

LAHORE HIGH COURT

Jagat Singh

Vs

District Board

(Bhide, J.)

05.05.1939

JUDGMENT

Bhide, J.

1. The plaintiffs sued in this case for possession of about 3 kanals of land on the ground that it had been only temporarily given to the defendant (District Board, Amritsar) for purposes of an agricultural farm, with an option to the plaintiffs to recover possession when required. The defendant having refused to deliver possession when demanded by the plaintiffs they instituted the present suit. The defendant on the other hand claimed that the land had been gifted to the District Board for the purposes of a school and that the District Board was entitled to hold possession so long as the school was in existence and the land was required for the purposes of the school. The Courts below have found the issues in favour of the defendant and dismissed the plaintiffs' suit. From this decision the plaintiffs have preferred a second appeal. The finding of the Courts below that the land in question was given to the District Board for the purposes of the school and that the plaintiffs were not entitled to reclaim possession of the land so long as the land was required for the purposes of the school is based on the evidence of respectable witnesses and being a finding of fact is not open to challenge in second appeal. The learned Counsel however contended that one of the witnesses on whom the Courts below have relied has distinctly stated that there was no question of any transfer of ownership [vide statement of Bawa Barkat Singh (D.W. 5)] and that the defendant had been merely allowed to keep the land for the purposes of the school. He argued that if the ownership still remains with the plaintiffs they were entitled to recover possession as there was no gift in the legal sense of the term and the alleged agreement not to recover the land so long as the school was in existence could not bind the plaintiffs as there was no consideration for it.

2. It is significant that no deed of gift was executed and even a mutation with regard to it was not effected in the Revenue records wherein the plaintiffs have all along been shown as owners and it is also admitted that they have also been paying the land revenue. The District Board has not been able to produce any evidence even from its own records as regards the exact nature of this

transaction. If there was any intention to transfer the ownership of the land it is difficult to believe that there would be no record of the transaction in the District Board Office. The District Board merely relied on certain entries in the khasra Girdwari where the land was stated to be given by way of dharamarth, but these entries were challenged by the plaintiffs when they came to know of them and they got them corrected. Moreover, even in these entries, the District Board was shown as tenant-at-will and dharamarth was only stated as a reason for not charging rent. In my opinion, the learned Senior Subordinate Judge has overlooked the statement of Bawa Barkat Singh to the effect that there was no question of transfer of ownership (Milkiyat ka sawal natha), has misconstrued the khasra Girdwari entries and has not taken into consideration the effect of the absence of any documentary evidence showing transfer of ownership. In the circumstances his finding that there was a permanent gift cannot be sustained.

3. It has been already held by the Revenue Courts that there was no relation of landlord and tenant between the parties and this seems to be correct as no rent was intended to be paid. On the facts proved, the permission granted by the plaintiffs to the District Board to occupy the land and to use it for the purposes of the school seems to be in the nature of a 'license' as defined in Section 52, Easements Act. Such a license is ordinarily revocable, but not so if the licensee acting upon the license has executed a work of a permanent character and incurred expenses in the execution (Section 60, Easements Act). In the present case, it is not disputed that the District Board has sunk a well and erected compound walls. I do not see why these should not be considered to be works of a permanent character within the meaning of Section 60: *cf. Madhusudan Das v. Bissuji*¹ The learned Counsel for the appellants urged that the plaintiffs should be allowed to recover the land on payment of compensation, but Section 60 does not recognize any such exception. I see no reason why the principle of that Section should not be applied in this case. There is, besides, definite evidence of respectable witnesses in this case that the plaintiffs gave an undertaking that they would not claim the land, so long as it was required for the school. I see no reason to disbelieve this evidence. I do not think the District Board would have cared to sink a well, etc. if the plaintiffs had given the land on the condition (as they now allege) that they were at liberty to take it back any time they liked. In the circumstances, the District Board having acted upon the promise made by the plaintiffs the principle of estoppel as laid down in Section 115, Evidence Act, will fully apply. I accordingly hold that the plaintiffs are the owners and the defendant District Board is in the position of a licensee but is not liable to be ejected on account of the undertaking given by the plaintiffs that they would not claim the land so long as it was required for the school and also on account of the works of a permanent character executed by the District Board, on account of that promise. I therefore dismiss this appeal, but in view of all the circumstances leave the parties to bear their costs.

¹ AIR (1918) Nag 180