ALLAHABAD HIGH COURT

Lala Kishun Chand

Vs.

Sheo Dutta

Special Appeal No. 98 of 1954. , against decree of R. N. Gurtu, J. in S. A. No. 922 of 1949,

(D.N. Roy and B. Dayal, JJ.)

31.07.1953. 17.03.1958

JUDGMENT

D.N. Roy, J.

1. This is a special appeal by the defendant against a judgment of a learned single Judge of this Court who dismissed a second appeal, affirming the decision of the courts below decreeing the plaintiff's suit for possession over certain land. The land belongs to the Government and is nazul. The management thereof vested in the Notified Area of the Bindki Board. The land was taken by the defendant initially on 17-1-1922, for a period of 1 ½ years under an ikrarnama executed by the defendant. Certain rent was reserved and the defendant was granted the right to carry on shop business over the land and to make a structure of a transitory character which he was to remove at the time of the expiry of the term. On 13-3-1925, a fresh ikrarnama was executed by the defendant for a term of 4 ½ years. That term expired sometime in September, 1929. The defendant was, however, permitted by the Board to continue in occupation of the land as a tenant and rent used to be realized from him. On 3-6-1939, the District Magistrate of Fatehpur by a letter Ex. 3 informed the President of the Notified Area that the lease in favor of the defendant might continue for another five years. The holding over therefore continued up to 31-3-1944.

2. What transpired then was this. The Board wanted that the defendant should continue over the land as tenant. The plaintiff, however, approached the Commissioner for a lease in his favour. On 9-2-1946, a notice was given by the Administrator of the Notified Area to the defendant asking him to vacate the land within a period of fifteen days, and telling him that the lease stood determined on that date. On 29-3-1946, the plaintiff obtained a lease in regard to this land from the Commissioner of Allahabad. The lease was for building purposes and was in Form B of the lease of nazul land. The plaintiff could not get possession over the land. He therefore instituted the suit out of which this appeal has arisen on 9-7-1946, contending that the defendant had no right to remain in occupation of the land after 31-3-1944, when the lease stood determined and

after the expiry of the term given in the notice aforesaid.
The defendant denied that the term of his lease had expired and he alleged that no valid notice of ejectment had been given. He contended that the Notified Area still recognized him as the lessee of the land. He further contended that the commissioner had no authority to execute a lease in favor of the plaintiff and that even if his position be treated to be that of a licensee, he has made a work of permanent character on the land and could not therefore be ejected therefrom.

3. The trial court found that the lease in favour of the defendant had in fact been determined so far back as 13-9-1929. The trial court further held that even if the possession of the defendant was that of a licensee, the license had been revoked by a notice dated the 9th of February, 1946, given by the then Administrator of the Notified Area of Bindki. The defendant, in the trial court's view, therefore, was not entitled to remain in possession of the land and the plaintiff was entitled to possession on the basis of the lease dated the 29th of March, 1946, executed in his favour by the Commissioner.

4. The court of first appeal held that there was nothing on the record to indicate that the defendant was a lessee up to 31-3-1944; and that the two iqrarnamas, the last of which was dated 13-3-1925, gave the defendant the right to remain in occupation of the land up to September 1929. According to the court of first appeal, the defendant's right as a lessee came to end at the expiry of 4 ½ years from the date of the last ikrarnama that is 13-9-1929. That court held that the defendant was a trespasser since that date and the plaintiff could on the basis of his lease eject the defendant from the land.

5. In second appeal it was held by a learned Judge of this Court that the defendant ceased to be a lessee on 31-3-1944; that the notice given by the Administrator of the Notified Area on 9-2-1946, was a valid notice; that the lease in favour of the plaintiff made by the commissioner on 29-3-1946, was a valid lease; that even if the lessee right under the two iqrarnamas executed by the defendant and mentioned also in the letter Ex. 3 of the Collector were to be taken as subsisting for a particular period, there was nothing to indicate that upon the determination of the term of the lease the defendant was holding over in continuation of his alleged lease. The learned single Judge therefore affirmed the decision of the courts below which granted the plaintiff a decree for possession over the land.

6. In this special appeal the first point which has got to be determined is whether there was holding over and, if so, has the lease in favour of the defendant been determined under section 116 of the Transfer of Property Act. If a lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in Section 106. That there was holding over up to 31-3-1944, was a position which was accepted at the trial on all hands.

What then intervened which might be said to have determined the lease after 31-3-1944? Under section 106 of the Transfer of Property Act, as then applicable, in the absence of a contract or local law or usage to the contrary, a lease of immoveable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days notice expiring with the end of a month of the tenancy. If there was holding over, as undoubtedly it was, notice under section 106 of the Transfer of Property Act was necessary. The notice that was given in the present case by the Administrator of the Notified Area to the defendant was of 9-2-1946 and it called upon the defendant to vacate the land within fifteen days of that date. That would be by 24-2-1946. The notice therefore did not end with the end of the month of tenancy and was an invalid notice. On account of that invalidity the defendant could not have been ejected even by the Notified Area. Consequently the position would be that the defendant continues to be a tenant of the land. During the continuance of that tenancy the plaintiff by obtaining a lease on 29-3-1946, could not eject the defendant.

7. It was at one stage argued before us that in view of section 2 of the Crown Grants Act (No. XV of 1895), the provisions of the Transfer of Property Act are not applicable to the case. This argument, in our opinion, cannot be accepted. Section 2 of the Crown Grants Act says that nothing contained in the Transfer of Property Act, 1882, shall apply or be deemed ever to have applied to any grant or other transfer of land or of any interest therein heretofore made or hereafter to be made (by or on behalf of the Crown) to or in favour of, any person whomsoever; but every such grant and transfer shall be construed and take effect as if the said Act had not been passed.

Section 2 of the Crown Grants Act of 1895 does not render all the provisions of the Transfer of Property Act inapplicable to lands held under grant from the Crown, but the meaning of the section is that when the court is called upon to construe an instrument granting land by the Crown, it shall construe such grant irrespective of the provisions of the Transfer of Property Act. See *Dost Mohammad Khan v. Bank of Upper India, Ltd*[1]*., Dost Mohammad Khan v. Upper India Bank, Ltd*[2]*.,* and *Munshi Lai v. Gopi Ballabh*[3]*,*. Section 2 of the Crown Grants Act does not therefore exclude the operation of sections 106 and 116 of the Transfer of Property Act in their application to the present case. In our opinion therefore the plaintiff was not entitled to succeed and the suit ought to have been dismissed.

8. In the result we allow the appeal, set aside the decision of the learned Single Judge and dismiss the suit of the plaintiff with costs to the defendant in all courts.

Appeal allowed

[1] 3 All LJ 129 (A)

[2] 3 All LJ 628 (B)

[3] ILR 36 All 176: AIR 1914 All 120