ALLAHABAD HIGH COURT

Karan Singh

Vs

Budh Sen

(Mohammad Ismail, J.)

23.02.1938

JUDGMENT

Mohammad Ismail, J.

1. This is a plaintiffs appeal arising out of a suit for possession of a Nohra, a house and some land appurtenant to the house, on the allegation that the plaintiffs' father Pitambar Das gave the house to the defendants to reside, that the plaintiffs now require the house for their own use and therefore served notice on the defendants to make over the house to the plaintiffs, that the defendants hate refused to deliver possession of the house : hence the suit. The suit was resisted by the defendants inter alia on the grounds that the defendants were the owners of the property, that they were in adverse possession of the property, that even if they were licensees they were given the land by the predecessor of the plaintiffs for building a house and as they have spent considerable amount of money on constructing a building on the land the licence cannot be revoked and, lastly, that the suit is not maintainable for non-joinder of a necessary party. The Court of first instance dismissed the suit. On appeal the learned Civil Judge decided most of the issues in favour of the plaintiffs but dismissed the suit on the ground of non-joinder of a necessary party. The plaintiffs now come to this Court in appeal. It may be noted that the original plaintiff Chiranji Lal is dead and the present appellants have been substituted in place of Chiranji Lal.

2. Learned Counsel for the appellants has challenged the finding of the learned Civil Judge on several grounds. He contends that the defendants had never pleaded that there was a partition between the plaintiff Chiranji Lal and his brother and therefore the presumption of law remains that the property belonged to both brothers as joint owners and, on the death of Chiranji Lal's brother Hira Singh and the latter's son Durga Prasad, Chiranji Lal became full owner of the property to the exclusion of Durga Prasad's widow. The plaintiff in para. 1 pleaded that he was the sole owner of the property in dispute. The defendants in para. 18 of the written statement pleaded that Pitambar Das the original owner of the property left two sons namely the plaintiff and Hira Singh deceased. Hira Singh died leaving a son Durga Prasad who died leaving a widow

Mt. Tirbeni Kuar, who was a necessary party to the suit. There was no suggestion whatsoever in this paragraph or in any other paragraph of the written statement that there was a partition between Chiranji Lal and Hira Singh or his son Durga Prasad. The learned Munsif framed the following issue in the light of the written statement:
3. Issue 5. Is Mt. Tirbeni a necessary party to the suit? The finding of the learned Munsif on this issue is in the following terms:It is proved beyond doubt that Mt. Tirbeni is residing separate from the plaintiffs as stated by plaintiffs' witnesses. Her husband was also residing separate from plaintiff....

4. There is no suggestion that there was a partition between the plaintiff Chiranji Lal and his brother or nephew. The mere fact that the widow and her husband lived in a separate house is no proof of partition between them. Separation in residence is only one of the factors that goes to prove partition but is by no means conclusive evidence of partition. Generally speaking, the normal estate of every Hindu family is joint; presumably every such family is joint in food, worship and estate. In the absence of proof of division such is the legal presumption. In the present case, the written statement of the defendants did not suggest that there was partition in the family. There is no finding to this effect either in the judgment of the trial Court or in that of the Court below. Under these circumstances, I must assume that on the death of Pitambar Das his two sons succeeded to this property as joint tenants and the joint tenancy, was never converted into a tenancy in common. If the property in dispute was jointly owned by the family it follows that the widow of Durga Prasad will have no interest in the property. All that she is entitled to is to be maintained by the plaintiff and can claim no share in the estate. If Mt. Tirbeni Kuar has no share in the estate she cannot be considered a necessary or even a proper party to this litigation. Under these circumstances in my judgment the Courts below have erred in dismissing the suit for non-joinder of Mt. Tirbeni in the suit.

5. Learned Counsel for the appellants has attempted to support the decree of the Court below by challenging its finding on the question of revocation of licence. It is contended that under Section 60, Easements Act, a licence may be revoked by the grantor unless the licensee acting upon the license has executed a work of a permanent character and has incurred expenses in the execution. In the present case the Courts below have found that soon after the property was made over to the defendants or their predecessor by Pitambar Das they extended the old building and spent considerable amount of money on the construction. The learned Civil Judge, however, has found that the grantor had given the land and rooms for purposes of residence and that they were not given for building purposes. In view of this clear finding, it is not open to learned Counsel for the respondents to argue that the defendants were given land to build upon. As the defendants were permitted only to reside in the rooms, any addition made by them would not be covered by the terms of the grant and therefore Section 60, Easements Act will not come into operation.

6. The next point that has been urged by learned Counsel for the respondents is that the plaintiffs were estopped from ejecting the defendants from the property in suit as the defendants were

allowed to construct the new building without any protest from the plaintiffs. In order to substantiate the plea of estoppel, it must be proved that one person has by his declaration, act or omission intentionally caused or permitted another person to believe a thing to be true and to act upon such belief. In the present case the finding of the learned Civil Judge is against the defendants on this point. The learned Judge has remarked as follows:

The land was not given to them as a gift. The plaintiffs' conduct in allowing them to put up permanent constructions on the land could not have led them to believe that the land was to be considered their own.

7. Apparently the learned Judge of the Court below was not satisfied on the evidence that the defendants were led to believe that they were entitled to construct new buildings on account of any declaration or omission on the part of the plaintiffs. Reliance has been placed on *Mata Dayal Lal v. Lalji Sahai* In this case the learned Judge found on facts that the plaintiff was estopped by reason of[1] his own previous conduct, under Section 115, Evidence Act, from disputing the right of the vendee in the property transferred under the sale deed which he himself attested. It appears that in this case the dispute was with regard to sir plots which were transferred by the vendor to the vendee and the plaintiff had attested the document in token of his acceptance of the transfer. Under these circumstances it is obvious that the plaintiff could not be allowed to challenge the transfer of the sir plots. In the present case I am bound by the finding of the learned Civil Judge who was not satisfied on the evidence that the defendants were induced to construct the additional building on account of the declaration or omission of the plaintiffs. Under these circumstances, in my judgment, the plea of estoppel has no force.

8. Learned Counsel for the appellants has further argued that the defendants are not entitled to be compensated for the new constructions made by them as there is no rule of law which sanctions such a course. It is true that Section 51, T.P. Act in terms does not apply, nor does Section 63 of the Act has any application to the facts of this case;, but the principle underlying Section 51, T.P. Act has been extended in several cases on equitable ground. Learned Counsel for the respondents has referred me to several cases in support of his contention. In *Kalyan Das v. Jan Bibi* it was held that when a purchaser for value is evicted in equity under a prior title he will b[2]e credited with all the moneys expended by him in necessary repairs or permanent improvements....

9. It was further held that the Transfer of Property Act is not exhaustive and does not exclude any equitable principles such as may regulate the rights and liabilities of the parties in a case not specifically provided by the Legislature.

10. The next ruling cited by learned Counsel for the respondents is reported in Uma *Shankar Lal v. Mahabir Prasad*[3] In this case the plaintiff had brought a suit for recovery of possession of a house on the ground that the defendants had no right to remain in possession of the same and that a gift of this house in favor of the defendants was null and void. It was found on evidence that the

gift in favor of the defendant was inoperative, that the defendants had been occupying the house for a very long time and that under the belief that the gift in their favor was legal and operative they had spent considerable amount of money in overhauling and repairing the house. In view of these findings the learned Judges-observed as follows: At the time it is quite obvious that the house at the time was in a tottering condition and dangerous to live in. Acting in good faith and on the assurance received from Rampat Lal and his nephew the defendants believed that they were entitled to retain this house and spent considerable sums in overhauling it.... We therefore think that it will be just and equitable to order that the plaintiffs should be allowed the possession of half the house on payment of half the amount spent by the defendants.

11. In *Badal Chandra Sadhukhan v. Debendra Nath*[4] the following observations have been relied upon:But there is a question of equitable estoppel which arises by reason of the fact that the defendant, acting though he may have been under an inoperative deed and led into the belief that he had obtained a permanent tenancy in the land, has spent money on it in recent permanent structures. This equitable estoppel must be, in my judgment, equally operative against the plaintiff as it was against the Mridhas or the Mitras. Giving effect to this equitable estoppel I hold that the decree passed by the Court below should be conditional on payment by the plaintiff to the defendant of the value of the structures at their present market price.

12. In this case the defendants were lessees under an unregistered lease and relying upon the operative character of the lease the defendants had spent considerable amount of money in building a house and as on the evidence it was found that they had acted in good faith a conditional decree was passed in favour of the plaintiff on payment of the amount spent by the defendants in constructing a house. None of these cases is clearly applicable to the facts of this case but it is obvious that the principles underlying Section 51, T.P. Act have been extended in suitable cases on equitable grounds. In the present case the defendants are near relations of the plaintiffs. They were allowed to occupy the house or the rooms as long ago as 1893. During this interval they spent substantial sums of money on improving the building without any protest from the plaintiffs or their predecessor. There is nothing to show that they did not do so in good faith. Under these circumstances I think it is a suitable case in which the equitable principle should be extended in favour of the defendants and a conditional decree should be passed in favour of the plaintiffs. The Court below has found that Rs. 450 is the value of the new constructions and that the plaintiffs should be allowed possession over the land and the building on condition of their paying Rs. 450 to the defendants.

13. In the result I allow the appeal, set aside the decree of the Court below and decree the plaintiffs' suit for possession of the property described in the plaint on payment of Rs. 450 to the defendants. Under the special circumstances of this case, I think it will be just that the parties should bear their own costs throughout. Leave to appeal under the Letters Patent is granted to both parties.

Cases Referred.

1(1927) 14 A.I.R. All 838
2(1929) 16 A.I.R. All 12
3(1929) 16 A.I.R. All 854
4(1933) 20 A.I.R. Cal. 612