

# **BOMBAY HIGH COURT**

Ramchandra Raghunath

Vs.

Vishnu Balaji Hindalekar

(Norman Macleod, Kt., C.J. and Heaton, J.)

13.01.1920

## **JUDGMENT**

### **Norman Macleod, Kt., C.J.**

1. The plaintiff sued for possession of the plaintiff property and that it might be restored to him by removing the defendant's building. The trial Court ordered the plaintiff to get possession on paying ₹ 2,000/- to the defendant. The appellate Judge reversed the decree of the lower Court and directed that the defendant should retain possession of the land covered by the building. The tenant has been in possession of the land for a considerable number of years, but it is admitted that he is not a permanent tenant under the documents which exist, nor can he claim to be a permanent tenant under Section 83 of the Land Revenue Code. But the learned appellate Judge considers that because he has been allowed without objection to build on a portion of the land, therefore what were agricultural leases for a year had become building leases. I am afraid I cannot follow that argument. The ordinary rule is that a tenant must give up vacant possession at the end of his term. If he builds he builds at his own risk, and at the end of the term he can take away his building. If he leaves it there, it becomes the landlord's property.

2. Then it seems that the learned appellate Judge has come to the conclusion that there was a sort of an estoppel which created a permanent tenancy as regards the portion of the land built upon. But that would be to ignore the real nature of an estoppel which prevents a party telling the truth, but It Could not pombly create permanent tenancy. All that we can say is that there is certainly an equity in this particular case on its own facts in favor of the plaintiff being bound to compensate the defendant if he gives notice, The defendant has been in possession. He also paid rent for this land for a very large number of years and has built to the knowledge of the plaintiff, as is admitted, one of the finest houses in Malvan, and we must any this that very probably the defendant thought he would not be disturbed. But now the land has gone up in value, and the plaintiff evidently is not content with receiving the very small rent received by him on the terms on which he let it to the defendant with the result that he has given notice. He gets a fine house

under the decree of the trial Court which probably is worth much more than ₹ 2,000/- having regard to the in-creased prices. If we order the defendant to remove the house it would probably be worth nothing as the materials would not fetch much when broken up. I think we ought to rely upon the discretion of the trial Court and hold that this was a case in which in equity the plaintiff ought to compensate the defendant for retaining his building. We allow the appeal and restore the decree of the trial Court. The plaintiff will get his costs throughout from the 1st defendant. The cross objections are dismissed with costs.

**Heaton, J.**

3. I agree to the decision proposed. The mistake made by the lower appellate Court, I think, was that it inferred something precise when it was logically impossible to infer anything but what was vague. No doubt it is quite logical to say that there must have been some sort of understanding between the landlord and the tenant, for the latter never would have put up such a costly building as he did, if he held only the position of an annual tenant. But when we come to the question what was it that was understood between the landlord and tenant we find everything is vague. There is nothing in writing about it. No one deposes to it. It is all left to be inferred from general circumstances. It seems to me that you cannot, in a case like this, from general circumstances infer that which requires to be proved by definite evidence, such as for instance that there was a building lease, or that there was a specific understanding the terms of which can be stated. I think, therefore, that all that we can do is to say that although there is no specific agreement proved of the nature inferred by the lower appellate Court, yet the circumstances do show that it would be very unjust to evict the defendant without awarding him compensation. Therefore I think the order proposed by my Lord the Chief Justice is the correct order to make in this case.