

PATNA HIGH COURT

A.H. Forbes

Vs

Hanuman Bhagat

(Jwala Prasad, C.J. Adami , J.)

06.02.1923

JUDGMENT

Jwala Prasad, J.

1. This second appeal arises out of a suit for ejection. The Courts below have by concurrent findings dismissed the suit. The plaintiff is, therefore, the appellant before us. He is the Malik or proprietor of Forbisgnj Bazar where the land in suit is situate. It measures 3 bighas odd, or 1.31 acres. The land was enrollee held by one Gulab Chand under a base (Exhibit H), dated 1892. The defendant-respondent purchased the rights of Gulab Chand. He also took lease of the land from the plaintiff (Exhibit 8-A) dated 20th Aghan 1307 (5th December 1899). The appellant commenced the present action by filing a plaintiff in the Court of the Mnisif of Basantpur on the 22nd of June 1908. In the plaint he stated that the lease to the defendants was from year to year and that they were given no permanent right under the lease and that as the value of land of Forbesanj Bazar had increased and other tenants there under the plaintiff were pay in rent at higher rate, the defendants were served with notices to take fresh settlement of the land as their existing rent was rather low, or to quit the same; but the defendants neither took any fresh settlement nor gave up the land. The plaintiff comes khas possession of the land by ejecting the defendants from 1st Bnsakh 1326 M.S. and also from arrears of rent amounting to Rs. 162-4-3.

2. The Courts below have given the plaintiff a decree for arrears of rent and this portion of the decree is not under appeal before us.

3. Therefore, the appeal before us is only against the decree refusing the plaintiff's relief for ejecting the defendants.

4. The defendants in resisting the plaintiff's claim asserted that the lease granted to them created a be maiyadi or permanent tenancy and not one from year to year; that in terms of the lease the defendants have constructed pucca buildings on the land at immense cost with the permission of the plaintiff and on payment of the to him and, therefore, the plaintiff is estopped from bring in

the suit for ejectment. In the alternative the defendants pleaded that in case they be found liable to be ejected, they be awarded Rs. 32,000, as compensation for the pucca buildings erected by them.

5. Two questions were agitated in the Court below, namely:

(1) whether the lease in favour of the defendants was a permanent lease in its inception, and (2) whether the subsequent acts and conduct of the lessor and the lessees converted the lease into a permanent one; and "if so, whether the plaintiff lessor is, therefore, estopped from bearing a suit for his possession of the land in suit.

6. The Court below has decided both the issues against the plaintiff. Mr. Sen on behalf of the appellant impugns the finding of the Court below on both the issues.

7. Now, the plaintiff's suit will fail if any of the aforesaid issues is decided against him. The first issue depends upon the construction of the deed in question. It is conceded that no definite term was fixed in the lease. That in itself will not show further that the lease was of a permanent character or that it was for a term of years. As to whether this indefinite term was intended to be perpetual or permanent depends upon the intention of the parties as gathered from the covenants in the lease. The learned Subordinate Judge has in his judgment summarised the terms. It is not necessary to refer to all of them for the purposes of this appeal. We may, however, refer to the following terms only:

(1) The purpose of the lease was to enable the lessee to erect a house and to purchase and sell all sorts of commodities therein or in other words to open his business therein;

(2) The lease was not limited for any definite period but that it was a *be maiyadi* lease, or a lease without any term;

(3) That the lessee shall not have the power to construct any pucca building without the express and written permission of the lessor and if that stipulation be violated and pucca building be raised by the lessee without such permission of the lessor, he the lessee, shall be liable to be evicted and (4) In case the lessee want to erect pucca building and to have a pucca well or *indara ha* shall have to do so according to the advice of the lessor.

8. Now it is clear from the aforesaid terms that the lease was for the purpose of a business and for building houses. It is also clear that the erection of pucca buildings for the "business as well as for the purpose of residence was in the contemplation of the parties, with the condition that any possession for erecting pucca structures will, have to be taken from the lessor. Under these circumstances the inference is not unreasonable that the lease in question was meant to be of a permanent character and not for a term of years. No doubt, as observed above, it was a *be made* lease or a

lease without any term may in the circumstances of a particular case be shown not to confer any permanent grant, as was held in the cases relied upon by the learned Counsel on behalf of the appellant *Biroda Prasad v. Prosonna Kumar Da¹ Mohim Chandra Sarkar v. Anil Bandhu Adhicary² Parshan Kuer v. Tulsi Kuer³ and Kailaspati Chowdhury v. Muneshwr Chowdhury⁴* The decisions in those cases were applicable to the particular facts decided and the leases concerned.. "The present case is very near the case reported in *Promada Nath Roy v. Srigo bind Chowdhry* 32 C. 648 : 9 C.W.N. 463 Upon the facts in the present case and the lease in question we are not prepared to differ from the view of the Court that at its inception the lease was a permanent lease, and not one from year to year.

9. The respondents are on firmer ground Upon Issue No. 2. Now it is undisputed that on the 29th of November 1907 the defendants applied for permission to erect pucca buildings on the land in question in terms of Clause (3) of the lease and the permission was expressly granted on acceptance of nazraia of Rs. 21. The plaintiff has filed purwangis issued to the defendants in 1909 (Exhibits 18 and 18-A). These purwang is confirm the permission already granted stating that the permanent structures standing on the land, were erected with the permission and sanction of the lessor. Now, before the foundation was laid the defendants applied for permission in 1907 and they were given that permission. The purwanlis referred to above, which were granted two years after, indicate that the buildings had already been completed and the construction thereof was confirmed by the plaintiff. In none of these documents is there any indication of the plaintiff having demanded a higher rent as a condition for the erection of the pucca buildings on the land in question; nor is there any suggestion that the erection of such buildings would not confer upon the defendants the right to remain on the land permanently or that the construction of the buildings was to be at the risk of the defendants liability to be ejected on the ground of the lease being only of a limited duration. The plaintiff in this case did not only acquiesce in the construction of the buildings in question by merely abstaining from interference, but he actually granted permission for erecting the "buildings Therefore, even if the lease was of a temporary duration limited by terms, or a lease from year to year reserving the right of re-entry in the lessor. I am afraid the plaintiff would have been estopped from claiming the right of khas occupation by ejecting the defendants. The lease, even if originally for a limited term, would then have been construed to have been made permanent in the sense that the plaintiff would not have been entitled to reenter. The original terms of the lease would then have been supplemented by a fresh contract by the conduct of the parties whereby the defendants would have acquired a right of occupation over the land in question. The learned Counsel on behalf of the appellant relies upon the case of *Beni Ram v. Kunian Lal⁵* In that case the term of the lease was defined and no express permission for building was given by the lessor. Under those circumstances, the observation of the Lord Chancellor in *Ramsden v. Dyson⁶* was applicable to the facts of the case, to the effect that if a tenant builds on the lands which he holds under a term he cannot acquire any right to

prevent the lessor from taking any possession of the land and building when the lease determines; he knew the extent of his interest; and it was his folly to expend money upon a title which he knew would or might soon come to an end. On the other hand, Lord Watson in delivering the judgment of their lordships of the Judicial, Committee observed: "In order to raise the equitable estoppel which was enforced against the appellants by both the Appellate Courts below, it was incumbent upon the respondents to show that the conduct of the owner, whether consisting in abstinence from interfering, or in active intervention, was sufficient to justify the legal inference that they had, by plain indication, contracted that the right of tenancy, under which the lessees originally obtained possession of the land, should be changed into a perpetual right of occupation."

9. In the present case the Courts below have held that the plaintiff in the present case had actually given express permission to the defendants to construct buildings on the land in question and thereby he contracted that the right of tenancy would continue principally so as to confer upon the defendant the right of permanent occupation.

10. The case of *Ralli v. Forbes*⁷ decided in this Court, does not seem to help the appellant, In that case the lease was from year to year, whereas in the present case the lease is without any term. On the other hand, the principle laid down in the above case as to the doctrine of estoppel seems to apply to the present case. Upon the circumstances, not very dissimilar to those of the present one, the learned Chief justice applied' the doctrine of estoppel against the claim of Mr. Forbes to eject the defendants from the land leased to them.

11. We agree with the view taken by the Court below on both the issues and dismiss the appeal with costs.

Adami, J.

12. I agree.

Cases Referred.

114 Ind. Cas 152 : 16 C.W.N. 564

21 Ind. Cas. 66 : 9 C.L.J. 362 : 13 C.W.N. 513 : 5 M.L.T. 297

339 Ind Cas. 658 : 2 P.L.J. 180 : 1 P.L.W. 447 : (1918) Pat. 11

443 Ind. Cas. 665 : 3 P.L.I. 576 : 4 P.L.W. 109

521 A. 496 : I Bom. L.R. 400 : 3 C.W.N. 502 : 26 I.A. 58 : 7 Sar. P.C.J. 523 : 9 Ind. Dec. (N.S.) 1022 (P.C.)

6(1866) I.H.L. 129 : 12 Jur (N.S.) 506 : 14 W.R. 926 : 149 R.R. 543

767 Ind. Cas. 744 : (1922) Pat. 209 : 3 P.L.T. 467 : 4 U.P.L.R. (Pat.) 43 : (1922) A.I.R. (Pat.) 158 : 1 Pat. 717