

Kaveriamma Vs. Lingappa

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Court : Mumbai

Decided On : Oct-06-1908

Reported in : 1Ind.Cas.654

Judge : Scott, C.J. and ;Chandavarkar, J.

Appellant : Kaveriamma

Respondent : Lingappa

Judgement :

1. This suit was brought by the plaintiffs to recover rent from the first defendant on the ground that he was the lessee of certain property to which the first plaintiff had become entitled as heir of her deceased brothers.

2. The property had come into the possession of the first plaintiff's family by a deed of mortgage, dated the 14th of December 1895, which was executed with possession in favour of Subraya, although the mortgage money was advanced by Subraya on behalf of himself and his younger brother. On the same date, the 14th of December 1895, Subraya in his own name granted a lease of the property for 12 years to the first defendant. Subraya after some years died, his interest as mortgagee surviving to his younger brother Ramkrishna. Ramkrishna thereafter died and the person who became entitled as his heir was the first plaintiff. The first plaintiff, however, did not live with her brothers and upon the death of Ramkrishna the property was taken possession of and managed by Subraya's widow Gowri,

who, after Ramkrishna's death in the year 1901, got her name placed on the khata as the owner of the property. While she was thus the apparent owner of the property she demanded rent from the first defendant and he paid her rent for the year 1902 and the year 1903. It is for these years that the plaintiffs now seek to recover rent from the first defendant on the ground that Gowri had no authority to receiver rent and give a discharge for the same.

3. At the time that the first defendant paid these rents to Gowri, the tenancy was still continuing and he was, therefore, estopped as against Subraya, the nominal lessor, and Subraya's heir Gowri from disputing their right as landlords. He could not have defended a suit for rent brought against him by Gowri.

4. It is also apparent from the findings of the District Judge that the defendant in making the payment to Gowri was acting in good faith. He had no notice of the plaintiffs' interest in the property. We think that it is a case calling for the application of Section 50 of the Transfer of Property Act which runs as follows:

No person shall be chargeable with any rents or profits of any immoveable property, which he has in good faith paid or delivered to any person of whom he in good faith held such property, notwithstanding it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits.

5. It has been contended on behalf of the plaintiffs that Section 50 has no application to a case in which there has not been an assignment by the lessor during the tenancy.

6. The section, however, is not in terms limited to such cases, and, we think, its language is general enough to cover the case before us. We must, therefore, hold that the first defendant is not chargeable with the rents sued for and we, therefore, confirm the decree of the Lower Court and dismiss the suit.

7. The defendant in the course of the suit raised contentions as to the right of the plaintiff as heir of her brother Ramkrishna and it became necessary to investigate closely the rights of Subraya and Ramkrishna with reference to the property in

question. In those contentions the defendant has failed. For these reasons we think that the proper order as to costs will be that each party do bear her or his own costs throughout.

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