
(2011) 09 AHC CK 0497
In the Allahabad High Court
Case No : First Appeal No. 962 of 2004

State of U.P.

APPELLANT

Vs

Thakur Sri Radha Ramanji Maharaj

RESPONDENT

Date of Decision : 20-09-2011

Acts Referred:

Easements Act, 1882 — Section 62, 62(d)
Evidence Act, 1872 — Section 65, 90

Citation : (2011) 8 ADJ 684

Hon'ble Judges : Yatindra Singh, J; Dinesh Gupta, J

Bench : Division Bench

Advocate : V.K. Singh, S.C, for the Appellant; Shamim Ahmad, R.K. Jain and Vipin Sinha, for the Respondent

Judgement

Yatindra Singh, J.—This defendant's first appeal revolves around the nature of the rights conferred upon the plaintiffs predecessor-in-interest by the letter written by the Collector in 1858 (the 1858 Deed).

THE FACTS

Thakur Sri Radha Ramanji Maharaj (the Plaintiff) is a deity. It has filed original suit No. 185 of 1992 for permanent injunction restraining the State of UP through Collector Mathura (the Defendant) from interfering with its possession.

2. The main allegations in the plaint are as follows:

(i) Shah Kundan Lal and Shah Fundan Lal (the original beneficiaries) were given freehold rights over the land situate in the civil lines, Mathura by the British Government (the 1858 Deed). They had constructed a house over the land and are owners of the same.

(ii) The original beneficiaries created a trust dedicating considerable property by the deed dated 7.9.1866 (the 1866 Deed) and later on Shah Fundan Lal alongwith the son of Shah Kundan Lal executed a supplementary deed on

19.7.1881 (the 1881 Deed) dedicating the property given to them in free hold by the British government (by the 1858 Deed) alongwith other properties to the Plaintiff.

(iii) The total area of the land given to them by the (1858 Deed) was 6.67 acres. Out of this area, (the northern portion) 3.69 acres was leased out to one Sri Laxman Das Bhargava (Laxman Das), who was a high official in the government. He illegally got the entire land recorded as the nazul property.

(iv) The remaining (southern) area of 2.98 acres of land continued with the Plaintiff. (It is subject matter of dispute in this case).

? Over the property in dispute, a kothi was standing. This kothi/alongwith the land (2.98 acres) was leased out to the Planning Department of the Defendant.

? Later on, original suit (OS) No. 30 of 1969 for recovery of rent and ejectment was filed against the tenant. The suit was decreed for rent, but was dismissed for ejectment on 10.8.1971.

? The civil appeal (CA) 195 of 1971, against the aforesaid judgment, was allowed on 31.1.1975 and the suit was decreed for ejectment also.

? The plaintiff obtained possession of the land in dispute in pursuance of the decree and is in a lawful possession over the same;

(i) The old building standing on the plot has fallen down however, the malwa is still there. The Defendant is illegally trying to make construction over the same.

3. In the plaint, it was not mentioned that:

The land given to Laxman Das was the northern portion of the land of the 1858 Deed, or

The property in dispute in the suit was the remaining southern portion.

However, it is clear from the boundaries of these properties described in the plaint in paragraph 1, 4 and at the end of the plaint.

4. It is on the basis of the aforesaid allegations that the relief of the permanent injunction was asked for.

5. The Defendant filed the written statement. Its case is as follows:

? The British Government had not given any land to the original beneficiaries as the free hold. They are not owners of the property in dispute. Neither any trust deed was executed in respect of the property in dispute nor they were entitled to execute it;

? Shah Gaur Saran had let out some property to Laxman Das. However, Laxman Das got the lease deed executed from the Defendant, when he came to know the correct facts that the property was nazul property and was wrongly let out by Shah Gaur Saran;

? The 1858 Deed said to be executed by the Collector Mathura does not give any details of the property and is not in respect of the property in dispute;

? Even if the 1858 Deed is taken to be in respect of property in dispute then, it is neither a lease, nor grants freehold rights. At the most, it could be a permission to construct a building and is akin to a licence;

? The building has fallen down and the rights of the Plaintiff have come to an end. There was no necessity of taking formal possession over the property in dispute. The permission has automatically lapsed and the property is released;

? The property in dispute is plot No. 61/1 (area 2.98 acres). It has been allotted to the Youth Welfare Department (the YWD) in the year 1991 and is in their possession;

? The YWD is making constructions over the land in dispute. The suit is liable to be dismissed for not impleading the YWD.

6. The plaintiff examined the following witnesses:

? Sri K.S. Gupta (PW-1): the shebait of the Plaintiff;

? Goverdhan Das (PW-2): the manager of the Plaintiff;

? Balram (PW-3): the watchman of the building in dispute till it fell down;

? Sri Vijay Kumar Agarwal (PW-4): the advocate commissioner in the miscellaneous case under Order 39 Rule 2A arising out of an application filed by the plaintiff-respondent for the alleged violation of injunction order granted in the suit.

7. The defendants have examined the following witnesses:

? Sri Hari Lal Verma (DW-1): the Incharge, district welfare officer;

? Sri Ramesh Chandra Dhenua (DW-2): the regional welfare officer;

? Sri Dinesh Kumar Mittal (DW-3): the nazul clerk;

? Sri Jagdish Mohan (DW-4): the lekhpal of the area.

8. Among the documents filed by the Plaintiff in the suit, it relies upon the following documents in the appeal:

(i) The 1858 Deed namely the letter of the Collector, Mathura (paper 101-Ka). It is said to be executed on 22.4.1858 by the trial Court however, this is not correct (see discussion in this regard under the first point);

(ii) Paper book in first appeal 480 of 1925 (paper 43-Ga);

(iii) Copy of the 1866 Deed namely the trust deed dated 17.9.1866 executed by the original beneficiaries. It is part of the paper book in first appeal (FA) 480 of 1925;

- (iv) Certified copy of the 1881 Deed namely the supplementary trust deed dated 5.8.1881 executed by Shah Fundan Lal and Shah Madhuri Saran son of Kundan Lal (paper 40-Ga);
- (v) Certified copy of the plaint in OS 30 of 1969 (paper No. 16-Ga);
- (vi) Certified copy of the written statement in OS 30 of 1969 (Paper No. 17-Ga);
- (vii) Certified copy of judgment in OS 30 of 1969 (paper 18-Ga);
- (viii) Certified copy of judgment in civil appeal (CA) 196 of 1971 (paper 20-Ga);
- (ix) Certified copy of Khasra 1388 F (Paper No. 111-Ka): It shows that name of the shebait of the plaintiff over plot No. 61/1 area 2.98 acres;
- (x) Certified copy of water & house tax assessment (Paper No. 55 Ga);
- (xi) Original receipt of water & house tax in the name of Shah Gaur Saran (Paper No. 71 Ga/1);
- (xii) Original letter by Zila Niyojan Adhikari addressed to Shah Gaur Saran Gupta dated 29.10.1975 (Paper No. 71 Ga/2);
- (xiii) Original letter of Addl. Ziladhish Niyojan Mathura addressed to Shah Gaur Saran Gupta dated 27.9.1974 (Paper No. 71 Ga/5);
- (xiv) Certified copy of registered lease deed dated 12.5.1960 by the Defendant in favour of Laxman Das (Paper No. 143 Ga).

9. Among the documents filed by the Defendant in the suit, it relies upon the following documents in this appeal:

- (i) Dakhalnama dated 25.2.1991 (paper-91-Ka) (Ex A-1);
- (ii) Letter of DM dated 16.2.1991 (paper 92-Ka)(Ex A-2);
- (iii) Nazul register (paper 95-Ka) (Ex Ka-1);
- (iv) Letter of the State government dated 31.1.1991 (paper 93-Ka);
- (v) Khasra for the year 1399 fasli (Paper 94-Ka);

10. The trial Court framed the following issues on the pleadings of the parties:

11. That the Trial Court decided the issues in favour of the Plaintiff by holding that:

- (i) The plaintiff is owner of the property in dispute;
- (ii) He was never dispossessed;
- (iii) He has right to file the suit;
- (iv) The YWD is not a necessary party;
- (v) The suit is properly valued.

The suit was decreed on the basis of the aforesaid findings. Hence, the present Appeal.

POINTS FOR DETERMINATION

12. We have heard Sri VK Singh, Additional Advocate General for the Defendant; Sri Ravi Kiran Jain and Sri Shamin Ahmad, for the Plaintiff¹. The following points arise for determination in the case:

- (i) Whether the documents relied upon by the parties are admissible and should have been exhibited;
- (ii) What is the pedigree of the original beneficiaries;
- (iii) Whether the 1858 Deed was in respect of property as alleged by the plaintiff;
- (iv) Whether the property was assigned to the Plaintiff;
- (v) What rights has the Plaintiff got over the property in dispute;
- (vi) Whether the Plaintiff is entitled to permanent injunction.

1st POINT: DOCUMENTS SHOULD HAVE BEEN EXHIBITED

13. The trial of the case before the Court below and method of conducting the trial leaves much to be desired:

The parties have filed documents at different stages. After the documents are filed, the counsel are required to make endorsement whether they admit them or not. In case any document is not admitted then it is exhibited when it is proved in evidence or an order regarding their admissibility is passed. This has not been done in this case for most of the documents;

The documents have been relied upon by the trial Court though most of them were neither exhibited nor any order was passed holding them to be admissible or accepting them;

Some documents have been exhibited, it is mentioned in the statement but the exhibit numbers are neither entered on the index nor on the document.

14. In view of above, it is proper to first consider the admissibility of documents that the parties wish to rely. Let's consider the admissibility of the Plaintiffs documents first They are mentioned in paragraph 9 of this judgment under the heading "THE FACTS".

Plaintiffs Documents

Documents at paragraph 9(i)

15. The 1858 Deed is the most important document in this case. It is said to be written by the Collector and is in Urdu. In the trial Court, its Hindi translation was also filed. In the Hindi translation, the date of its execution was mentioned as 22.4.1858. It is because of this, that this date is referred in the judgment of the

trial Court.

16. However, we got it translated by Sri Nasiruddin, Urdu Translator in the High Court and Sri A.A. Khan, guide in the High Court museum. They have given its transcription in Devnagari and translation in English. It is "Appendix-I" to this judgment. This transcription and translation is also accepted to be correct by the counsel for the parties.

17. The front page of the 1858 Deed does not contain any date. Its back contains three dates: 10.4.1858, 17.9.1885, and 13.12.1900. It does not contain the date 22.4.1858. There is nothing on record to show why three dates have been mentioned on this document. This document was written some time in the middle of 19th century and as the first date mentioned is 10.4.1858, it would be correct to presume that it was executed on that date.

18. u/s 90 of the Evidence Act, the Court can raise a presumption regarding the documents that are 30 years old provided they come from proper custody. This document has come from the side of the Plaintiff, the successor-in-interest of the original beneficiaries: in our opinion, it has come from proper custody.

19. The land affected by 1858 Deed that was later dedicated to the Plaintiff (6.67 acres). It is not disputed that it is at present recorded as plot No. 61 in the nazul register. A certified copy of its extract was filed by the Defendant and was marked as Ex. Ka-1. In this extract, in front of plot number 61 "Kothi of Mst. Ramdei w/o Madhuri Saran" is mentioned.

20. The pedigree of the original beneficiaries is being mentioned while deciding the second point. Madhuri Saran was son of Shah Kundan Lal, one of the original beneficiaries and one of the executors of the 1881 Deed. Mst. Ram Dei was his widow.

21. The fact that kothi of Mst. Ram Dei is recorded over nazul plot shows that the 1858 Deed was acted upon and the original beneficiaries did erect a building on the basis of the same. It also shows that the 1858 Deed was in respect of land comprising of plot No. 61 (area 6.67 acres).

22. The southern portion of the land of the 1858 Deed is property in dispute in this case. Admittedly, the planning department of the Defendant was the tenant of the same and was ejected in proceeding arising out of OS 30 of 1969.

23. In the lease deed in favour of Laxman Das the southern boundary is the property in dispute and described as "Kothi and the land of Thakurji Mahraj Radha Ramanji."

24. There is neither any suggestion nor anything on record to show that this document is forged or fabricated. In view of Section 90 of the Evidence Act the presumption is raised and this document is held to be admissible.

Documents at paragraphs 9(ii) and 9(iii)

25. Shah Kundan Lal and Shah Fundan Lal created the trust dedicating the property to the Plaintiff. It was created by the deed dated 17.9.1866 (the 1866 Deed). The original 1866 Deed was not filed before the Court. However, a paper book of FA 480 of 1925 was filed. It is paper No. 43 Ga. The copy of the 1866 Deed is part of this paper book.

26. We can take judicial notice of the fact that the paper books at that time were printed by the High Court from the original documents on the record. There is nothing to show that this paper book was not so printed and we hold accordingly.

27. At the end of the printed copy of the 1866 Deed in the paper book of the FA 480 of 1925, it is mentioned that this deed was registered as numbered 233 on pages 57 to 70 in volume 2 of book No. 1 in the office of Sub-Registrar of Mathura.

28. Shri Shah KS Gupta (PW-1) deposed that:

? The 1866 Deed was a registered document. The original has been lost;

? The relevant records in the registry office were burnt out due to fire;

? The registered copy of the document cannot be filed;

? The documents in the first appeal have also been weeded out.

29. In view of above, secondary evidence is admissible. The documents in the paper book of the FA 480 of 1925 (including the 1866 Deed) are admissible u/s 65 of the Evidence Act.

30. It is relevant to point out that FA 480 of 1925 was decided by bench of this Court on 20.12.1928. The judgment is in (Sah) Dharam Narain and Another Vs. Gur Saran and Others, . The 1866 Deed is not only referred in the judgment but was held to be valid.

Document at paragraph 9(iv)

31. A supplementary trust deed was also executed on 5.8.1881 (the 1881 Deed). A copy of this document is also printed in the paper book of FA 480 of 1925. The 1881 Deed was not only referred to in judgment of FA 480 of 1925 but was also accepted as duly executed. The certified copy of this document was filed before the trial Court.

32. This document is held to be admissible considering the following circumstances:

? The admissibility was not challenged before the trial Court;

? This document was considered by the trial Court as if it was exhibited;

? It was only due to some inadvertent mistake that it was not marked as exhibit.

Documents at paragraph 9(v) to 9(x).

33. The documents mentioned in paragraph 9(v) to 9(x) are certified copies of the pleadings, judgments of the Court, khasra, and tax assessment. They are also not challenged by the Defendant They are admissible.

Documents at paragraph 9(xi) to 9(xiii)

34. The documents mentioned in paragraphs 9(xi) to 9(xiii) are the original water and house tax receipt or letters written by the officials. These are the original documents. They are also not challenged by the Defendant. They were also taken into account by the trial Court, They are also held to be admissible.

Document at paragraph 9(xiv)

35. The document mentioned in paragraph 9(xiv) is a certified copy of the registered deed dated 12.5.1960. This document is executed by the Defendant in favour of Laxman Das. It is in possession of Laxman Das. This document is not disputed by the Defendant. It is also admissible.

The Defendant's Documents

36. The documents filed by the Defendant have been mentioned in paragraph 10 of this judgment.

Documents at paragraph 10(i) to 10 (iii)

37. The documents mentioned in paragraphs 10(i) and 10(ii) have been exhibited as Ext-A1 and Ex-A2; whereas, the document mentioned at paragraph 10(iii) is mentioned as Ext. Ka-1. In fact considering the earlier exhibits it should have been Ext-A3. These documents have been exhibited and no further order is required.

38. The documents mentioned in paragraph 10(iv) is a letter written by the State Government dated 31.1.1991. This is a letter written by the Government official in his official capacity and in discharge of his functions. It has been filed in original. It is not challenged by the Plaintiff. It is admissible.

Document at paragraph 10(v)

39. The document mentioned in paragraph 10(v) is khasra of 1399 fasli. Initially, its photo-stat copy was filed. Thereafter an application was filed on 5.2.2001 mentioning therein that a certified copy was being filed. This application was allowed by the order dated 17.3.2001. However, this certified copy is not on record but the photo-stat copy is on record. The certified copy might have been misplaced. As the photo-stat copy of the khasra is not disputed by the Plaintiff and the certified copy was also filed, it can also be read in evidence.

40. In view of our discussions, the documents mentioned in paragraphs 9 and 10 are admissible and should have been exhibited. The record of the case is bulky and in the index of the documents, it is not mentioned which document is exhibited and which is not exhibited. It is difficult to allot them exhibit number without the risk of their being repeated. In view of this, we treat them as

exhibited, without formally putting exhibit numbers on them.

2nd POINT: PEDIGREE OF THE ORIGINAL BENEFICIARIES

41. The papers in the paper book of FA 480 of 1925 have been held to be admissible by us while deciding the preceding point. This appeal arose out of the judgment and decree dated 21.8.1925 in OS 60 of 1924.

42. The aforesaid suit was amongst the family members of the original beneficiaries. According to the plaint allegations Mst. Ram Dei was widow of Madhuri Saran and Gaur Saran was grandson of her sister.

43. The suit was filed by Dharm Narain for declaration that adoption of Gaur Saran by Mst. Ram Dei was invalid and Gaur Saran did not get any right to manage the trust property under the management of the temple of Thakur Radha Ramji Mahraj situate at Vrindavan (the Plaintiff in the present suit).

44. In the plaint of the OS 60 of 1924 a detailed pedigree was also given. The relevant part of the pedigree is mentioned below:

45. In the pedigree as well as in the allegations in the plaint the word "Shiv Nandan Lal" was used. However, in written statement filed by Mst. Ram Dei in place of "Shah Shiv Nandan Lal", the name of "Shah Fundan Lal" was mentioned. In the oral testimony of the parties, the name "Shah Fundan Lal" is used. In the judgment of the FA 480 of 1925, the name "Shah Fundan Lal" is used, it is clear that:

? Shah Fundan Lal and Shah Shiv Nandan Lal are names of the same person or Shiv Nandan could be typing, mistake; and

? Mst. Ram Dei was widow of Madhuri Saran son of Kundan Lal.

46. OS 60 of 1924 was dismissed on 21.8.1925 holding that adoption of Gaur Saran was valid and he was allowed to manage the property of the trust.

47. The appeal against this judgment namely FA 480 of 1925 was dismissed by this Court on 20.12.1928 in (Sah) Dharam Narain and Another Vs. Gur Saran and Others, .

48. Gaur Saran Gupta was adopted son of Mst. Ram Dei and managed the trust property. Shah KS Gupta (the present shebait of the Plaintiff) is son of Gaur Saran Gupta. Thus the pedigree relevant for the purpose of this case is as follows:

3rd POINT: 1858 DEED - IN RESPECT OF PROPERTY ALLEGED BY THE PLAINTIFF

49. The counsel for the Defendant submitted that:

? The 1858 Deed did not give description of the property;

? It cannot be said that it was in respect of the property at present recorded as plot No. 61 (6.67 acres) in the nazul register.

50. It is correct that the 1858 Deed does not describe the property. It merely states that Roshan Lal is willing to give land over which the original beneficiaries could make constructions. However it did permit them to construct a building that could only be done on some land. In order to find out the whereabouts of that land, it is relevant to consider the subsequent conduct of the parties.

51. The land of the 1858 Deed is described in the plaint as

52. This is how it is also described in the 1881 Deed by which it was dedicated to the Plaintiff.

53. The Plaintiff is claiming the land at present described as plot No. 61 (area 6.67 acre) in the nazul register as the land that was subject matter of the 1858 Deed. In the nazul register, in front of this plot. Kothi of Mst. Ram Dei w/o Madhuri Saran is mentioned. Madhuri Saran was son of Shah Kundal Lal, one of the original beneficiary (see discussion on the second point) and one of the executors of the supplementary trust deed.

54. The next plot in the nazul register is plot No. 62 (area 9.32 acres). In front of this plot "Kothi Bharatpur State" is mentioned.

55. The northern portion of the land of the 1858 Deed was leased out to Laxman Das by the Defendant in 1960 (the 1960 Deed). The property that was leased out is described as:

56. The northern boundary is the same namely land of Raja Bharatpur which is plot No. 42 where "Kothi Bharatpur State" is mentioned in the nazul register.

57. The southern portion of the land of the 1858 Deed is subject matter of dispute in this case. This is also so described in the boundaries of the 1960 Deed.

58. This property was also let out to the planning department of the Defendant. Later on when the eviction suit No. 30 of 1969 was filed, it was described in the eviction suit as:

59. The Plaintiff has been claiming the land of nazul plot 61 as the land that was subject matter of the 1858 Deed. It has not been disputed for about 130 years.

60. Considering the evidence of the case, in our opinion:

? The Plaintiff was permitted to make construction over the land that at present is described in the nazul register as plot No. 61 (area 6.67 acres);

? The northern portion of the 3.69 acres of the land has now been leased out to Laxman Das;

? The southern portion of 2.98 acres of the land is subject matter of dispute in this case.

4th POINT: PROPERTY WAS ASSIGNED

61. The plaintiff's case is that the Shah Kundan Lal and Shah Phundan Lal

created a trust by the 1866 Deed and dedicated property to the plaintiff. Thereafter, the property subject matter of the 1858 Deed was dedicated by the 1881 Deed.

62. The following circumstances are relevant for deciding whether the property was assigned to the Plaintiff or not:

? The original document relating to the trust and supplementary trust deed are not on record but secondary evidence in respect to them has been filed and held to be admissible;

? They were filed in OS 60 of 1924. They were accepted to be validly executed (see (Sah) Dharam Narain and Another Vs. Gur Saran and Others,);

? More than a hundred years have passed since execution of these documents without any challenge to them;

? A department of the Defendant had taken a part of the property on lease for which OS 30 of 1969 was filed;

? The registered deeds assigning the property to the Plaintiff has never been challenged prior to filing of the present suit rather they were accepted.

63. In view of above, we have no doubt that the property was assigned to the Plaintiff.

64. Nevertheless, only that right can be assigned to the Plaintiff that the original beneficiaries had. We will consider the nature of that right as well as its extent while answering the succeeding points.

5th & 6th POINTS: PLAINTIFF IS ENTITLED TO INJUNCTION

65. The counsel for the Defendant submitted that:

? The trial Court at one place held the property to be of Roshan Lal and at other place to be of the State;

? It was nobody's case that property ever belonged to Roshan Lal;

? The trial Court has given contradictory finding; and

? The judgment of the trial Court be set aside and the suit be dismissed.

66. The Plaintiff filed the suit with the allegation that the property was given to it by the British government. It was not their case that the property ever belonged to Roshan Lal. The Defendants case was that the property belonged to the State--initially of the British government then of the State of UP--and is recorded in the nazul register as the property of the State.

67. It was nobody's case that the property belonged to Roshan Lal. Had this case taken, it could have been explained. The State is super owner of all land, mines, and minerals: it is just possible that it might have first asked Roshan Lal

to make construction and on his inability to do so, the Collector granted permission to the original beneficiaries to make constructions.

68. In our opinion, the property belonged to the State and the finding of the trial Court that it belonged to Lala Roshan Lal is incorrect.

69. Nevertheless, merely for the reason that the finding of the trial Court about Roshan Lal is incorrect, neither the appeal can be allowed nor the suit can be dismissed. This can be done only after deciding the nature of rights conveyed by the 1858 Deed. The suit can be dismissed only if we come to the conclusion that the Plaintiff has no legal right to be in possession of the land, thus disentitled to any injunction.

70. The counsel for the Plaintiff submitted² that:

? The 1858 Deed was executed prior to enforcement of the Government Grant Act, 1895 (the Grants Act) but it is applicable to 1858 Deed;

? The 1858 deed should be read according to its tenor;

? In any case, while interpreting a document, intention of the parties is to be seen;

? The intention of the parties was to grant the land also.

71. There is some dispute whether the Grants Act is applicable to the 1858 Deed or not. However, there is no dispute with the proposition that:

? A document is to be interpreted according to the intention of the parties; and

? The intention of the parties can be gathered from the words used in that document.

However the question is, does the 1858 Deed confer any right on the land or is it merely a permission to construct a Bungalow to be enjoyed by the beneficiaries that lapsed as the building has fallen down.

72. The counsel for the Defendant submitted³ that:

(i) The 1858 Deed merely granted permission to construct a bungalow. It also granted rights in that bungalow;

(ii) The 1858 Deed did not grant any right over the land over which bungalow was to be constructed. There is nothing in this document to indicate that any right over the land was transferred;

(iii) The rights can only be transferred by specific words. The 1858 Deed specifically grants rights in the constructions but does not say a word about the land;

(iv) The property is recorded in the nazul register. There is presumption of correctness of the nazul register. There is no evidence to rebut it;

(v) The word licence was defined under the Indian Contract Act, 1872 and thereafter under the Indian Easement Act 1882. Both these Act came into existence after execution of the 1858 Deed. However the entire transaction was akin to a licence for making a bungalow and only the rights in that bungalow were granted;

(vi) The principle of licence u/s 62 of the Easement Act are general principles of licenses and are applicable in this case;

(vii) In pursuance of the permission the bungalow was also constructed. This building was affected by the licence. At present the bungalow is destroyed and the licensee or its assignee cannot exercise their rights. The licence is deemed to be revoked on the principles mentioned in Section 62(d) of the Easement Act;

(viii) In the written statement, it is mentioned that the construction by the original beneficiary fell down in 1972-73 . This may or may not be correct but it is irrelevant--as according to the Plaintiff's own case in the plaint, the building had fallen down before filing the suit and was not in existence.

73. There appear to be force in the submission of the counsel for the State as prima facie the 1858 Deed grants permission only to construct a bungalow and rights in that bungalow. There is no reference of granting any rights over the land; there is also no clause conveying the land. However, we decline to go into this question as the Defendant themselves have determined and admitted the status of the Plaintiff in the subsequent deed.

74. The southern portion of the land over which building was permitted to be constructed by the 1858 Deed has been leased out to Laxman Das. It has been done by three different deeds:

(i) Lease deed dated 22.2.1953 executed by the Plaintiff in favour of Laxman Das (the 1953 Deed);

(ii) Lease deed dated 26.1.1956. It is a tripartite document between the Plaintiff, defendant and Laxman Das (the 1956 Deed);

(iii) Registered deed dated 12.5.1960 executed by the Defendant in favour of Laxman Das (the 1960 Deed).

75. The 1953 and 1956 Deeds were not part of the record in the suit but are filed alongwith the stay application by the Defendant in the appeal. They are not disputed by the Defendant. In fact, during arguments the counsel for the Defendant placed reliance on them. We did not consider it, as it was not part of the record and also for the reason that the 1960 Deed was subsequently executed by the Defendant and it finally determines the status of the Plaintiff.

76. The 1960 Deed was filed by the Plaintiff and it is part of the record. It's relevant part is reproduced as "Appendix-2" to this judgment. The 1960 Deed mentions about the 1956 deed also.

77. The 1960 deed describes status of the plaintiff as perpetual lessee and it further records that the question of nature of the Plaintiffs right was reconsidered by the Defendant at the request of Laxman Das and after examining it they were satisfied that the Plaintiff held the land on lease in perpetuity. This is not only the admission on the part of the Defendant but the 1960 Deed also records that the Defendant had determined the status of the Plaintiff over the land after consideration.

78. This determination is admission of the Defendant. It is conclusive proof of the status of the Plaintiff as neither any explanation for the same has been offered, nor any action has been taken against Laxman Das.

79. The land in 1858 Deed comprises of northern portion that is at present land of the 1960 Deed and the southern portion that is the land in dispute. The nature of rights in the entire land is one and the same. There is no difference between the two. It is not possible that the Plaintiff is perpetual lessee of the northern part and merely licensee for the southern part of the land of the 1858 Deed.

80. The State should not and in our opinion cannot discriminate between its high official Laxman Das, who is occupying the northern part and the Plaintiff deity, which is claiming rights in the southern part of the land that originate from the same source namely the 1866 Deed.

81. There is nothing to show that the perpetual lease was cancelled. In fact it was not even the case of the Defendant that the Plaintiff was a lessee; there is no question of cancelling it.

82. In view of above,

? It is held that the Plaintiff holds the lease in perpetuity for the property in dispute;

? As the lease was not cancelled, the Plaintiff is entitled to permanent injunction.

83. We would also like to record that some arguments were raised before us on the point whether merely on the basis of possession injunction could be granted or not.

(i) The counsel for the Plaintiff had submitted⁴ that:

? The Plaintiffs are in possession of the property in dispute;

? They cannot be forcibly evicted; and

? They are entitled to injunction.

(ii) Whereas, the counsel for the Defendant had submitted⁵ that:

? The State is owner of all land;

? The Plaintiff has no legal right over the property in dispute;

? No injunction can be granted against the real owner merely on the basis of the possession unless better title or atleast some rights are established;

? The land is recorded as nazul land in the nazul register since starting of the nazul register i.e. from beginning of the last century. No injunction can be granted on the land recorded as nazul unless superior title is established;

? The Plaintiff neither has better title nor has established any right The only right he had was to enjoy the building. It has come to an end with the falling down of the building.

? The Plaintiff is not entitled any injunction.

We have already held that the Plaintiff is entitled to permanent injunction. It is not necessary to consider these submissions.

A SUGGESTION

84. While deciding the first point, we have mentioned that this case was not properly conducted. In deciding a case, not only good knowledge of law and appreciation of evidence is necessary but one must know how to conduct a trial. This cannot be taught in the law schools, but the right place is the judicial training institutes.

85. We have a judicial training institute at Lucknow. This procedural aspect of conducting a trial should be specially emphasised during training of the judicial officers. With these words, we leave the matter.

CONCLUSIONS

86. Our conclusions are as follows:

(a) The document mentioned in paragraphs 9 and 10 under the heading "THE FACTS" are admissible and are taken into consideration without formerly noting down the exhibit numbers;

(b) The 1858 document was in respect of the land as alleged by the Plaintiff;

(c) The property, which was subject matter of 1858 Deed, was validly assigned to the Plaintiff;

(d) The Plaintiff is lessee in perpetuity of the land in dispute; and

(e) The lease has not been terminated; and

(f) The plaintiff is entitled to an injunction.

In view of our conclusions, the appeal is dismissed.

Appendix-1

(Devnagri transcription and English translation done by Sri Nasruddin Urdu translator in the High Court and Shri A.A. Khan guide in the High Court museum.

This text is also agreed by the counsel for the parties.)

Transcription in Devnagri

English Translation

Sahab Mushifiq, after Nice meeting with my friends Shah Kundan Lal and Shah Phoondan Lal, it came to my notice that Lala Roshan Lal does not build the bungalow, but he is ready to give his land for construction of bungalow. A piece of land is available. Hence, you are requested to built your bungalow at the earliest on that land at your own cost. Be it known further that the bungalow to be built by you would not be in the ownership of the Government, it would remain under your ownership. Apart from this permission, I wish to make one more request with you that if have any dress kindly sent it to me as a sample, if it is liked by me some more dress may be asked for. If you have no objection, you may start the work for construction of bungalow by tomorrow.

On the back of the document

Today dated 10th April 1858

Musammi

Versus

Smad Kha

17th September 1885

13th December 1900

Har Prasad Vakil

Lal Beni Madhav Vakil

Appendix-2

AND WHEREAS in view of the said assignment and in order to assure to the second party the possession over the said land the said Sri Thakurji Mahraj Radha Ramanji and the parties hereto executed an Indenture dated the twenty sixth day of January. One thousand nine hundred and fifty-six registered as No. 553 in Book No. 1 Volume 527 on pages 139 to 150 on the sixteenth day of May, One thousand nine hundred fifty six at the office of the sub-Registrar, Mathura;

AND WHEREAS the second party claimed that the said Sri Thakurji Mahraj held the aforesaid [and on lease in perpetuity and made a request that his status as assignee of the lessee's rights in perpetuity be reconsidered, and the State government has at the request of the second party examined and are satisfied that the claim of the second party is correct;

AND WHEREAS it has been agreed between the parties hereto finally to set as rest the said controversy and also to recognise the status of the second party as

assignee of rights as permanent lessee that the assignment by way of lease in perpetuity may be executed;

NOW THEREFORE IN PURSUANCE of the said agreement and in supersession of the Indenture dated the 26th day of January, 1956, the first party hereby confirms and demises to the second party ALL THAT plot of land described in the Schedule hereto and delineated on the plan annexed hereto and thereon shown and marked ABCDE in red colour NO HOLD the said premises from the twenty second day of February one thousand nine hundred and fifty three in perpetuity PAYING THEREFOR the yearly rent of Rs. 10/- on the thirty first day of December in each year at the office of the Collector, Mathura or at such other place or places as the State Government may appoint in this behalf.

THIS INDENTURE made on the twelveth day of May one thousand nine hundred and sixty BETWEEN the Governor of Uttar Pradesh (hereinafter called "the first party") of the one part AND Sri Lakshman Das Bhargava son of Pt. Govind Das Bhargava, permanent resident of Mathura (hereinafter called the second party) of the other part;

WHEREAS Sri Thakurji Mahraj Radha Ramanji held the land, described in the Schedule hereto as a perpetual lease;

AND WHEREAS the said Sri Thakurji Mahraj Radha Ramanji through his Manager and Sarbarakar assigned the premises aforesaid to the second party and the State Government also concurred in the said assignment;

1 We are thankful to the counsel for the parties for looking into part of the judgment under heading "The Facts", "Point for determination", "First to Fourth Points", and the "Appendix-1". Yet if there are any mistakes, they are ours.

2 The counsel for the Plaintiff relied upon the following rulings:

(i) Sahebzada Mohammad Kamgar Shah Vs. Jagdish Chandra Deo Dhabal Deo and Others, ;

(ii) Delhi Development Authority Vs. Durga Chand Kaushish, ;

(iii) C. Periaswami Goundan and Others Vs. Sundaresa Iyer and Others, ;

(iv) Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, .

3 The counsel for the Defendant referred to Form F grant of land for building purposes under the nazul manual and cited cited the following rulings in support of his submissions (i) to (iv):

(i) Raj Singh Vs. The Union of India and Others, ;

(ii) Jhunni Lal v. Ghasi, AIR 1973 All 302;

(iii) Gaya Prasad and Others Vs. Gulab Chand and Others ;

- (iv) Mohsin Ali and Others Vs. State of Madhya Pradesh, ;
- (v) Raja Rajinder Chand Vs. Sukhi, ;
- (vi) Shree Gujarati Harijan Co-operative Housing Society Ltd. Vs. Additional Collector, Bombay Suburban District and another, ;
- (vii) Delhi Development Authority Vs. Durga Chand Kaushish, ;
- (viii) Nirod Baran Banerjee Vs. Dy. Commissioner of Hazaribagh, ;
- (ix) Pheku Chamar and Others Vs. Harish Chandra and Others, ;
- (x) M. Sahai v. Gopeshar Bahu, 1953 ALJ 303;
- (xi) Sri Girdhari Mahraj v. Chhote Lal, ILR 20 All 248 : 18 AWN 27;
- (xii) Commentary on U.P. Tenancy Act, 14th Edition by M.L. Agarwal page 1022 Appendix-G "Certain customary Rights".

The counsel for the Defendant cited the following rulings for the in support of his submissions (v) to (viii):

- (i) Chandu Lal Vs. Municipal Corporation of Delhi, ;
- (ii) Satya Narain Lal v. Bansh Bahadur Lal, 1979 All LJ 441 (Paragraph 16);
- (iii) Raghubir Saran and Others Vs. Param Kirti Saran, ;
- (iv) Bhaga and Others Vs. Girwar and Others, ;
- (v) Dhool Singh Vs. Smt. Bardhu Bai and Others, .

4 The counsel for the plaintiff had cited the following decisions in his support that such injunction could be granted:

- (i) Rama Gowda v. M. Varadappa Naidu, 2004 (54) (SC) ALR 725 Supreme Court;
- (ii) Ramesh Chand Ardawatiya Vs. Anil Panjwani, .

5 The counsel for the Defendant has cited the following rulings in his support:

- (i) Moran Mar Basselios Catholicos and Another Vs. The Most Rev. Mar Poulouse Athanasius and Others, ;
- (ii) Chandu Lal v. Municipal Corporation, AIR 1973 Del 174 (Paragraph 26);
- (iii) R. Hanumaiah and Another Vs. Secretary to Government of Karnataka, Revenue Department and Others, ;
- (iv) Hanumanthappa v. Muniarappa, 1997 (88) RD 41;
- (v) Tamil Nadu Housing Board Vs. A. Viswam (Dead) by Lrs., .