Jagadguru Gurushiddaswami

Vs

Dakshina Maharashtra Digambar Jain Sabha.

Civil Appeal No. 187 of 1952

(M. C.Mahajan, B. K. Mukherjea, B. Jagannath Das JJ)

14.10.1953

JUDGMENT

MUKHERJEA J. -

This appeal is directed against a judgment and decree of a Division Bench of the Bombay High Court dated October 19, 1949, affirming, in appeal, those of the Civil Judge, Hubli, passed in Special Suit No. 21 of 1924.

The fact of the case lie within a short compass and the whole controversy, so far as this appeal is concerned, centers round the short point as to whether or not the plaintiff's suit is barred by limitation. Both the courts below have decided this point against the plaintiff and he has come up on appeal before us.

To appreciate the contentions that have been canvassed before us, a brief resume of the material facts will be necessary. The plaintiff appellant in the spiritual head or Mathadhipati of a Lingayet Math known as Murusavirmath situated within Hubli Taluka in the district of Dharwar. On November 13, 1887, Gurusidhwaswami, who was the then head of this religious institution, granted a permanent lease of a tract of land belonging to the Match and forming part of R. S. No. 34, in favour of one Pradhanappa and the rent agreed to be paid by the lessee was Rs. 50 per annum for the first six years and thereafter at the rate of Rs. 25 annually. On June 19, 1892, Pradhanappa sold a portion of the leasehold property, which is described in Schedule 1(b) to the plaint, to a person named Bharamappa. In 1897 Gurusidhwaswami died and was succeeded by his disciple Gangadhar Swami who did not repudiate the permanent lease granted by his predecessor and went on accepting rents from the lessee in the same way as before. In April, 1905, another part of the land, which is described in Schedule 1(a) to the plaint, was put up for sale in execution of a decree against Pradhanappa's heirs and it was purchased by one Kadayya, and Kadayya in his turn sold the same to Bharamappa who had already purchased Schedule 1(b) plot by private purchase. On April 8, 1910, Bharamappa made a gift of the entire premises consisting of plots 1(a) and 1(b) to the Dakshina Maharashtra Digambar Jain Sabha, a registered body, for the purpose of building a school upon it for the education of Jain students. On August 31, 1920, Gangadhar Swami died and for some time after his death the affairs of the Math were in the hands of a committee of management. On November 25, 1925, the present plaintiff Gurusidhwaswami became the head of the Math. On August 27, 1932, the plaintiff instituted a suit, being Suit No. 80 of 1932, against the heirs and successors of Bharamappa for recovery of possession of the land comprised in the permanent lease on the allegation that there being no legal necessity for granting the lease, the alienation was not binding on the Math and became void on the death of the last Mahant. The Jain Sabha was impleaded as defendant No. 23 in the suit, but under a wrong name. The suit was dismissed by the

trial judge but on appeal by the plaintiff to the High Court of Bombay, the trial court's judgment was reversed and the plaintiff's claim for khas possession was allowed in respect of the suit land against all the defendants with the exception of defendant No. 23 who was dismissed from the suit on the ground of misdescription. The judgment of the High Court is dated the 26th of November, 1942. On 3rd December, 1943, the plaintiff appellant commenced the present suit against the respondent Jain Sabha claiming khas possession of the land gifted in its favour by Bharamappa, alleging that as the original permanent lease was not binding on the Math for not being supported by legal necessity, the defendant could not acquire any title by grant from the successor of the lessee. The defendant Sabha resisted the suit and the two material questions round which the controversy centered were : (1) whether the original permanent lease was supported by legal necessity, and even if it was not, (2) whether the plaintiff's suit was barred by limitation under article 134-B of the Indian Limitation Act ? The trial judge decided the first point in favour of the plaintiff, but on the question of limitation the decision was adverse to him. The result was that the plaintiff's suit dismissed. Thereupon the plaintiff took an appeal to the High Court of Bombay and the learned Judges, who heard the appeal, concurred in the decision of the court below and dismissed the appeal and the suit. It is the propriety of this decision that has been challenged before us in this appeal.

Both the courts below have held that a suit of this description is governed by article 134-B of the Limitation Act and the period of limitation is 12 years computed from the date when the previous Mahant died. The plaintiff's predecessor admittedly died in 1920 and the suit was brought more than 12 years after that and hence it was time-barred.

To get round the plea of limitation, the learned Attorney-General, who appeared in support of the appeal, has put forward a two fold contention. It is argued in the first place that the decree for ejectment, which was passed in favour of the plaintiff and against the heirs of Bharamappa in the earlier suit of 1932, was binding on the present defendant on the principle that a decree against a lessee binds the sub-lessee as well. The defendant, therefore, was not competent to resist the plaintiff's claim for possession which was already allowed in the previous suit. The other ground urged is, that limitation is saved in this case by virtue of the provision of section 10 of the Indian Limitation Act.

So far as the first ground is concerned, it may be stated at the outset that even if the appellant's contention is right, the present suit would be barred under section 47 of the Civil Procedure Code and the proper remedy of the plaintiff would be to apply for execution of decree in the previous suit. This difficulty, however, is not insuperable, as under section 47 of the Civil Procedure Code the court is empowered to treat a suit as an execution proceeding, when there is no question of limitation or jurisdiction standing in the way of the plaintiff. In our opinion, however, the contention as put forward by the learned Attorney-General cannot succeed. It may be assumed as a proposition of law that a sub-lessee would be bound by a decree for possession obtained by the lessor against the lessee, no matter whether the sub-lease was created before or after the suit, provided the eviction is based on a ground which determines the sub-lease also (Vide Sailendra v. Bijan, 49 C.W.N. 133; Yusuff v. Jyotish Chandra, I.L.R. 59 Cal. 739.). But there seem to be two insuperable difficulties in the way of applying that principle to the facts of the present case. In the first place, the suit of 1932 was not by a landlord or ex-landlord against his tenant for evicting him from the leasehold premises basing his claim on the ground of determination of tenancy. The Mahant, who created the permanent lease in 1887, might not have been able to derogate from his grant and the lease might be taken to be valid so long as the alienating Mahant lived. As soon as he died, it was open to his successor to repudiate the lease and recover possession of the property on the ground that the alienation was not binding on the endowment. In the present case the immediate successor of the alienating Mahant

consented to the lessee's continuing in possession of the property and thereby he might be treated as creating an interest in the lessee commensurate with the period of his lifetime or the tenure of his office. After his death, however, his successor did not accept any rent from the lessee or otherwise treated the lease as subsisting and in 1932 he brought the suit for recovery of possession of the property against the successors of the original lessee on the footing that they did not acquire any title by the grant which, being unsupported by legal necessity, was not binding on the Math. This was not a suit by a landlord against his tenant; it was a suit by the holder or manager of the Math to recover possession of Math property which was improperly alienated by his predecessor on the ground that the defendant became a trespasser as soon as the previous Mahant died and the plaintiff was entitled to recover possession on proof of his title.

Quite apart from this, the other difficulty is equally formidable for it does not appear to us that the defendant Jain Sabha was at all a sub-lessee under Bharamappa or his heirs. We have gone carefully through the document executed by Bharamappa in cased of the Jain Sabha. Both in form and in substance it is a deed of gift and not a sub-lease. The gift, it seems, was made for a specific purpose, namely, for construction of a school building upon the site which was to be used for the education of the boys and girls of the Jain community, and it was for this reason that the deed provided that on the contingency of the school being removed from the site or its ceasing to exist, the land would revert to the donor. The attaching of a condition like that to a deed of gift could not, in our opinion, convert it into a sub-lease. It is clear, therefore, that the suit of 1932 was not a suit for eviction instituted by a lessor against his lessee, nor could the present defendants be regarded as a sub-lessee under the defendants in the earlier suit. It may be unfortunate that by reason of a pure misdescription, the earlier suit was dismissed against the Jain Sabha, but that is altogether irrelevant for our present purpose. In our opinion, the first contention of the Attorney-General must fail.

As regards the other ground raised by the Attorney-General, we are of opinion that the point is without any substance, and section 10 of the Indian Limitation Act is of no assistance to the plaintiff in the present case. In order that a suit may have the benefit of section 10, it must be a suit a against a person in whom the property has become vested in trust for any specific purpose or against his legal representatives or assigns, not being assigns for valuable consideration. It may be taken that the word "assign" is sufficiently wide to cover a lessee as well; but the difficulty is, that as the lease was for valuable consideration, the case would come within the terms of the exception laid down in section 10 and consequently the defendant would not be precluded by reason of the fact that the property was to his knowledge a trust property, from relying on the provisions of the statute which limit the time within which such suits must be brought. The Attorney-General contended rather strenuously that the transfer here was not for valuable consideration inasmuch as the rent reserved for a large tract of land which has immense potential value was Rs. 50 only for the first six years and then again it was to be reduced to Rs. 25 which would continue all through. We desire to point out that the expression "valuable consideration" has a well-known connotation in law and it is not synonymous with "adequate consideration". It may be that judged by the standard of modern times, the rent reserved was small, but as has been found by both the courts below the consideration was not in any sense illusory having regard to the state of affairs prevailing at the time when the transaction took place. This is a concurrent finding of fact which binds us in this appeal. The result is that, in our opinion, both the contentions raised by learned Attorney-General fail and this appeal must stand dismissed with costs.

Appeal dismissed.

Agent for the appellant : Rajinder Narain.

Agent for the respondent : Naunit Lal.

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