ALLAHABAD HIGH COURT

Mathuri

Vs.

Bhola Nath

(Sulaiman, C.J.)

22.01.1934

JUDGMENT

Sulaiman, C.J.

1. This is a defendant's appeal arising out of a suit for ejectment. Originally the plaintiffs brought a suit in the Court of Small Causes to recover ₹ 50 as house rent for three years against the defendant. In the written statement the defendant pleaded that the house did not belong to the plaintiffs at all but belonged to the defendant, and denied his alleged tenancy. The plaint was accordingly returned by the Court of Small Causes for presentation to the proper Court, and it was later filed in the Court of the Munsif. The defendant again took up the same position. The trial Court found that the plaintiffs' case that the house belonged to them was not established and that the house appeared to have been built by the defendant's ancestors. It accordingly dismissed the claim. There was no other option, because the plaintiffs' claim was based on the allegation that they were entitled to the house itself.

2. On appeal to the District Judge, the finding of the first Court that the house did not belong to the plaintiffs had to be affirmed, because there was no evidence to prove the plaintiffs' case. The District Judge took the extraordinary step of taking down the statement of the defendant during the pendency of the appeal and subjected him to a cross-examination. In his statement the defendant admitted that his grand-uncle and grandfather must have settled down on the land with the permission of the then zamindar Gulab Gir, as they could not have settled down without his permission. He did not clearly admit that the land had been given to his ancestors by Gulab Gir, or any one else for building purposes. Indeed the statement was that he had from his childhood been living in the house. In answer to certain questions he further admitted that his mother and other females used to do some work when called by Gulab Gir. He however never admitted that the land was given to his ancestors on condition of rendering any service. The learned Judge thought that in view of the admissions made by the defendant, the plaintiffs should be allowed a further opportunity to amend their claim, and proceed with the suit on an entirely different basis. He accordingly allowed the appeal and remanded the case to the trial Court with directions to

allow the plaintiffs to amend their plaint. The plaint was then amended and the suit was converted from one for recovery of rent of the house to one for recovery of possession of the site by demolition of the construction. The plaintiffs took up another position that originally the land had been given as a license but the defendant's ancestors had agreed to pay rent for it which he subsequently refused to do. In the written statement the defendant denied that there was any condition for rendition of services and claimed that he had put up a building of a permanent character, had incurred expenses and was not liable to be ejected.

3. The learned Munsif finding that there was no evidence whatsoever on the record to show what the terms of the original grant were, whether it was a license coupled with a condition or whether it was an unconditional license or whether it was a grant of any other nature, dismissed the claim. On appeal the same District Judge has allowed the appeal and granted the plaintiffs a decree for possession of the site on payment of compensation of ₹ 18. The learned Judge has thought that it is not necessary for him to decide whether the construction on the land is of a permanent character, because in his opinion Section 60, Basements Act, was not applicable as the house had been in the occupation of the defendant's ancestors from before the date when the Basements Act was enforced in these provinces (1891). Following the view of the Calcutta High Court, apparently that expressed in *Surnomoyee Peshkar v. Chunder Kumar Das*[1] followed in *Moti Lal v. Kalu Mondar*[2] he has held that the plaintiffs are entitled to revoke the license on paying adequate compensation. As regards the amount of the compensation, he did not ask for the trial Court to determine the question but acted upon the suggestion of the defendant's counsel that amount should be fixed "in view of the valuation of the Municipal Board." The Municipal Board has assessed the house at an annual rental of ₹ 18. The learned Judge has fixed that amount as compensation. Obviously the compensation is inadequate as the annual letting value of the house cannot represent the value of the house itself.

4. In view of the wide language used in Section 2, Sub-section (c), Easements Act, that nothing contained in it shall derogate from any right acquired, or arising out of a relation created, before this Act came into force, it may be assumed in favour of the plaintiffs that if they had the right of ejectment of the defendant on payment of compensation that right was not affected by the provisions of the Easements Act. It may therefore be conceded that Section 60 would not in terms apply to this case, because admittedly the alleged license came into existence long before the Easements Act was passed. The view which seems to have prevailed in the Calcutta High Court, is that when a licensee acting upon the license has executed a work of a permanent character and has incurred expenses in the execution, a licensor nevertheless has the option of revoking the license on paying adequate compensation. Reliance seems to have been placed on some English cases including the case Of *Plimmer v. Wellington Corporation* But in that case their Lordships actually held that the license given by Government to Plimmer which had been indefinite in point of duration and revocable at will become irrevocable by the transactions of 1856, when the jetty was extended, land was reclaimed at the suggestion of the provincial

authorities and a ware-house or shed built for the accommodation of the emigrants, because those transactions were sufficient to create in his mind a reasonable expectation that his occupation would not be disturbed. The compensation allowed in that case was not a compensation for the license but was the amount allowed as compensation for the acquisition of the land by Government, Plimmer getting compensation on the basis of having an interest in the land itself.

[1](1910) 8 I.C. 793 [3](1885) 9 A.C. 669

[2] A.I.R. 1914 Cal. 173

5. It seems to me that there is a certain amount of contradiction in saying that a license is revocable on payment of compensation. If a license is revocable at will, the licensor has the option of revoking it, without being called upon to pay any compensation to the licensee who must remove the materials. Of course, if reasonable notice of the revocation is not given and the licensee suffers, he may be entitled to compensation on the account; but that will not be a compensation for the structure built upon the land. On the other hand, if a license is either coupled with a transfer of property or if the licensee acting upon the license has executed a work of a permanent character and incurred expenses in the execution, the license becomes irrevocable, and it is no longer open to the licensor to revoke it by offering to pay compensation for the buildings and the materials. No doubt in some English cases a licensor has been allowed to revoke the license where either the power of disposition was limited in character or duration or the right of revocation was expressly reserved or the license was granted only for a limited term or where the act licensed was found to have such injurious consequences as could not have been contemplated by the licensor in its inception or where there were other circumstances which would make the inference of an irrevocable grant or the application of the principle of estoppel by conduct impossible or improbable. These conditions are included in those, enumerated in Section 62, Easements Act. But there is no provision in the Easements Act which compels the licensor to pay compensation when the license is still revocable and has not become irrevocable.

6. No clear authority has been cited before us where under the English Common Law a license is deemed to be revoked when none of the conditions mentioned in Section 62 is fulfilled. It is equally true that if the license has become irrevocable in the time of the licensor, the mere fact that he transfers his interest (in the land would not extinguish the license. Section 59, Easements Act, would not confer any higher rights on the transferee from a licensor than the licensor himself possessed : see the case of *Bas Behari Lal v. Akhai Kumar*[4] It seems to me that even though the Easements Act does not expressly apply the principles underlying Ch. 6 of the Act, being in consonance with justice, equity and good conscience, may well be applied.

7. When an owner of land gives permission to another person to put up a building of a permanent character and he incurs expenses in the execution of such work, the licensor is by necessary implication estopped from revoking his permission so as to prejudice the licensee whose position has been compromised in consequence. It would be inequitable, unjust and unfair to allow a licensor to order that the licensee should forthwith remove the work of a permanent character which he has put up after incurring expenditure. In such an event the transaction ceases to be a mere license revocable at will, but may in certain circumstances amount to a license coupled with

a transfer of interest or, at any rate, a case where the licensee acting upon the license has executed a work of a permanent character and has incurred expenses in the execution so as to make the license irrevocable. So long as the construction consists, the right to revoke it would be in abeyance.

8. Applying these principles to the case before us, it is necessary to find out whether the construction in dispute is a work of a permanent character and whether the licensee must have incurred expenses in its execution. As pointed out above, the learned Judge has not recorded any finding that it is not a work of a permanent character. He has in a sense

[4] A.I.R. 1915 All. 56

minimized the size of the house by calling it a mud built cabin or a hovel and calling a verandah in front as a sun-shade. But on behalf of the plaintiffs it was admitted that the structure is a tiled house consisting of one room 9 or 10 feet long and 9 or 10 feet wide and in front of it there is a dalan or hall which also is of nearly the same dimensions. The house no doubt has tiled roof and is not very high; but the fact remains that it has on the findings of the lower appellate Court stood for over sixty years if not much more. The admission of the defendant on which reliance was placed by the learned District Judge goes to suggest that probably there was a ditch which was filled up and occupied by the ancestors of the defendant who put up this house on the land. They have been repairing it year after year, spending money on its maintenance and maintaining it on the land without any objection. The present plaintiffs' predecessor acquired the rights of the original owner of the land some time in 1881 and yet they never objected to the continuance of possession by the defendant's ancestors. It is only when in recent years the value of the land has apparently gone up in the town of Allahabad that it has dawned upon the plaintiffs first to file a suit for recovery of rent and then later on to maintain a suit for ejectment. Admittedly no ground rent has ever been claimed for all these generations. In several cases of this Court it has been held that even a mud house or a kachcha house may be a work of a permanent character: see the case of *Nazirulzaman Khan v. Azim Ullah*[5] The learned Counsel for the respondents has relied strongly on the case of *Anand Sarup v. Chawwa,* [6]But in that case there was no evidence of any kind that the land was ever given to the defendant's predecessor-in-title for building purposes. The building on the plot was some sort of a kachcha structure worth about ₹ 25 only and the defendant had failed to prove adverse possession of the plot, although he had admitted the title of the plaintiffs to the land. In the present case the plaintiffs admitted that the house did not belong to the plaintiffs and they were not owners of it, and that the defendant's predecessor had constructed the house on the said site with the permission of the ancestor of the plaintiffs. The annual rental of the house being ₹ 18 and the plaintiff himself having claimed ₹ 50 as rent for three years, the value of the house in dispute in this case is a great deal more than that of the house in dispute in the reported ruling. The case is therefore clearly distinguishable.

9. Having regard to the nature of the constructions made probably after filling up a part of the ditch, the long period of its occupation, the dimensions of the house and the value of the

structure, it must be held that this is a work of a permanent character in executing which the defendant's ancestors incurred expenses. It is not necessary for the defendant to show that a large sum of money had been actually spent in order to bring the case within the scope of the principle underlying Section 60.

10. I would therefore allow this appeal and dismiss the plaintiffs' suit.

Mukerji, J. –

11. I agree and I have nothing more to add.

[5](1906) 28 All. 741

[6] AIR 1916 All 241 : 34 Ind. Cas. 952