

Ram Gopal and Another

Vs

Alladia and Others

Civil Appeal No. 1642 of 1966

(J.C. Shah, K.S. Hegde JJ)

27.11.1969

JUDGMENT

HEDGE, J. -

1. This is an appeal by special leave. The plaintiff is the appellant. He sued for the possession of the suit properties after issuing a notice purporting to terminate the tenancy of the defendants (respondents in this appeal). The case of the plaintiff is that the defendants are monthly tenants. The Trial Court as well as the 1st appellate Court upheld the contention of the appellant and decreed the suit for possession. In Second Appeal, the High Court reversed the decree and judgment of the Courts below and dismissed the suit on two grounds. In firstly held that as the defendants have become Bhumidars under the provisions of the U.P. Urban Areas Zamindari Abolition and Land Reforms Act (U.P. Act 9 of 1957), they cannot be evicted. Secondly it came to the conclusion that the defendants are licensees and not lessees and as such they could not be evicted.

2. One Mst. Isa Bela and her children were the owners of the suit properties. They entered into a registered agreement with Masita, to construct a house on the suit properties. The agreement in question was entered into in the year 1911. It is marked as Exh. Ka-6 in the case. That document was signed only by Masita. Admittedly Isa Bela and her children agreed to the terms embodied in the document. Under that document Masita was to pay rent to Isa Bela and her children at the rate of Rs. 4/- per annum. The document further says :

"Firstly that I shall continue to pay the rent annually in the office of the proprietors, aforesaid, at Mauza Mussorie or to their Karinda. I shall take a receipt for the same from the Manager, duly signed by him. Without the receipt any objection regarding the payment of rent shall be invalid. If the rent, aforesaid, remains unpaid, I shall immediately be liable to be ejected. Secondly that I shall take away the entire material existing in the house, within one month after I vacate the same. I shall, thereafter, vacate the land. If during this period, I, the executant or my representative and successors do not remove the materials or do not vacate the land, the proprietors, aforesaid, shall have the right to take the materials in their proprietary possession and occupation. I, the executant, my representatives or successors or the owner of the materials shall have no claim to any cost or material against the proprietors, aforesaid. Thirdly, that I shall no sublet the house aforesaid to any other person on rent on my own behalf and on my own authority nor I shall allow any one to settle therein. If I do so, the proprietors aforesaid shall at all times, have the right to get their house vacated under these circumstances and eject us therefrom. I shall have no objection."

3. In pursuance of the afore-mentioned agreement the suit property was put in the possession of Masita. The house put up by Masita was reconstructed by the defendants. The defendants have been regularly paying Rs. 4/- per annum to the owners of the suit property. It is not said that they had contravened any of the terms in the agreement. The original owner sold the suit property to one Babu Ram who in turn sold the same to the plaintiffs. The plaintiffs have brought this suit on the basis of the agreement entered into in 1911.

4. The principal question debated before the High Court and the courts below is whether Exh. Ka-6 evidences a lease or a licence ? It may be noted that the agreement was entered into in the year 1911 long before the third into that section. But for our present purpose, it is not necessary for us to go into the question whether under the law as it stood in 1911 Exh. Ka-6 can be considered as a valid lease as only Masita had signed that document. On that question some of the High Courts have differed. But what is clear is that right from 1911, the defendants are enjoying the suit properties on the strength of the agreement entered into between them and the original owner. From that agreement it is clear that the original owner had agreed not to evict Masita and his descendants from the suit property so long as they conform to the terms of the agreement.

5. Under these circumstances we think that the claim made by the plaintiffs is a highly unjust one. Hence we do not think that we will be justified in exercising our discretionary power under Article 136 of the Constitution in interfering with the judgment of the High Court. In this view of the matter there is no need to go into the correctness of the decision of the High Court that the defendants have acquired Bhumindari rights in the suit property. That question is left open to be decided in future, if necessary.

6. In the result this appeal fails and the same is dismissed with costs.

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