

SUPREME COURT OF INDIA

Badri Prasad Bhola Nath

Vs.

Ganesh Prasad

C.A.No.656 of 1976

(V. R. Krishna Iyer and Jaswant Singh, JJ.)

21.02.1977

JUDGEMENT

KRISHNA IYER, J.:-

1. The legal quandary between lease and license, with the principles being simple in statement but puzzling in application, when the facts are bi-faced, is not uncommon in courts and this appeal has claimed special leave only because the short point, complicated by the admitted circumstances, does not admit of short shrift.

2. The litigation is between landowner and alleged licensee and is for ejection; the former won before the trial Court, lost in first appeal but again succeeded in the High Court. The tangle of facts need fuller narration for appreciation of the divergence of views between the courts below and choice of the correct conclusion. Finality, on questions of fact, ordinarily attaches to the first appellate judgment. So we proceed on that footing and indeed, the High Court, while reversing the result, has not overturned the factual holdings of the District Judge.

3. The subject-matter of the suit for eviction is a plot of land with a room and verandah and some vacant space. This roofed edifice plus open land was in existence when the suit was filed. But was it there when the defendants were put in possession? If it was not there, the U. P. (Temporary) Control of Rent and Eviction Act, 1947 (Act III of 1947) (for short, the Act) would not apply to the proceedings but if there was some structure and appurtenant open space it would attract the definition of 'accommodation' in S. 2 (a) and repel the civil court's jurisdiction to entertain the action in ejectment unless it be that there was no lease involved but only a licence which was revoked by the plaintiff-licensor.

4. Naturally, parties joined issue on when and by whom the constructions, now admittedly on the land, were put up. The District Court held - and this holding of fact has not been set aside by the High Court - that

"the only possible conclusion which can be drawn from the evidence on the record is that the constructions are in existence over the disputed land at least since the year 1945 and that these constructions have not been raised by the defendant firm in the year 1963 with the permission of the plaintiff."

5. The second controversy decisive of the fate of the suit, is as to whether the plaintiff had merely licensed the occupation by the 1st defendant firm or whether the case of the contesting defendants covered by issues 3 and 4 that there was a lease to the defendant's predecessor as early as 1945 and therefore the Act barred the suit.

6. A few additional facts need to be set out at this stage. The plaintiff acquired title to the suit property by an assignment of 1960 from one Lakshman Maharaj. It is now found that the person in occupation of the premises was a firm of which defendants 2 to 7 were partners and, equally importantly, the plaintiff also was a partner. The claim to recovery of possession pleaded by the plaintiff is based on his title which is admitted and, on a termination of the licence which he put forward as an explanation for the possession of the firm (which he revoked by notice issued in 1973). The fact remains, however, that while there is no dispute about the title of the plaintiff to the property in the suit, the final court of fact negated the case of licence in these words:

"The plaintiff has thus failed to prove that the defendant firm is in occupation of the disputed constructions as a licensee, ... The defendant firm is in occupation of the disputed accommodation but not as a licensee of the plaintiff. This point is decided accordingly in favour of the defendants-appellants."

7. The High Court, strangely enough, did not reverse this finding negating the case of licence set up by the plaintiff. To by-pass a basic issue is to make a short cut which, oftentimes, proves a wrong cut. The learned Judge, after stating that 'a suit for ejectment can be decreed on the basis of title even though a case of tenancy as pleaded may not be established', proceeded to clinch the matter by resort to doubtful logic and law. We had better borrow the language of the High Court itself.

"The defendants were in occupation of the premises either with permission or without the permission of the plaintiff. If with permission, they were licensees. If without permission, they were trespassers. Ad valorem court-fees on the value of the property had been paid in the suit and the plaintiff's claim could be investigated on the basis of his title. Once the learned Judge came to the conclusion that the plaintiff was the owner of the property and the defendants had no title to the same, it seems to me that the suit should be decreed on the basis of the plaintiff's title even though the case set out may not have been established in the form pleaded."

8. The vital issues on which the fate of the case depended were thus ignored. The substance of the plea in defence was covered by issues 3 and 4 which we may extract:

"3. Whether Dwarika Prasad was the tenant of the accommodation in suit and his tenancy continues? If so, its effect ?

4. Whether the premises in suit is subject to the U. P. Control of Rent and Eviction Act? If so, its effect?"

It was the duty of the learned Judge as well as the High Court to have recorded findings on these crucial issues one way or the other. If Dwarika Prasad was a tenant under the predecessor of the tenant and the defendant firm merely stepped into the shoes of the tenant, the Act inhibited eviction of the accommodation without reference to the grounds permitted by the Act. There are certain telling circumstances which must be remembered in this context. The accommodation was in existence before the plaintiff acquired title. The premises were in the occupation of the first defendant firm and, prima facie, the implications of possession are not necessarily consistent only with a licence. Moreover, the plaintiff himself was one of the partners of the firm which was in possession. Notwithstanding title in the plaintiff, the admitted possession of the first defendant needed explanation. Rival versions were set up, one of licence and the other of lease. Issues were struck highlighting the point and the decision of the suit depended on the verdict thereon. It was inescapable for the court to record its holding on the major issues in the suit. The learned Judge at the High Court level was taken in by the specious submission on the side of the plaintiff that if the occupation was with permission, they were 'licensees'. The sequitur does not follow. The occupation could well be on the strength of a lease. The objective fact remains that the first defendant firm has been in possession. It was capable of two explanations. Induction under a lease, or permissive occupation as licensee. The learned District Judge had negated the case of licence which was the

specific case put forward by the plaintiff. By implication did he uphold the lease? This was left ambiguous and this was wrong since a specific consideration of the issue about the lease and a finding thereon was necessary. The High Court did no better. Its brief observation as if all alternatives were exhausted thereby cannot hold good: 'If with permission, they were licensees; if, without permission, they were trespassers'. The third probability that possession, especially when the person in possession was a firm of which the landlord was a partner, could well have been under the lease set up from the predecessor of the plaintiff. We cannot say that it must be so, but we must say that the matter deserved to be considered before final disposal of the case. A finding on title in favour of the plaintiff who had no explanation for the possession of the first defendant especially in a case where such possession was surrounded by circumstances tending to one inference or the other, could not inevitably end in a decree for possession. The investigation by the District Judge himself was incomplete and the High Court's simplistic disposal also cannot hold good.

9. We are therefore constrained to remit the case to the District Court for fresh disposal of the appeal after recording findings on issues 3 and 4. We make it clear that the title of the plaintiff will not be open to assail, that the suit property is 'accommodation within the meaning of the Act' cannot be re-opened and that the building on the plot was there even prior to the plaintiff's acquisition of the title must be taken as established. We also add a note of caution that our broad discussion on the question of the nature of the possession is not intended to conclude the matter but to highlight the necessity for the recording of findings thereon. The observations made in that context should not be taken as fettering the re-assessment of the evidence by the District Court. If the Court thinks that there is need to allow the parties to let in further evidence or to call for a finding from the trial Court, it will not be precluded from doing so by this order. We therefore allow the appeal and remand the case to the District Court which will dispose of the matter expeditiously. Parties will bear their costs of this appeal.

Appeal allowed.