LAHORE HIGH COURT

Jagat Singh

Vs

District Board, Amritsar

(Tek Chand, J.)

28.03.1940

JUDGMENT

Tek Chand, J.

1. This appeal has arisen from a suit for possession of 3 kanals and 19 marlas of land in mauza Ray a, District Amritsar, instituted by the plaintiff-appellants against the respondent, the District Board of Amritsar. It was alleged in the plaint that the plaintiffs are the owners of the land, that 11 years ago they had given it temporarily to the District Board, Amritsar, for the purposes of an agricultural farm attached to the Board School at Raya on the condition that they would be entitled to resume possession at their option, at any time they liked. They averred that they required the land for their own purposes and had demanded possession from the District Board but the latter had refused to surrender it. The defendant Board resisted the suit on various grounds. It was denied that the land bad been given temporarily to the defendant and could be resumed by the plaintiff s at their pleasure. On the other hand, it was pleaded that the plaintiffs had gifted the land to the Board for the purpose of an agricultural miniature farm attached to the school. It was further alleged that in order to make the land fit for use as a farm the Board had spent large sums of money on constructions of a permanent character Including a well, boundary wall and a pucca gate and that the plaintiffs never objected to these constructions and, therefore, they were estopped from maintaining the suit.

2. The trial Judge held that the land had not been given temporarily to the defendant but there was an out-and-out gift for the purpose of starting a miniature farm, and that as the land was being used by the defendant for that purpose the plaintiffs were not entitled to recover possession at their pleasure. Ha also held that the plaintiffs were estopped from maintaining the present suit. On these findings he dismissed the suit. On appeal, the learned Senior Sub-Judge concurred with the trial Judge in holding that there was a permanent gift and so long as the school at Raya continued and used the land in question for the farm, or for purposes akin to it, it could keep the land. He accordingly dismissed the appeal.

3. On second appeal to this Court, the learned single Judge found that in finding that there was an out-and-out gift the Courts below had ignored important evidence on the record and had misread the depositions of some witnesses. He, therefore, held that this finding was not conclusive. He accordingly, examined the evidence himself and came to the conclusion that there was no out-

and-out gift, but the plaintiffs had retained the ownership in themselves and had granted permission to the District Board to occupy the land and use it for the purposes of the school. He held that this possession was in the nature of a 'license' as defined in Section 52, Easements Act. He further found that though such a license is ordinarily revocable but it is not so if the licensee, acting upon the license, has executed a work of a permanent character and incurred expenses in its execution, as laid down in Section 60 of the Act. As the District Board had sunk a well on this land and erected compound walls, which were works of a permanent character, the learned Judge came to the conclusion that the Board was 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 works of a permanent character having been executed by the Board, acting on that promise. In the result, he dismissed the appeal, leaving the parties to bear their own costs. He, however, granted a certificate to the plaintiffs for a further appeal under Clause 10 of the Letters Patent.

4. Before us, counsel for the defendant-respondents challenged the finding of the learned Judge on the merits and contended that the transfer was in the nature of an out-and-out gift. After hearing him, however, I can find no force in this contention, and agree with the learned Judge that the grant was in the nature of a license, as defined in Section 52, Easements Act. The main contention raised by Mr. Barkat Ali on behalf of the plaintiff-appellants is that the Indian Easements Act is not in force in the Punjab and, therefore, the rule laid down in Section 60 is not applicable, and that in this province the rule of English law should be followed, according to which even where the licensee, acting on the license, has executed works of a permanent character, the li censor is entitled to revoke the license and recover possession of the land on payment of compensation to the licensee for the expenditure incurred by him in executing these works. In support of this contention the learned Counsel relied upon *Wood v. Lead bitter*[1]. and three Calcutta cases, to which I shall refer presently. In *Wood v. Lead bitter. (1845) 18 M & W 838(Supra)* the facts were materially different and the decision does not really touch the point before us. There, the li censor, on receipt of money, had allowed the plaintiff to go to a stand in his enclosure and witness the races; the plaintiff had gone to the enclosure but was asked to leave and on his refusal to do so was forcibly ejected; and he brought an action for assault and false imprisonment. The case was decided primarily on the ground that according to the law, as administered in England at the time (1845), the right to come and remain for a certain time on the land of another could only be granted by deed; and that a parol license to do so, though money had been paid for it, was revocable at any time and without paying back the money.

5. This common law doctrine, however, was not allowed to prevail in equity; and ever since the Judicature Act the Courts in England have been giving effect to equitable considerations, and *Wood v. Lead bitter. (1845) 18 M & W 838(Supra)* has not been followed in its integrity: see the judgment of Lindley L.J. in *Hurst v. Picture Theatres Ltd*[2]. and *Lowe v. Adams*[3]. see also Gale on Easements (Edn. 11), pp. 69 and 70. Farther in *Wood v. Leadbitter. (1845) 18 M & W 838(Supra)* a distinction was drawn

[1](1845) 18 M & W 838
[2] (1915) 1 KB 1
[3](1901) 2 Ch D 598

between what is called a "naked license" and a "license coupledwith a grant." Alderson B., who delivered the judgment in that case observed at pp. 844 and 845:

> A mere license is revocable, but that which is called a license is something more than a

> license; it often comprises or is connected with a grant, and then the party who has given it cannot in general revoke it go as to defeat the grant, to which it was incident.

6. It cannot be said that in the case before us the license was a mere "naked" license. The case cited, however, does not deal with the principle underlying Section 60, Easements Act, and therefore it is not necessary to discuss it further. That principle appears to be based on equitable considerations and is really an application of the rule of estoppel to the case of a li censor, and I have not been able to find anything in English law, to the contrary. Indeed, the following passage from Goddard on Easements (Edn. 8) p. 529 sums up the English law in words, which are almost identical with Section 60 of the Indian Act:

> A license is also irrevocable if the licensee acting upon the permission granted, has executed a work of a permanent character, and has incurred expenses in its execution. This rule of law seems to be based upon the injustice which would be inflicted upon the licensee if, after he had laid out money and executed a permanent work, the licensor were permitted to revoke his licence and make him waste the money expended, or if he ever allowed to treat him as a wrongdoer and recover damages for the very act for which he gave permission.

7. Of the three Calcutta cases cited by Mr. Barkat Ali, *Prosonna Coomar v. Ram Coomar*[4]. is clearly distinguishable, as in that case no work of a permanent character had been executed; the plaintiff had merely been given the right to go to a corner of she defendants' land and use it as a privy and, following *Wood v. Leadbitter. (1845) 18 M & W 838(Supra)* it was held that this being a "naked license" to use the land of the defendant, not coupled with a grant, was revocable at the will of the li censor, subject to the right of the licensee to damages if revoked contrary to the terms of any express or implied contract. The other two cases certainly support Mr. Barkat Ali's contention and have the high authority of Sir Asutosh Mookerjee behind them. In *Sutnomoyee Peshakar v. Chunder Kumar Das*[5]. it was observed that where a licensee acting upon the license has executed works of a permanent character and has incurred expenses in their construction, the grantor of the license is entitled to revoke it, if he makes compensation to the licensee for the loss he may incur by reason of the revocation of the license. The learned Judge based this conclusion upon certain English authorities, mentioned therein. This view was reiterated by the same learned Judge in *Moti Lal Rai v. Kalu Mondar*[6]. But as pointed out by Sulaiman C.J. in *Mathuri v. Bhola Nath*[7]*.,* the rule has been expressed in too wide terms in these Calcutta cases and is not supported by the English decisions cited therein. In one of these cases, *Plimmer v. Mayor*, Councillors etc. of Wellington. (1884) 9 AC 699, the license was held to be irrevocable and the compensation actually granted to the

[4] (89) 16 Cal 640
[6] AIR 1914 Cal 173
[5](10) 12 CLJ 443
[7] AIR 1934 All 517 : 1934 AWR (H.C.) 4 1109

licensor was notfor revoking the license but for acquisition of certain other interests which he held in the land.

8. Similarly, in *Eoohdale Canal Co. v. King*[8]. the Court gave full effect to the rule of estoppel and refused to the licensor the injunction asked for, as he had acquiesced in the construction of costly works by the licensee. The decision in *Bankart v. Tennant*[9]. turned on its peculiar facts and it was held on the evidence that the undertaking given by the licensor did not form the foundation of an

equitable right and therefore neither an injunction nor compensation was granted. In Winter v.Brookwell. (1807) 8 East 308 an action in a case for nuisance was dismissed, as the license executed was held to be not countermandable, though it was remarked obiter that after the licensee had incurred expenses the license could not be recalled "at least not without putting him in the same position as before, by offering to pay all the expenses which had been: incurred in consequence of it." No compensation was however actually granted and the verdict was entered for the defendant. Again in *Llgglns v. Inge*[10]. in an action for tort it was held that the license was not countermandable and injunction was refused: it does not appear from the judgment that compensation was in fact granted. The last case referred to is *Aldin v. Latimer Clark Muirhead and Co*[11]. in which a parol license by a lessor to the lessee to open ventilators in the walla of a building demised by the lease was held to be revocable, and on the lessor closing the ventilators the lessee's action for injunction to restrain the obstruction was dismissed, but an enquiry was ordered to ascertain the amount of damage (if any) which he had suffered by reason of the obstruction. In the judgment emphasis was laid on the circumstance that the license was not by deed but was *parol and Wood v. Leadbitter. (1845) 18 M & W 838(Supra)* was followed the authority of which (as already stated) has since been shaken, so far as the particular matter is concerned.

9. In England, the present rule is as expressed in the passage from Goddard on Easements reproduced above and is substantially the same as that contained in Section 60, Easements Act. This rule being in consonance with equity, justice and good conscience should be given effect to in provinces like the Punjab, where the Act is not in force. This was done by Sulaiman C.J. in *Mathuri v. Bhola Nath*[12], in a case in which the license had been granted before the Easements Act was extended to the United Provinces and by the Judicial Commissioner of Central Provinces in *Dayaram v. Deorao*[13]. to a case from Berar where the Act is not in force. The contention of the learned Counsel for the appellant is without force and must be repelled. It is not denied that the land in dispute is being actually used by the District Board for the purpose for which it was given. It is also proved that more than ten years ago the defendant, acting on this license had sunk a well, erected a boundary wall and a pucca gate at considerable cost. These are works of a permanent character and therefore applying the rule laid down above, it is not open to the appellants to revoke the license at their option, and resume the land on offer of payment of compensation. I would accordingly affirm the judgment of the learned Judge and dismiss the appeal, but having regard to all the circumstances would leave the parties to bear their own costs throughout.

8(1853) 16 Beav 630
10(1831) 7 Bing 682
12 AIR 1934 All 517 : 1934 AWR (H.C.) 4 1109
9(1870) 10 Eq 141
11(1994) 2 Ch 437
13 AIR 1926 Nag 376

Dalip Singh, J.

10. I agree.