

Ramesh Chandra Das Vs. Atul Chandra Sarkar

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Court : Guwahati

Decided On : Feb-17-1958

Judge : H. Deka and G. Mehrotra, JJ.

Acts : [Transfer of Property Act, 1882](#) - Sections 40, 105 and 111

Appeal No. : Second Appeal No. 106 of 1955

Appellant : Ramesh Chandra Das

Respondent : Atul Chandra Sarkar

Advocate for Def. : P.K. Gupta, Adv.

Advocate for Pet/Ap. : S.M. Lahiri and B.N. Choudhuri, Advs.

Disposition : Appeal dismissed

Judgement :

G. Mehrotra, J.

1. This is plaintiff's appeal arising out of a suit for ejectment. The suit land, according to the plaintiff, originally belonged to Khatija Bibi who has been impleaded as pro forma defendant No. 1 in the suit and Nejifar Rashman--her husband who has been impleaded as pro forma defendant No. 2. The husband used to manage the land for her. On the 20th -December, 1944, the defendant No.

1 sold the suit land to the plaintiff under a registered sale deed and she delivered possession. The principal defendant Atul Sarkar took the land from the proforma defendants under a lease dated 18th March, 1941 for 10 years at a monthly rental of Rs. 2/8/-. The rent was to be payable within the 1st week of the next month. The lease began from March, 1942.

There was a provision in the lease that after the end of the period of 10 years, defendant Atul Sarkar will be entitled to remain in the suit land on a new Bandobasta only. On his failure to get the renewal of lease, he will have to remove his houses at his own cost. During the pendency of the lease, the plaintiff became the owner of the property under the sale deed dated 20th December, 1944. The plaintiff, after the sale, admitted the contesting defendant as his tenant and he paid him the rent for the suit land upto August, 1950.

But subsequently he committed default in payment of the rent. The land is now needed by the plaintiff for his own possession and therefore he served a notice on 11th February, 1952 to the principal defendant before the expiry of 10 years to give up the possession of the suit land. On 19th February, 1952, the defendant replied to the notice intimating his intention to get renewal of the lease of the land for another 10 years on the same terms and conditions. Thereupon the plaintiff brought the suit for the ejectment of the defendant and also has claimed the arrears of rent with compensation amounting to Rs. 99/-.

2. The suit was brought on the 22nd April, 1952. The defence taken was that the notice was not proper and valid and was not properly served on him and that the defendant was entitled under the terms of the earlier lease to get the renewal of the lease in his favour. He cannot thus be ejected from the land as he has already expressed his option to take the land on lease for a fresh period of 10 years. The Munsiff held in favour of the defendant on both the grounds.

The lower appellate court accepted the contentions of the defendant that he was not liable to be ejected as he had a right under the terms of the earlier lease to get the renewal of the lease. As he had, in pursuance of the terms of the lease, expressed his intention to take a fresh lease he could not be ejected from the land. The lower appellate court further held that in the absence of any express terms in

the lease, the defendant will have a right to have a fresh lease on the same terms and conditions as the earlier lease.

3. Two contentions have been raised before us by the counsel for the appellant. Firstly it is urged by him that no right in the land has accrued to the defendant under the terms of the old, lease. It was not a valid answer to the suit for ejectment that he had a right to get the fresh lease in his favour under the terms of the old lease. His remedy was to file a suit for the specific performance, but he cannot resist the suit for ejectment on that ground.

Particularly in the present case, it was urged that the terms of the lease were very vague and thus he could not even file a suit for the specific performance of the contract. Secondly it was urged that even if the deed can be said to contain a term of renewal, unless the appellant could successfully invoke the aid of Section 53A of the Transfer of Property Act, he cannot, on the strength of the lease, resist the suit for ejectment. Section 53A of the Transfer of Property Act does not apply to the present case and moreover it has not been specifically pleaded in the written statement.

Relying upon the case of *Girindra Ch. v. Kamini Nath Roy*, AIR 1949 Assam 78 (A), the lower appellate court accepted the contentions of the defendant. That was a case where the trial court had dismissed the suit against the defendant No. 1. The defendant had taken a settlement of the land from the plaintiff for a period of 5 years from 1347 B.S. and had agreed to pay Rs. 50/- as rent per annum. At the determination of the lease by efflux of time, the plaintiff served a notice asking the defendant to vacate the land as he required it for his own possession. At the expiry of the notice, a suit was brought against the defendant No. 1.

The defence taken was that he was not liable to be evicted as the plaintiff had agreed by the terms of the old lease to give him an option of renewal of the lease. A few days before the expiry of the period of the lease, a notice had been sent by the defendant to the plaintiff stating that he was prepared to take a fresh lease in accordance with the terms of the agreement as to renewal. The notice was however ignored and the suit was brought. On these facts it was held that under the terms of the lease, an option of renewal was given to the lessee and as he had

expressed his intention to take the lease, it was not open to the plaintiff to bring a suit for ejectment. Reliance was placed by this Court on a Calcutta case reported in *Hemanta Kumari Debi v. Sefatulla Biswas*, AIR 1933 Cal 477 (B).

4. The main contention raised by the appellant is that after the efflux of time under the provisions of the Transfer of Property Act, the defendant was liable to be evicted and unless the defendant can take the benefit of Section 53A of the Transfer of Property Act, the express provisions of the Transfer of Property Act cannot be ignored and the suit for ejectment cannot be defeated.

5. Section 111 of the Transfer of Property Act provides that a lease of immoveable property determines by efflux of time limited thereby. The lease thus, according to the contention of the plaintiff-appellant, determines on the expiry of the period of 10 years and unless the defendant acquired any right to the land, under the old lease, or that he had a right to resist the suit for ejectment under the provisions of Section 53-A, the suit cannot be defeated.

Section 53-A which was added by the amendment of Section 16 of the Transfer of Property (Amendment) Act reads as follows :--

'Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract taken possession of the property or any part thereof, or the transferee being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that the contract, though required to be registered has not been registered or where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property or which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract: provided that nothing in this section shall

affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.'

6. Section 106 of the Transfer of Property Act deals with the duration of certain lease in the absence of a legal contract or local law. Section 108 Sub-section (Q) of the Transfer of Property Act provides that on the determination of the lease, the lessor is bound on the lessee's request to put him in possession of the property. Section 111(a) provides that a lease of immoveable property determines by efflux of time limited thereby. It was argued that the lessee is bound to deliver possession to the lessor after the termination of the lease.

In the present case, the lease determined after the efflux of time of 10 years and the suit for ejectment cannot be resisted by the defendant unless the provisions of Section 53-A were available to the defendant and that covenant was such as can be specifically enforced. In this connection it was further contended that the covenant relied upon by the defendant is not a covenant for renewal of the lease. Under the terms of the lease, the lessee was entitled only to get a fresh Bandobasta. The terms translated will read as follows :--

'After the expiry of the period of lease if the defendant wants to remain in the leased out land again then he can remain there on a new Bandobasta.'

We have carefully considered the terms of the lease and in our opinion, though the words do not very clearly set out the terms and do not incorporate the conditions in details, still it is a clause for renewal. It gives an option to the lessee to continue to remain in possession on a new Bandobasta. The option to continue in possession on getting new Bandobasta has been given to the lessee.

7. In the case of Secretary of State v. A. H. Forbes, 16 Cal LJ 217 (C), the terms of the lease were that on payment of the rent assessed, the lessee will peacefully dwell on the land and if he stood in need of constructing any house, he could build on obtaining sanction therefor from the Collector. Interpreting these words, it was held by the Calcutta High Court that though the terms of the lease were not very happily worded, it was intended to be a covenant for renewal.

It is always a matter of the construction of the terms and intention of the parties to be gathered from the language of the document. In the present case, the option was also exercised by the lessee in reply to the notice of the lessor when he expressed his desire to take the lease on the old terms. He was thus entitled to continue in possession of the lease land.

8. Reliance was placed on the case of *Surendra Nath Sen v. Dinabandhu Naik*, 13 Cal WN 595 (D), on behalf of the appellant. In that case the lease was for a term of 9 years and it further provided that on expiry of the terms of 9 years, the defendant might apply for re-settlement and the plaintiff would be bound to grant him a re-settlement without any bonus. On those terms, it was held that the covenant for renewal was very vague. No terms were specified in the lease and there was nothing in it which would show what the rent would be.

All that appeared was that the defendant was entitled to re-settlement. It will however be clear from this case that the defence was thrown out on the ground that the defendant never in fact applied for re-settlement of the lease or for the renewal of the lease. Nor had he expressed any willingness to remain in possession of the land. Under those circumstances, it was held that if the terms were clear, the right of the defendant was to ask for a specific performance. But it was not a case where any right to remain in possession of the land accrued to the defendant so as to defeat the right of the plaintiff for ejectment.

9. The covenant in the lease for the renewal is a covenant running with the land and can be given effect to. This has been held in the case of *Midnapore Zemindary Co. v. Ishan Chandra*, AIR 1924 Cal 346 (1) (E), and in the case of 16 Cal LJ 217 (C), referred to earlier by us and in the case of *Radha Kamal v. Puri Municipality*, AIR 1954 Orissa 110 (F). Section 40 of the Transfer of Property Act also provides that where a third person is entitled to the benefit of an obligation arising out of contract and annexed to the ownership of immoveable property, but not amounting to an interest therein or easement thereon, such right or obligation may be enforced against a transferee with notice thereof or a gratuitous transferee of the property affected thereby, but not against a transferee for consideration and without notice of the right or obligation, nor against such property in his hands.

The principle underlying Section 40 clearly enunciates that between the lessor and the lessee the terms are primarily binding on these two, but upon an assignment either of the reversion, it may also be binding on the grantee or the assignee of the terms. A covenant for renewal runs with the land and so both the lessor and the lessee and their successors in title are bound by it and the lessee is not liable to be ejected unless he refuses to exercise that option

10. It was contended that in view of the decisions of the Privy Council that equitable principles enunciated in the case of *Walsh v. Lonsdale* 1882-21 Ch. D. 9 (G) and in the case of *Bibi Jawahir Kumari v. Chatterput*, 2 Cal LJ 343 (H), are not applicable to India, the authority of the case reported in 16 Cal LJ 217 (C), referred to above is no longer binding. Before examining the cases referred to by the counsel for the appellant, it will be necessary to deal with Forbes's case (C), in little detail.

In this case, the Secretary of State had filed a suit against A. H. Forbes for his ejectment. A lease was granted by the Collector on 11-11-1878 to one John Christian in respect of a parcel of homestead land for a term of 27 years. The lessee transferred later on his interest to one Ambler and he sold the property to the defendant. Upon the expiry of the terms of the lease, the Collector made an offer to the defendant to renew the lease on a certain new terms. The defendant refused to accept a renewal on the terms proposed and claimed a renewal on the same terms as before, subject to the payment of fair rent. The Collector then served a notice on the defendant to quit the land.

The notice being ignored by the defendant, the Collector brought a suit for his ejectment. The lower appellate court dismissed the suit on the ground that the defendant had got practically permanent interest' on the land. On this, three questions were formulated by the High Court. Firstly whether there was a covenant for renewal the lease; secondly if there was a renewal clause, was the defendant offered a renewal on proper terms and thirdly if the defendant was protected from ejectment. On the first question, the finding was that there was a covenant for the renewal.

As regards the second question, it was held that the defendant was entitled to renewal on the same terms, subject to his payment of a fair rent. In this connection, it was held that covenant for renewal runs with the land and reliance was placed on the case of *Simpson v. Clayton* (1838) 132 ER 981 (I), *Roe d. Bamford v. Hayley*, (1810-104 ER 181) (J), & *Brook v. Bulkeley* (1754-28 ER319) (K). As regards the 3rd contention that the defendant was entitled to equitable relief & was entitled to resist the suit for ejectment--reliance was placed on the case of *Walsh v. Lonsdale* (G). The appeal was therefore dismissed not only on the ground that the defendant was entitled to claim right to continue in possession on some equitable grounds only, but also on the finding that the covenant of renewal runs with the land and the defendant was not liable to be ejected.

11. Reliance was then placed on the case of *G.H.C. Ariff v. Jadunath Majumdar Bahadur*, AIR 1931 PC 79 (L). It was held in this case reversing the decision of the Calcutta High Court that the doctrine of part performance was not applicable to India and that the appellant in that case was not entitled to succeed neither having any equitable principle nor on the basis of the doctrine of part performance. The facts of that case were entirely different.

In 1913 a verbal agreement was made between the appellant and the respondent for the grant to the respondent by the appellant of a permanent lease of a small parcel of land at a total rent of Rs. 80/- per month. In anticipation of the execution of the lease, the respondent was left into possession and shortly thereafter he raised certain structures on the land with the knowledge of the appellant. In the year 1914 it was agreed upon by the parties that the lease should be a lease for five years. No lease was ever executed, but in October, 1922 the appellant served upon the respondent a notice to quit asserting that he was a monthly tenant and requiring the premises to be vacated. This not being done, a suit was instituted.

Under the circumstances, it was held that the verbal agreement could confer no right upon the respondent to resist a suit for ejectment. The lease for immoveable property from year to year or for a term exceeding one year had to be by means of a registered instrument. No right therefore could accrue in favour of the lessee in the absence of any such registered document. The defendant's claim was not

justified on the grounds of doctrine of part performance and also on the equitable principles. It was held by their Lordships of the Privy Council that the doctrine of part performance was not applicable to India and that the equitable principles enunciated in the case of *Walsh v. Lonsdale* (G) could not be applicable to India in view of the express statutory provisions.

There was no agreement in writing in that case and the only defence which was taken by the defendant was that in view of certain oral agreement, he had entered into possession of the land in part performance of the said oral agreement. The defence on these circumstances was repelled. There being an express provision in the Transfer of Property Act requiring a registered document, no relief to the defendant could be granted on any equitable principles. Since this decision, the doctrine of part performance has been incorporated in Section 53A of the T. P. Act. That was however not a case of any covenant of renewal under which any right had been given to the lessee to continue to remain in possession even after the expiry of the terms of the lease.

12. This view was further re-iterated by their Lordships of the Privy Council in the case of *Pir Bux v. Mahomed fahar*, AIR 1934 PC 235 (M). That was a case where there was a contract for a purchase of a property and it was held that the English equitable doctrine did not apply. Next case referred to is the case of *Haripada Mukherjee v. Elokeshi Devi*, AIR 1940 Cal 254 (N).

In that case the suit for possession was resisted on the ground of some antenuptial agreement and a gift in favour of the defendant. The gift in that case was not accepted as it was not registered. As regards the agreement, it was observed that it has been authoritatively laid down by the Judicial Committee that the English doctrine of part performance is not available in India by way of defence to a suit for ejectment except under the provisions of Section 53A, of the Transfer of Property Act and in cases to which that section is applicable.

13. An attempt was made in that case to justify the defendant's case upon the equitable doctrine enunciated in the case of 1882-21 Ch. D. 9 (G) and that was repelled and it was observed as follows : --

'The doctrine in (1882) 21 Ch. D 9 (G) as is well known is based upon the principle that equity regards all that as done which ought to have been done, and if the defendant in an action of ejectment had an enforceable right to enforce specific performance of a contract entered into, entitling him to remain in occupation of the land, it would furnish a complete defence to the action commenced by the plaintiff on the strength of his legal title.'

From these observations, it was argued that the defendant could resist the suit for ejectment only if he could establish that he could claim any specific performance of the contract of renewal under Section 53-A. The terms of the contract being vague, no specific performance can be claimed and that as the lessor did not make any demise in praesenti under the document, Section 53-A in terms did not apply.

In this connection, it was also contended that no benefit of Section 53-A could be claimed by the defence as he did not specifically plead the necessary facts in the written statement. In the view which we have taken of the matter, there is no force in these contentions. It is not a case where the defendant resisted the claim on the basis of the doctrine of part performance. He does not invoke the aid of any doctrine of part performance of the agreement as embodied in Section 53-A. His case is not that he entered into possession of the property under some contract which failed only for want of registration.

The case of the defendant really was that there was in the earlier lease a covenant for renewal which was a covenant running with the land and as such he was entitled to continue to remain in possession if he was willing to exercise his option to get the land on fresh lease and that was a complete defence to the suit for ejectment.

14. The next point which was urged was that the defendant was not entitled to the renewal of the lease on the same terms as contained in the earlier lease. This Court in the case of AIR 1949 Assam 78 (A), which we have already referred to earlier has accepted the principle laid down in the case of Secretary of State v. Digambar Nanda, AIR 1919 Cal 620 (O). In the case of Secretary of State v. Digambar Nanda (O), it was held by Mukherjee J. that where there is a covenant

for renewal of the land, the defendant has an option of refusal or otherwise of the renewal itself. This principle' was also laid down in the. earlier case of the Secretary of State v. A. H. Forbes (C) to which we have already referred to. In a later case of Srish Chandra v. Doa Mahommad, AIR 1939 Cal 77 (P), the same principle was again followed.

15. In the result, therefore, we are of the opinion that the defendant is entitled to renewal of the lease on the same terms as contained in the earlier lease, subject to his payment of a fair rent. The appeal is accordingly dismissed with costs.

H. Deka, J.

16. I agree.

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