

ALLAHABAD HIGH COURT

Pandit Ram Chander

Vs

Pandit Maharaj Kunwar

(Thom, C.J.)

25.04.1939

JUDGMENT

Thom, C.J.

1. This is a plaintiff's appeal and arises out of a suit in which the plaintiff prayed that (a) a perpetual injunction may be issued to defendants 1 and 2 restraining them from doing anything towards the demolition of the house and from doing anything as might interfere with the plaintiff's rights as lessee; Laid at Rs. 25; (b) defendants 1 and 2 may be ordered to restore the demolished portion of the house to its original condition, otherwise, it may be caused to be reconstructed at the expense of defendants 1 and 2 through the Court Amin. In case defend, ants 1 and 2 do not pay the cost of construction, the house may be restored to its original condition at the expense of the plaintiff and the amount spent may be awarded to the plaintiff against defendants 1 and 2. This second appeal has been referred to a Bench by a learned Single Judge in this Court and is in his opinion one in which an important question of law was involved. On 8th August 1931, Brij Lal sold a house to the defendant Maharaj Kunwar in discharge of his liability under two decrees obtained by Maharaj Kunwar on the basis of two mortgage deeds. The price of the house was fixed at Rs. 8400. The amount due under the mortgages was Rs. 4762. Out of the sale consideration, the aforementioned mortgages were paid off and the balance of the sale price was paid in discharge of a debt to one Babu Ram. The sum of Rs. 35 was paid in cash to the vendor. During the pendency of the suits, in which the aforementioned mortgage decrees were obtained, Brij Lal executed a lease for the period of 11 years on 30th November, in favour of the plaintiff-appellant. This lease was duly registered and the appellant executed a registered qabuliat. The lease however was not signed by both the lessor and the lessee in accordance with the provisions of Section 107, T.P. Act. Nevertheless, although the lease was thus invalid the appellant Ram Chander obtained possession of the subjects leased and he is still in possession thereof. The suit out of which this appeal arises was instituted when Maharaj Kunwar demolished part of the roof of the said house. It is alleged by the plaintiff that Maharaj Kunwar acting in collusion with the Municipal Board of Moradabad induced the Board to issue an order for the

demolition of that part of the house which was occupied by the plaintiff on the ground that the building was dangerous.

2. The trial Court dismissed the suit on the ground that it was barred under Section 52, T.P. Act. The lower Appellate Court has upheld the decision of the learned Munsif upon the additional ground that the lease granted to the plaintiff was invalid in view of the provisions of Section 107, T.P. Act. The lease was not signed by both parties in accordance with the provisions of the latter Section. We may dispose briefly of the contention that the suit must fail because of the provisions of Section 52, T.P. Act. It is true that the lease in favour of the appellant was executed while the suits on the basis of the mortgages in favour of Maharaj Kunwar were pending. The sale of the property mortgaged to the mortgagee however was a private sale, and furthermore, the entire decretal amounts under both decrees were paid out of the sale consideration. In those circumstances it cannot be maintained that the lease of 30th November 1980 executed by Brij Lal in favour of the appellant is invalid under the provisions of Section 52 inasmuch as the execution of that lease did not affect the rights of any party to the suits upon the basis of the mortgages in favour of Maharaj Kunwar.

3. The main contest in this appeal centred round the interpretation of Section 53-A, T.P. Act. It was contended on the one hand for the appellant that having obtained possession in terms of the lease executed in his favour, being in possession and being willing himself to perform his part of the contract of lease though the lease was not signed by both parties the respondents were not entitled to eject him by a process of law or otherwise. For the respondents, upon the other hand, it was contended that the appellant could take the plea based upon Section 53-A, T.P. Act, only in defence to a suit to eject him or to any interference with the enjoyment of his rights under the lease which was held to be invalid. He was not entitled, it was maintained, to bring a suit upon the basis of the lease and claim an order that he be left in undisturbed possession of the property leased to him; in other words, that whilst the benefits of Section 53-A, T.P. Act, were open to him if he were a defendant they could not be extended to him in a case in which he was a plaintiff. Section 53-A refers to the case of a contract by a transfer effected by a written document which has either not been registered or has not been completed in accordance with the law. In regard to such transactions the Section enjoins then, notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract.

4. It was contended for the plaintiff that in the present suit he was merely seeking the remedy which Section 53-A, T.P. Act, afforded him. In other words, he was seeking to debar the defendants from enforcing against him a right in respect of the property of which he had taken

possession. It was maintained for the respondents on the other hand that the benefits of the provisions of Section 53-A were only available to a party in litigation who was a defendant. In support of this contention learned Counsel for the respondents referred to the case in *Dantmara Tea Co. Ltd., v. Probodh Kumar Das*¹ This decision clearly supports the defendants' contention. The case is however distinguishable from the present because there the transferee sought a direct relief in support of his title. The decision appears to have been based upon certain observations of Lord Macmillan in the Privy Council case in *Pir Bux v. Mahomed Tahar*² of the judgment of the Board it is observed:

It remains to take note of the fact that since the present suit was brought the law in India has been altered by the Transfer of Property (Amendment) Act, 20 of 1929, which has inserted a new Section 53-A in the principal Act, whereby a defendant in an action of ejectment may, in certain circumstances, effectively plead possession under an unregistered contract of sale in defence to the action. Their Lordships' views, as expressed in the present case, must therefore be understood to be referable to the state of law before this partial importation into India of the English equitable doctrine of part performance.

5. Learned Counsel for the defendants-respondents founded particularly upon the words whereby a defendant in an action of ejectment may, in certain circumstances, effectively plead possession under an unregistered contract of sale in defence to the action.

6. In the first place it is to be noted that the above observations of the Board are obiter; and, secondly, it does not at all follow from these observations that their Lordships intended to lay down that the only remedy which was open to a transferee under Section 53-A, T.P. Act, was to plead as a defendant in possession under an unregistered or invalid document. We would note further that the above observation concludes with the statement that the views of the Board, as expressed in the case, must be understood to be referable to the state of law before the introduction of Section 53-A, into the T.P. Act in 1929. In our judgment, that part of Section 53-A, T.P. Act, under consideration presents little difficulty. The words appear to us to be perfectly simple and straightforward. Where a person has been party to a transfer which is invalid because the formalities of the law have not been complied with, then that person is to be debarred from enforcing, as against his transferee, any right in respect of the property of which the transferee has taken or continued in possession. In other words, the intention of the Legislature plainly was that, the transferor was not to be entitled merely because the transfer was invalid as the result of a non-compliance with the formalities of the law to enforce, as against the transferee, a right which the deed of transfer was intended to convey.

7. Now, in the present case, what is it that the plaintiff is attempting to do? He is not attempting to set up a transfer which is invalid; he has not instituted a suit for the declaration of the validity of the transfer : he has not instituted a suit in which he claims an order against the defendant directing him to perform any covenant of the transfer. What he is seeking to do is to debar the

defendants from interfering with his possession into which he has entered with the consent of his transferor after the execution of a transfer in his favour. He is, in other words, seeking to defend the rights to which he is entitled under Section 53-A, T.P. Act. Defendants 1 and 2 in demolishing part of the property of which the plaintiff had obtained possession were acting sue motu with the aid of the Municipal Board of Moradabad. The defendants it is who are seeking to assert rights covered by the contract. The plaintiff seeks merely to debar them from doing so; the plaintiff is seeking to protect his rights. In a sense, in the proceedings he is really a defendant and we see nothing in the terms of Section 53-A, T.P. Act, to disentitle him from maintaining the present suit. Defendant 3 is the Municipal Board of Moradabad. Although impleaded they did not enter appearance or contest the plaintiff's claim. Counsel on behalf of the Municipal Board however has appeared in appeal before us and has contended that in any event no perpetual injunction should be granted as against his clients. The Municipal Board, under Section 263, Municipalities Act, have certain duties imposed upon them by the Legislature, in relation to property situated in the Municipality. In certain cases, if they are satisfied that property constitutes a danger to the public, they have a right and duty to order its demolition. As the property stands at the present moment, however, we hold that the Municipal Board have no right to order its demolition. They did not appear' to defend in the present suit and therefore it must be taken that at the present juncture there is no reason for an order for the demolition of the property under Section 263, Municipalities Act. Furthermore we would observe that the learned Judge in the lower Court has found that the house is in a good condition. He remarks in the course of his judgment:

The lower Court's inspection note shows that beams and planks of the ceiling were as good as now and neither the ceiling nor the walls showed any sign of decay or danger of falling down.

8. The plaintiff has claimed Rs. 100 in name of damages. The learned Civil Judge in the lower Appellate Court has observed at the conclusion of his judgment that if he had not held the suit barred he would have awarded the plaintiff Rs. 50 as damages. We consider this, in this suit, to be a reasonable award in the circumstances. In the result we allow the appeal and set aside the order of the lower Appellate Court. We grant a perpetual injunction restraining defendants 1 and 2 from doing anything towards the demolition of the house in suit and from interfering with the plaintiff's rights as a lessee. We further grant an injunction restraining defendant 3 from demolishing the house so long as its condition remains as at present. We further grant a decree to the plaintiff for the sum of Rs. 50 in name of damages as against defendants 1 and 2. The plaintiff is entitled to his costs against defendants 1 and 2 throughout.

Cases Referred.

1(1936) 41 C.W.N. 54

2(1934) 21 A.I.R. P.C. 235. At page 916