratan Moti

APPELLANT

Vs

Tilak Chand and Others

RESPONDENT

Date of Decision : 04-06-1918

Acts Referred:

Specific Relief Act, 1877 — Section 42

Citation : AIR 1918 All 388 : 47 Ind. Cas. 856

Hon'ble Judges : Ryves, J;P.C. Banerji, J

Bench : Division Bench

Judgement

1. This and the connected Appeal No. 1065 of 1916 arise out of a suit brought by Musammat Ratan Moti for a declaration that a sale-deed executed by Jagan Lal, defendant No. 3, in favour of Tilak Chand and Hushiar Singh, defendants Nos. 1 and 2, on the 14th of February 1911 is null and void as against her interest. The sale-deed relates to a shop which admittedly belonged originally to one Chnnni Lal. Chunni Lal had a son Kunwar Sen, whose widow was Musammat Badamo. It is alleged by one party and denied by the other that Kunwar Sen predeceased his father, but the fact is admitted that after Kunwar Sen's death Musammat Badamo was in possession. It is alleged on behalf of the plaintiff that the affairs of Musammat Badamo were managed by her son-in-law, Fakir Chand. In 1881 Musammat Badamo made a gift in favour of Roshan Lal, the son of Fakir Chand by Badamo's daughter. Fakir Chand had another wife by whom he had another son, Mahabir defendant No. 5. Roshan Lal died in 1900 leaving his widow Musammat Parsandi defendant N. 4. On the 22nd of June 1910, Parsandi made a gift in favour of the plaintiff. By virtue of this gift the plaintiff claims to be the owner of the property and she alleges that Jagan Lal had no right to sell it to Tilak Chand and Hoshiar Singh. The defendant Mahabir claims the ownership of the property by reason of his being the son of Fakir Chand who, he says, became entitled to it under the gift made in favour of Roshan Lal. Mahabir has, therefore, been arrayed as a defendant. The Court of first instance made a decree in the plaintiff's favour but the lower Appellate Court has reversed it without trying the suit on the merits but only on the ground that the plaintiff was entitled to farther

relief, that she ought to have claimed possession of the property and that as she had not done so Section 42 of the Specific Relief Act barred the claim. The lower Appellate Court holds that the shop being in the possession of one Moti Lal who executed a rent agreement in 1906 in favour of Fakir Chand, the plaintiff must be deemed to be out of possession, and it must be held that Fakir Chand was in possession and after his death Mahabir Prasad (his son) is in possession.

2. The plaintiff has preferred this appeal and it is contended on her behalf that having regard to the circumstances of the case the only relief that she could have claimed was a declaratory decree. In our opinion" this contention is well-founded. It has been found by the lower Appellate Court that a rent agreement was executed in favour of Fakir Chand; but it has also found that Moti Lal paid rent to Musammat Badamo so long as she lived and that after Badamo's death Moti Lal refused to pay rent to either party until one party or the other established his or her title to the property. This being the state of things, Moti Lal's possession cannot be said to be the possession of the defendant Mahabir. It is true that as between a landlord and his tenant the latter is estopped from denying the title of the former. But there is no question in the present case as between landlord and tenant. Therefore the numerous rulings which have been cited on behalf of the respondents do not seem to us to have any bearing on this case. Moti Lal having refused to pay rent to any one his possession can only be deemed to be possession on behalf of the rightful owner and, therefore, the Court in this case instead of dismissing the suit on a preliminary ground should have tried the question of title and determined whether title was in the plaintiff, or in Mahabir, or -in the defendants Nos. 1-3. As no question of title has been tried it cannot be said that the possession of Moti Lal is the possession of Mahabir, The plaintiff could not frame the present suit as a suit for possession inasmuch as the person in possession, namely, Moti Lal, has not denied her right and she has consequently no cause of action against him. Under these circumstances we are of opinion that the decree of the Court below is incorrect and must be set aside. We accordingly allow the appeal, discharge the decree of the lower Appellate Court and remand the case to that Court with directions to readmit it under its original number in the register and to try it on the merits bearing in mind the observations made above. Costs here and hitherto will be costs in the cause.