

# JAMMU AND KASHMIR HIGH COURT

Th. Milka Singh

Vs.

Th. Diana

Civil Revn. No. 86 of 1963

(S. Murtaza Fazl Ali and Janki Nath Bhat, JJ.)

20.03.1964

## JUDGMENT

### **S. Murtaza Fazl Ali, J.**

1. This is an application against an order passed by the City Judge Jammu dated 5-7-1963 in a suit brought by the plaintiffs for a mandatory injunction directing the defendants to vacate the premises. According to the plaintiffs they were the owners of the house in question and had allowed the defendants to occupy the house for a period of 5 to 6 months in the year 2004. Thereafter, they gave a notice dated 1-9-1962 terminating the license and directing the defendants to surrender possession to the owners. A preliminary issue was raised on the question as to how the suit should be valued and the amount of the court fees to be paid on the plaint. The trial court held that the suit was in effect a suit for possession from the defendants and hence a suit for injunction would not lie to eject a licensee. The trial court directed the plaintiffs to amend their plaint and pay court fees in accordance with Section 7(v) of the Court Fees Act. The revision was heard by a Single Judge but in view of the substantial question of law involved in it, the case has been referred to us.

2. Learned counsel for the petitioners has submitted that the present suit for a mandatory injunction directing the defendants licensee to surrender possession was maintainable and such a suit fell clearly within the purview of Section 7(vi)(d) of the Court Fees Act under which the plaintiff could put his own valuation and it was not necessary to pay court fees on the market value of the property. In support of his argument the learned counsel has relied upon a decision of the Calcutta High Court reported in *Prabirendra Nath v. Narendra Nath*<sup>1</sup> and a decision of the Punjab High Court reported in *Delhi Gate Service Private Ltd. v. M/s. Caltex (India) Ltd. New Delhi*<sup>2</sup>, On the other hand learned counsel for the other side has relied upon a Full Bench decision of the Patna High Court reported in *Jagdish Chandra Ghose v. Basant Kumar Bose*,<sup>3</sup> another Full Bench decision of the Calcutta High Court reported in *Sisir Kumar Dutta v. Susil Kumar Bose*<sup>4</sup>, and a Division Bench decision of the Bombay High Court reported in *Ratilal v. Chandulal*<sup>5</sup>,

<sup>1</sup> AIR 1958 Cal) 179

<sup>3</sup> AIR 1963 Pat 308

<sup>5</sup> AIR 1947 Bom 482

<sup>2</sup> AIR 1962 Pun 370

<sup>4</sup> AIR 1961 Cal 229

3. The question involved in the present case does not appear to be free from difficulty and as an authoritative pronouncement is necessary by this court, we have to consider this question in all its comprehensive aspects. It is well settled that the question of court fees to be paid by the plaintiff on his plaint must necessarily depend on the construction of the plaint in each case. A perusal of the plaint in the instant case clearly shows that the plaintiffs had asked for a mandatory injunction against the defendants for vacating the premises on the ground that he was a licensee and his license had been terminated by a valid notice. If the present suit for injunction is maintainable then there can be, no doubt, that court fees will have to be paid under Section 7(iv)(d) of the Court Fees Act which allows the plaintiff to fix any valuation he likes. The matter was considered by a number of High Courts in India and some of the High Courts have held that a suit for possession of the property from a licensee would be a suit for possession and would be covered by Section 7(v) under which the court fees will have to be paid on the subject matter or the market value of the property. In my opinion before deciding the question as to under which clause the present suit would fall it will be necessary to determine the real status of a licensee. It is well settled that a licensee has no interest in the land and his possession is purely permissive. As early as 1673 Vaughan, C.J. in *Thomas v. Sorrell*<sup>6</sup>, described the status of a licensee thus :

"A dispensation or license properly passeth no interest nor alters or transfer property in anything, but only makes an action lawful, which without it had been unlawful."

In Halsbury's Laws of England Volume 23, IIIrd Edition, p. 4.29 it is clearly mentioned that a mere license does not create any estate or interest in the property to which it relates; it only makes an act lawful which without it would be un-lawful. Thus the status of a licensee is essentially different from that of a trespasser or a tenant. In fact the possession of a licensee is not a juridical possession but only an occupation with the permission of the licensor. While the actual occupation remains with the licensee, the control or possession of the property is with the licensor through his licensee. This appears to us to be the real legal status of a licensee. This being the position, question is whether after termination of the license a licensee can be said to be a trespasser so as to drive the licensor to bring a suit for possession by evicting the licensee. In *Winter Garden Theatre (London) Ltd. v. Millennium Productions, Ltd*<sup>7</sup>. Viscount Simon, while discussing the status of a licensee quoted the observations of Vaughan, C.J. in 1673 Vaugh 330 and observed as follows :

"The effect of a license by A to permit B to enter upon A's land or to use his premises for some purpose is, in effect, an authority which prevents B from being regarded as a trespasser when he avails himself of the license."

From these observations, it is clear that by accepting the status of a licensee a person cannot be treated as a trespasser as long as his occupation of the premises remains. Even if the license is terminated he cannot be treated as a trespasser simpliciter unless he has left the premises and re-occupied it later on. The reason for this seems to us to

<sup>6</sup>1673 Vaugh 330

<sup>7</sup>(1947) 2 All ER 331

be very simple. There is always an element of *annus possidendi* in the possession of a trespasser which is completely absent in the possession of a licensee. After the termination of the

license while the licensee may continue to occupy the premises, the possession of the property would be deemed to be in the licensor through the licensee. In these circumstances, therefore, it cannot be said that the moment the license is terminated, the licensee's possession becomes that of a trespasser. I am fortified in my view by the observations of Mukherjee, J. in AIR 1958 Calcutta 179 where their Lordships have observed as follows :

"In the present case the plaintiffs alleged and established that the defendant respondent was merely a licensee. That being the case the possession of the house lay with the appellants through the respondent and not with the respondents who had no independent or separate interest in the house."

In the aforesaid case, their Lordships have clearly held that a suit for injunction for evicting a licensee whose license has been terminated by the licensor would be maintainable under Section 55 of the Specific Relief Act because by virtue of the license, the licensee was under an obligation to surrender possession after the termination of the license and such an obligation could be enforced by an injunction granted by the court. In this connection, his Lordship made the following observations :

"In my opinion Section 56(i) of the Specific Relief Act can control Section 55 of the same Act only where the "other usual mode of proceeding" referred to in Section 56(i) is based on the same set of facts and allegations as constitutes the foundation of a suit for injunction, otherwise the provisions of Section 55 of the Act would be completely stultified and a suit for injunction would be frustrated in every case by a defense that the plaintiff may get a better and more efficacious remedy by bringing a suit in a different form. In the present case the allegations of the appellants are that the respondent is their licensee and as such he is under an obligation to vacate the house on the demand of the appellants and as he has not vacate the house in spite of such demands the appellants for a mandatory injunction upon the respondent to compel the performance of an act which would prevent the breach of the obligation the act being the vacating of the house. Such a suit undoubtedly falls within the scope of Section 55 of the Specific Relief Act and no relief can be given "by usual mode of proceedings" there being no prayer for a declaration of title and recovery of khas possession".

This case was followed by a recent decision of the Punjab High Court in AIR 1962 Punjab 370. These are the only two cases where the question as to whether or not a suit for an injunction against a licensee on termination of the license would lie was decided. In other cases cited by the learned counsel for the opposite party, the question was not directly involved but appears to have been decided impliedly. I would now take up these cases : In the first place, there is a Full Bench decision of the Calcutta High Court reported in AIR 1961 Calcutta 229. I might mention here that in that case the plaintiff had not brought the suit for injunction but had brought a suit for possession on the footing that the license of the defendant having been terminated possession may be delivered to the plaintiff. On an exhaustive consideration of all the authorities of the Calcutta High Court and other High Courts their Lordships observed as follows :

"The answer to the question before me ought to be sought, in the first place is what the position, of a licensee is, after his license is revoked. In my opinion, a licensee whose

license has been revoked becomes a trespasser, just as a tenant whose tenancy has been determined becomes a trespasser, unless law makes him a statutory tenant.

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If a licensee, whose license stands revoked becomes a trespasser, then a suit for eviction of such a person undoubtedly would be a suit for possession of land, house, or garden and must be valued according to the value of the subject matter under Section 7(v) of the Court Fees Act".

4. In the first place, it seems to us that the question as to whether the suit for an injunction for directing the licensee to surrender possession was maintainable was not specifically considered by their Lordships in that case. Their Lordships appear to have proceeded on the footing that the position of a licensee after his license is terminated is that of a trespasser and, therefore, the suit being one for possession would be clearly covered by Section 7(v) of the Court Fees Act. We have, however, held for the reasons given above that the status of a licensee is quite different from that of a trespasser. While the possession of a trespasser is juridical possession in the sense that he can resist his possession against anybody in the world except the true owner the same cannot be said to be true of a licensee. For instance, A trespasser allows B to occupy a portion of this house for a certain period. After the expiry of the period, the licensee in a suit for possession by the trespasser cannot be heard to say that as the trespasser had no title to the property, the licensee is not entitled to be evicted. In these circumstances, therefore, it is clear that there is a clear distinction between a licensee and a trespasser and we cannot see how the possession of a licensee can be treated to be that of a trespasser after the license is terminated. We might further mention that the earlier Calcutta decision namely AIR 1958 Calcutta 179 was noticed in this Full Bench decision at page 235, Para (25) but was not specifically overruled by the Full Bench. The Full Bench also does not appear to have doubted the correctness of the observations of Mukherjee, J. in the previous case that a suit for injunction for evicting a licensee was clearly maintainable. For these reasons, we are unable to agree with the view expressed by the Full Bench of the Calcutta High Court that even a suit for injunction for eviction of a licensee would be governed by Section 7(v) of the Court Fees Act when such a suit would be clearly covered by Section 7(iv)(d) of the Court Fees Act.

5. The next case which requires consideration is the case of AIR 1963 Patna 308. In this case, Sahai, J. who delivered the leading judgment of the Full Bench has observed as follows :

"When the actual fact is that an ex-licensee is in possession, the licensor can only seek recovery of possession from him. Historically that is the legal remedy; whereas the remedy of injunction is an equitable remedy. If he can seek recovery of possession from the trespasser who is an ex licensee, he cannot be permitted to seek the remedy of injunction. The frame of a suit is not important. The substance of the plaint has to be considered. If a person is allowed to institute a suit by framing it as a suit for injunction, though in substance he wants recovery of possession, the provisions of Section 56(1) will themselves be stultified. There may be cases in which it is not necessary for a licensor to institute a suit for recovery of possession, but it would be enough if he seeks the remedy of grant of mandatory injunction; for instance, it would be so when a licensee is not given the license to reside in any house or a property but is given, the license to visit it

occasionally to do something e.g. to cut branches of trees, to keep birds, bees, etc it would not be necessary after determination of his license to seek recovery of possession of the property; it would be enough if the plaintiff prays for grant of an injunction, prohibiting the licensee from visiting' the premises. That, however, is quite different from a license to reside in premises because, in that case, the licensee by staying on the premises after termination of the license becomes a trespasser, and recovery of possession has to be sought from him. In my judgment, therefore, the plaintiff has, in the instant case rightly framed the suit as a suit for eviction of the defendants, and it cannot be construed to be a suit for grant of a mandatory injunction." Sahai, J. at another place has observed as follows :

"The difference between a tenant and a licensee is substantial. "Lease" has been defined in Section 105 of the Transfer of Property Act, and "license" has been defined in Section 52 of the Indian Easements Act (V of 1882). Whereas a tenant or lessee has a definite interest in the property which is put in his possession, a licensee has no such interest. There must be consideration for creation of a lease; but there may be or may not be any consideration for grant of a license. While a tenant may hold over, in certain circumstances, after the determination of his tenancy, a licensee cannot continue to be in possession of any property for more than a reasonable time after his license is terminated. There is therefore, no escape from the conclusion that, if a licensee continues to be in possession of certain premises after "expiry of a reasonable time from the date". His license is revoked, he does so only as a trespasser. If, therefore, a suit is instituted for his eviction, it is clearly a suit for recovery of possession from a trespasser. The entire value of the property in question must be held to be the value of the subject matter of the suit."

6. We have given our anxious consideration to this decision but with very great respects to their Lordships, we express our dissent from this decision. In the first place, Sahai, J. has himself observed that if a licensee continues to be in possession of certain premises only after the expiry of a reasonable time from the date of his license is revoked, he does so as trespasser. Thus his Lordship does not dispute the proposition that even after the expiry of the license the possession of a licensee does not develop into that of a trespasser until a reasonable time has lapsed. In other words, immediately after the expiry of the license the position of a licensee is not that of a trespasser. Putting this proposition into a practical shape, it becomes rather illogical. In the first place it will be difficult to fix a definite time limit when the status of a licensee after the termination of the license is converted into that of a trespasser. It is not easy to lay down such a thin line of distinction as to when an ex-licensee would be a trespasser and when he will continue to be a licensee. Either a licensee after the expiry of the period of license is a trespasser or he is not a trespasser. It is difficult to understand that a licensee whose license has been terminated would be a licensee for some time but after" the lapse of some time he would at once become a trespasser. The question as to what is reasonable time may involve further difficulty and it may not be possible in every case to lay down a uniform length of time as a standard to judge the status of a licensee. For instance A allows B to occupy a portion of his house from 1st of January to 31st of January.

7. According to the view of Sahai, J. if after the termination of the license B continues in occupation for some time and then a suit for injunction is brought to eject him within a reasonable time such a suit would lie. But if the suit is brought say after six months or a year the suit would not lie. This kind of description of the status of a licensee introduces an element of inconsistency. In our opinion the correct view seems to be that a licensee does not become a trespasser after the termination of his license unless there is an assertion of a hostile title against the licensor and the licensor does not take any steps to evict. On the other hand, even if the licensor brings a suit for an injunction directing the licensee to vacate the premises, the suit will be maintainable but the court may refuse to exercise discretion in granting the injunction on the ground that the licensor has not come up within a reasonable time after the termination of the license. Since injunction is an equitable remedy the court is guided by equitable considerations in granting such a remedy. It is well settled that enquiry does not help the negligent. But this is quite different from saying that a suit for injunction against a licensee after the termination of the license is per se not maintainable. Similarly, Sahai, J. has observed that a suit for a mandatory injunction against a licensee would be maintainable where the license is of a casual nature e.g. to visit the premises occasionally or to cut the branches of the trees etc. Here also the distinction drawn by Sahai, J., appears to us to be a distinction without any difference. A licensee is a licensee whether the license is for occupation of the premises or for casual visits or for any other purpose.. The status of a licensee cannot change or vary according to the purpose of the license. The principle once a licensee always a licensee would apply to all kinds of licenses. With very great respects to his Lordship, we are unable to agree with the line of reasoning that he had adopted.

8. Section 55 of the Specific Relief Act runs as follows :

"When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts." This Section appears to be controlled by Section 56 of the Act. In the instant case sub-clause (i) of 56 of the Act has to be considered. Sub-clause (i) of Section 56 of the Specific Relief Act runs as under :

"When equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust".

The contention of the learned counsel for the opposite party was that since the usual mode of proceeding was to bring a suit for possession, the remedy make way of a mandatory injunction is barred. We were, however, unable to agree with this contention. Sub-clause (i) referred to above requires two conditions :

- i. The relief must be equally efficacious.
- ii. Such a relief could be obtained by a usual mode of proceeding.

It is obvious that if the licensee was treated to be a trespasser, a suit for possession a against him would be covered by Section 7(v) of the Court Fees Act and the licensor will have to pay ad valorem court-fees on the subject matter of the property. The remedy, therefore, by way of a suit

for possession is onerous and cannot be said to be equally efficacious. Moreover, it will lead to an anomalous position if the licensor is driven to pay ad valorem court-fees on the subject matter of the property even in the case of a licensee whose license has been terminated. Suppose for instance A goes to some other place for a few months leaving his house in charge of his servant and permitting him to occupy the premises until he returns. When A returns the servant refuses to deliver possession and in these circumstances, it will be too harsh to drive the owner to bring a suit for possession against his servant, instead of suit for injunction directing the servant to deliver possession. Again suppose I allow a friend of mine to stay in a portion of my house for two days and go out on some business. On my return the friend refuses to vacate the house. Should I then be driven to bring a suit for possession and pay ad valorem court-fees on the subject matter of the portion occupied by my friend? It seems to us that the Legislature could not have contemplated, that Section 7(v) of the Court Fees Act should apply even to such a situation. The harshness caused to the litigant" and the anomalous results flowing from this interpretation of the question was noticed by the Division Bench of the Bombay High Court reported in AIR 1947 Bombay 482, where their Lordships observed as follows :

"I can imagine hard cases arising out of this provision; I can imagine cases where paying the court fee on the value of a house might in all the circumstances be an unduly heavy price to pay in the event of the stilt being lost. But we cannot do anything about that. The Law seems to be as I have said; and if the law is harsh, it can always be amended."

With very great respects to the observations of their Lordships, we are unable to agree that the matter could be explained away so simply and summarily as their Lordships have done. It is well settled that the court should interpret the provisions of a statute in a reasonable manner and avoid an interpretation which may lead to absurd and anomalous results unless such an interpretation is the only one that is possible in the circumstances. In our view, the Legislature must be presumed to be aware of the contingencies contemplated by the Court Fees Act. As the Act is exhaustive, it is not reasonable to infer that as no provision is made for the court fees to be paid for eviction of a licensee Section 7(v) is the only provision which will apply. In fact, the word "possession" used in this sub-section has been used in a wider sense and does not include a mere occupation of the property by a licensee or other kinds of permissive possession. That is why the Legislature has taken out the possession of a tenant holding over from the ambit of Section 7(v) by making a special provision in Section 7(x)(cc) of the State Act which is Section 7(xi)(cc) of the Indian Act wherein court-fee has to be paid only on the yearly rental of the property. There is a marked distinction between "occupation" and "possession". This distinction appears to have been brought out very clearly by the observations of Sinha, J. in a Full Bench decision of the Patna High Court reported in *S.M. Yaqub v. T.N. Basu*<sup>8</sup>, while construing the word "possession" as appearing in Section 145 of the Code of Criminal Procedure. These observations are as follows :

"Possession should not be confused with occupation. A person may be in actual possession of his property without occupying it for a considerable time. I have a house in my native village, far away from Patna, which I do not occupy for months together. But still it is in my possession. I may have my house with large grounds of acres, only a small fraction of which is either occupied by buildings or by flower beds or by kitchen gardens; but I am in possession of the whole because I have the right to utilize the whole in any

way I like. If anybody were to question my possession in respect of the unoccupied portion of the grounds in a proceeding under Section 145 of the Code, I am entitled to be declared in possession unless my adversary succeeds in proving that he had ousted me from possession in that portion by actually occupying it. But felling such a proof by my adversary I must be deemed to be in actual possession, though I have not occupied it for a considerable length of time.

We respectfully agree with the observations of their Lordships and we think that the word "possession" appearing in Section 7(v) of the Court Fees Act should be given the same interpretation as the word "possession" appearing in Section 145 of the Code of Criminal Procedure. In our opinion, the Court Fees Act, contemplates various categories of suits for payment of court fees. Thus in a suit for possession against a trespasser Section 7(v) applies and for eviction of a tenant Section 7(x)(cc) has been provided. As a licensee is neither a trespasser nor a tenant the Legislature in its wisdom thought that such a case could be clearly governed by Section 7(iv)(d) of the Court Fees Act leaving the litigant free to put his own valuation. This seems to us to be the only reasonable interpretation of the Section in the circumstances. Coming now to Section 56 of the Specific Relief Act, we are of the opinion that if the section is to be construed liberally then the provisions of Section 55 would be completely stultified and its every case of breach of an obligation, the litigant will have to take recourse to the remedy of a suit for possession. We respectfully agree with the observations of Mukerji, J. in AIR 1958 Calcutta 179 quoted above. Analyzing Section 55 of the Specific Relief Act, we find that in the Case of a licensee, there is a clear obligation on his part to remain in occupation of the property only till such time and till such period for which he has been permitted by the licensor to occupy the premises. After the termination of the license, the licensee is under a clear obligation to surrender his possession to the owner and if he fails to do so, we do not see any reason why the licensee cannot be compelled to discharge this obligation by way of a mandatory injunction under Section 55 of the Specific Relief Act. We might further mention that even under the English Law a suit for injunction to evict a licensee has always been

<sup>8</sup> AIR 1949 Pat 146

held to be maintainable. A clear authority for this proposition appears to be *Thompson v. Park*<sup>9</sup>, where the defendant was a licensee on the premises. As the plaintiff had revoked the license, the defendant re-entered the premises as a trespasser and the plaintiff was, therefore, entitled to an injunction. Similarly in *Minister of Health v. Bellotti*<sup>10</sup>, an injunction was granted against a licensee who was in possession after the termination of the license. In this case, their Lordships held that the licensee was entitled to a reasonable notice so that he could collect his property and quit the premises. Their Lordships further held that though the notice in that case did not give reasonable time yet since by the institution of the suit, the licensee had sufficient time to vacate the premises, an injunction could be granted.

9. From a careful consideration of all the circumstances mentioned by us above, the following propositions emerge :-

1. That a suit for an injunction simpliciter against a licensee whose license has been terminated is maintainable.
2. That Section 7(iv)(d) of the Court Fees Act clearly applies to such a suit and the plaintiff is given an option of putting any valuation that he likes and the court-fee has to be paid on such valuation.

3. That where a licensor approaches the court for an injunction within a reasonable time after the license is terminated, he is entitled to an injunction. On the other hand, if the licensor causes huge delay, the court may refuse the discretion to grant an injunction on the ground that the licensor had not been diligent and in that case, the licensor will have to bring a suit for possession which will be governed by Section 7(v) of the Court Fees Act.

10. Applying these principles to the facts of the present case, we find that the suit being merely a suit for injunction on the ground that the defendant was a licensee and his license having been terminated, the suit for injunction is clearly maintainable and the valuation put by the plaintiff cannot be questioned by the court and the court fees paid by him on such valuation is correct and was wrongly interfered with by the Court below. The order of the court below holding that the suit for injunction was not maintainable and directing the plaintiff to amend his plaint so as to convert the suit into one for possession was legally erroneous and without jurisdiction.

11. The application is, therefore, allowed, the order of the court below dated 5-7-1963 is set aside. The court below will now decide the suit in accordance with law.

12. In the circumstances of the case there will be no order as to costs.

**J.W. Bhat, J.**

13. I agree.

Application allowed.

<sup>9</sup>(1944) 2 All ER 477

<sup>10</sup>1944-1 All ER 238