

(1965) 05 PAT CK 0002

In the Patna High Court

Case No : Letters Patent Appeal No. 9 of 1959

Surajmal Marwari and Others

APPELLANT

Vs

Rampearaylal Khandelwal and Others

RESPONDENT

Date of Decision : 12-05-1965

Acts Referred:

Evidence Act, 1872 — Section 116

Transfer of Property Act, 1882 — Section 108, 111, 116

Citation : AIR 1966 Patna 8

Hon'ble Judges : S.C. Misra, J;G.N. Prasad, J

Bench : Division Bench

Advocate : Ray Paras Nath and B.P. Rajgarhlia, for the Appellant; Lalnarain Sinha and S.B. Sanyal, for the Respondent

Final Decision : Dismissed

Judgement

G.N. Prasad, J.—This is an appeal by the principal defendants (defendants 1 to 3) in a suit instituted by the plaintiff respondent for declaration of his title to and recovery of khas possession over a house property comprised in plot No. 463 of Mauza Kirkend within Pargana Jharia. There was also a claim for damages for use and occupation of the property.

2. It is now undisputed that the property which originally belonged to the defendants or their predecessor in interest was conveyed to the plaintiff by a registered sale deed (Ext. 1) dated the 9th October 1922 for a consideration of Rs. 5,000/- made up of certain earlier dues of the defendants to the plaintiff. It is also undisputed that after the title had passed to the plaintiff, the defendants continued in possession of the property as tenants under the plaintiff. A letter (Ext. 13/-e) acknowledging the tenancy was written by Lachmi Narain, the father of the principal defendants, on the very day on which the sale deed (Ext. 1) was executed, and the rent agreed upon was Rs 7.8.0 per month for a portion of the house. Subsequently, other documents described as Kirayanamas were executed by Lachmi Narain, whereby the defendants became tenants in respect of the

entire house. The last of such Kiryanamas was executed by Lachmi Narain in Magh 1988 corresponding to sometime in 1932. The defendants paid rent to the plaintiff in terms of the agreement until 1938.

3. On the 3rd January 1945, the plaintiff gave a pleader's notice to quit (Ext. 6) calling upon the defendants to vacate the house and to restore the plaintiff to possession over it at the expiry of Magh 2001 Sambat. The case of the plaintiff is that thereafter he made further demands for vacant possession of the house from the defendants, but the defendants failed to restore possession to him. Accordingly, he instituted the present suit for the reliefs mentioned above on the 9th March 1953.

4. The defence put forward by the principal defendants so far as they are now relevant, was that the relationship of landlord and tenant between them and the plaintiff came to end with effect from the 22nd February 1933, that is to say, upon the expiry of one year from the date of execution of last Kiryanama (Ext. 13/b) in favour of the plaintiff. According to the defendants, after that day, they began to exercise acts of ownership over the property in suit and paid Choukidar taxes and Water Board tax in their capacity as owners of the property. In this way, they remained in adverse possession over the property at least from 1938-39 when they had stopped the payment of rent to the plaintiff. Such adverse possession having continued for over twelve years, the defendants had become absolute owners of the property and, therefore, the suit instituted in 1953 was, barred by limitation.

5. The defence of adverse possession succeeded in the trial Court which, accordingly, dismissed the suit. On appeal, however, the learned Single Judge reversed the decision of the trial Court and decreed the suit holding that the relationship of landlord and tenant which subsisted between the parties continued until the 3rd January, 1945, when the plaintiff determined the tenancy by the notice (Ext. 6), and that the suit having been "instituted within twelve years from that date, was not barred by limitation in view of Article 139 of the Limitation Act, 1908. Hence this appeal by the principal defendants under the Letters Patent.

6. The only question for our decision is what was the starting point of limitation in this case. In other words, when did the relationship of landlord and tenants cease. According to the plaintiff, the tenancy came to an end by virtue of the notice (Ext. 6) which was a notice to quit in terms of Clause (h) of Section 111 of the Transfer of Property Act (hereinafter referred to as the Act) and the suit instituted within twelve years of the expiration of the said notice to determine the lease is within time. As against this the case of the principal defendants is that the tenancy was determined by efflux of time upon expiry of one year from the date of the last kiryanama (Ext. 13/b) which had been executed by Lachmi Narain in favour of the plaintiff on the 21st February, 1932. Since, however, the defendants had continued to pay rent to the plaintiff until 1938, the relationship of landlord and tenant may have continued until that year, but after 1938, such

relationship has ceased and the defendants were in possession of the property as trespassers to the knowledge of the plaintiff for more than twelve years before the institution of the suit.

7. The stand taken by the principal defendants is manifestly untenable having regard to the provisions of Clause (q) of Section 108 read with Clause (a) of Section 111 of the Act. Clause (a) of Section 111, no doubt, provides that a lease of immovable property is determined by efflux of the time limited thereby. But Clause (q) of Section 108 lays down that on the determination, the lessee is bound to put the lessor in vacant possession of the property. Having regard to these two provisions, it is abundantly clear that when the term of a lease has expired, the lessee can determine the lease by fulfilling his obligation of putting the lessor into possession of the property. But if the lessee does not put the lessor into possession of the property, and on the contrary, remains in possession thereof then he does not become a trespasser in relation to the property, but his status is that of a tenant on sufferance. Such a case is governed by Section 118 of the Act which is in the following terms :

"If a lessee or underlessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or underlessee, or otherwise to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year or from month to month, according to the purpose for which the property is leased, as specified, in Section 106."

In such a situation, it is open to the lessor to determine the lease by a notice as provided in Clause (h) of Section 111, and so long as the lessor does not exercise his option in the matter and assents to the lessee continuing in possession, the relationship of landlord and tenant does not legally come to an end. It is clear from the provisions of Section 116 quoted above that the lease is renewed from year to year, or from month to month, as the case may be, not only where the lessee is continuing in possession of the property and pays rent to the lessor or his legal representative, which the latter accepts, but also where the lessor otherwise assents to the lessee continuing in possession.

8. It is clear from the relevant provision of the Act referred to above that even after the 22nd February 1933, the principal defendants had remained in possession of the property as lessees under the plaintiff who had accepted rent from them at least till 1938 and, thereafter the plaintiff had assented to the defendants continuing in possession thereof by taking no steps to determine the lease until the expiry of the notice to quit (Ext. 6) which they gave in terms of Section 111(h) a to the defendants on the 3rd January 1945. It follows that the relationship of landlord and tenant did not automatically come to an end with effect from the 22nd February 1933 or even after the last payment of rent in 1938 so as to convert the possession of the defendants as lessees into their possession as trespassers. It is true that the defendants had paid Choukidari tax in their own names since 1937, as the Choukidari receipts, Exts. C. series would

show. They had also paid the water tax in their own names since 1941-42, as the receipts (Exts. D. series) granted to them by the Jharia Water Board would show. They purported to make these payments as owners, and not as mere occupiers; but merely by making such payments of taxes and rates even as owners, the defendants could not lawfully put an end to the relationship of landlord and tenant until they had offered to put the plaintiff in possession of the property in accordance with Section 108(q) of the Act. Such payments would be of no avail to the defendants until they had lawfully put an end to the relationship of landlord and tenant by putting or offering to put the lessor into possession of the property upon expiry of the terms of the lease as mentioned in the last Kirayanama (Ext. 13/b). It follows that even after the 22nd February 1933 or after 1938, the defendants were holding over in terms of Section 116 of the Act, in consequence of which the relationship of landlord and tenant between the parties was continuing until January 1945, when the plaintiff gave the notice to quit (Ext. 6). It is also clear that so long as the relationship of landlord and tenant was subsisting by "virtue of Section 116 of the Act, it was not open to the defendants to deny the title of the plaintiff.

In this connection I may also refer to Section 116 of the Evidence Act which provides :

"No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable-property by the licence of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such license was given."

This section, in terms, no doubt refers to the title of the landlord at the commencement of the tenancy, but it is clear from the decision of the Privy Council in *Bilas Kunwar v. Desraj Ranjit Singh* 42 Ind App 202 :AIR 1915 P C 98 that the rule of estoppel laid down in the section also applies to a tenant so long as he has not openly restored possession by surrender to his landlord.

9. Another principle which is well established is that so long as the relationship of landlord and tenant has not been lawfully determined by the tenant by discharging the obligation which rests upon him u/s 108(q) of the Act, he cannot claim a higher right in the leasehold property by prescription against his landlord. This principle was laid down by a Division Bench of the Madras High Court in *Seshamma Shettati v. Chickaya Hegade* ILR 25 Mad 507, where it was held that a person who had lawfully come into possession of land as tenant from year to year or for a term of years, or as mortgagee, cannot, By setting up, during the continuance of such relation, any title adverse to that of the landlord or mortgagor, as the case may be, inconsistent with the real legal relation between them,--and that however notoriously and to the knowledge of the other party -- acquire, by the operation of the law of limitation, title as owner or any other title inconsistent with that under which he was let into possession. It was further laid

down in this decision that if, after the determination of the tenancy, the tenant remains in possession as trespasser for the statutory period, he will, by prescription, acquire a right as owner or such limited estate as he might prescribe for. Therefore, before the defendants can claim any right by prescription they must establish that they had determined the tenancy by putting or offering to put the plaintiff in possession of the property. There is absolutely no material on the record that any such step was taken by the defendants to put an end to the tenancy until the plaintiff himself determined the tenancy by the notice to quit (Ext. 6).

10. I may also refer to two decisions of the Privy Council, in both of which the opinion of the Board was expressed by Sir John Edge, namely, *Madhavrao Waman v. Raghunath Venkatesh* ILR 47 Bom 798 : (AIR 1923 P C 205) and *Nainapillai Marakayar v. Ramanathan Chettiar* ILR Mad 337 : (AIR 1924 P C 65) . The principle laid down in these two decisions is that no tenant of lands in India can obtain any right to a permanent tenancy by prescription in them against his landlord from whom he holds the land. It is true that the tenants in possession in both these cases were claiming a right of permanent tenancy by prescription, although they were not let into possession as permanent tenants, but the same principle must apply where a tenant who has been let into possession by the landlord claims title as absolute owner by prescription against the landlord. Upon the authorities referred to above, it is manifest that the defendants cannot successfully assert their claim of absolute title against the plaintiff.

11. On behalf of the appellants, reliance was, however, placed upon a Bench decision of the Madras High Court in *Vadapalli Narsimham v. Dronamaraju Seetharamamurthy* ILR Mad 163, wherein it was held that a tenant holding over after the expiry of his term becomes a tenant on sufferance and the landlord's assent alone will suffice to convert such a tenancy into a tenancy from year to year, or from month to month, according to the nature of the original lease. But the representatives of a tenant on sufferance are mere trespassers, and the lessor cannot, by his assent alone, convert such representatives into tenants without their concurrence. Upon the authority of this case, it was contended by the learned counsel for the appellants that the principal defendants being the representatives of Lachmi Narain, the original tenant, were meretrespassers, who could not be converted into tenants by the mere assent of the plaintiff in allowing them to continue in possession. In raising this contention, the learned counsel has assumed that the principal defendants had no interest in the leasehold property during the lifetime of Lachmi Narain, that Lachmi Narain was the tenant in his individual capacity and that the principal defendants succeeded to his interest after his death and remained in possession of the property for more than twelve years after Lachmi Narain's death. But the materials on the record do not justify these assumptions. According to the case of the plaintiff set out in the plaint, Lachmi Narain had taken the lease of the house on behalf of his joint family. This is apparent from paragraph 10 of the plaint wherein it has been said :

"Accordingly, the said Lachminarain, father of the principal defendants, the then Karta of Lachmi-Narain Surajmal firm, took rent of a part of the house on a monthly rental of Rs. 7-8-0 and in token thereof wrote in favour of the said Murlidhar on the same date, i.e., on Kartik Badi 3, Sal 1979 Sambat corresponding to 9-10-1922, a letter acknowledging the monthly tenancy of the part of the house referred to above and described in the schedule below."

No doubt, in paragraph 25 of the written statement, the principal defendants alleged that they had separated from Lachmi Narain during his lifetime more than twenty-five years ago and the property in suit had fallen to the share of these defendants who were in possession thereof in their own right to the exclusion of Lachmi Narain and the other members of their family. But no issue was raised on this point and, therefore, no finding has been arrived at, either by the trial Court or by the learned Single Judge, one way or the other. At any rate, the stand now taken on behalf of the principal defendants to the effect that they acquired interest in the suit property after the death of Lachmi Narain is contrary to the case which they sought to make out in their written statement. The defendants have also led no evidence on the point as to when Lachmi Narain died or that he died more than twelve years before the institution of the present suit. Therefore, it is not possible to proceed upon the assumption that the principal defendants had no interest in the suit property during the lifetime of Lachmi Narain and that they were in possession thereof for more than twelve years before the institution of the suit as heirs of Lachmi Narain. As the averments in the plaint stand, it is manifest that the defendants were the tenants of the house property along with Lachmi Narain from the very inception. This part of the plaintiff's case has not been negatived and; therefore, it is not open to the principal defendants to urge at this stage that only Lachmi Narain was the lessee who was holding over after the expiry of the term, of the lease, and that after his death, the defendants were in possession as trespassers.

In Vadapalli's case I L R Mad 163, the lessee was one Sanyasi and he took the lease in January 1884 for a term of three years ending in April 1887, and paid rent to the landlord till 1887. He did not pay any rent after the expiry of the term of the lease and died in 1889, whereupon defendants Nos. 2 to 6 in that suit entered upon the property as his representatives. But they did not pay any rent for the property until the institution of the suit in 1903. In these circumstances, the learned Judges of the Madras High Court held that there was no evidence of any assent on the part of the landlord during Sanyasi's life which could have converted him from a tenant on sufferance into a tenant in the true sense of the term either at will or from year to year. That was, therefore, a case in which defendants Nos. 2 to 6 had no interest in the leasehold during Sanyasi's lifetime and the landlord also had not assented to Sanyasi's holding over as a tenant beyond the term of the original lease. After entering upon the property defendants Nos. 2 to 6 also did not acknowledge the tenancy by paying rent to the landlord. It was in these circumstances that the learned Judges of the Madras High Court took the view that defendants Nos. 2 to 6 were mere trespassers and

the lessor could not by his assent alone convert them into tenants without their concurrence. As I have pointed out above, the situation in the present case is entirely different. Here it has not been shown that the principal defendants entered upon the property for the first time after Lachmi Narain's death. Besides, the plaintiff had assented to Lachmi Narain holding over after the expiry of the lease by accepting rent from him until 1938. Therefore, the defendants must be deemed to have continued in possession of the property on the same term as Lachmi Narain. They cannot claim to have inherited any higher right or lesser obligations than those governing Lachmi Narain. I must, therefore, overrule the contention of the learned Counsel that the principal defendants were mere trespassers over the property after Lachmi Narain's death. It follows that the tenancy was validly determined in January 1945 by the notice to quit (Ext. 6).

12. From the foregoing discussions, it is abundantly clear that the starting point of limitation for the present suit was the expiry of the period of notice which the plaintiff gave to the defendants on the 3rd January 1945, and that the suit having been instituted within twelve years of that date, is not barred by limitation.

13. The result, therefore, is that the decision of the learned single Judge is upheld and the appeal is dismissed with costs payable to the plaintiff-respondent.

Misra, J.

14. I agree.