Mahableshwar Devershetti Vs. Badku Venka Naij and ors.

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SooperKanoon Citation : sooperkanoon.com/350188

Court : Mumbai

Decided On : Aug-28-1924

Reported in : AIR1925Bom178

Appellant : Mahableshwar Devershetti

Respondent : Badku Venka Naij and ors.

Judgement :

Fawcett, J.

1. This appeal relates to what is known as Nadgi tenure in the District of Kanara. The defendants are Nadgi tenants of the land in suit. The plaintiff is its owner. The plaintiff sued to recover possession of this land with mesne profits and damages. He alleged that the defendants had failed to comply with the condition, on which they were granted the land, of maintaining it in proper condition as a garden, and that therefore he was entitled to recover the land owing to forfeiture of tenancy by breach of the condition. Defendants Nos. 1 and 2, who have alone defended the suit contended that they had not neglected the land, and that such neglect as there had been in the last one or two years was not their fault; a hut that was on the land had fallen down, and although the plaintiff had been asked to erect a new hut, he had not done so, with the result that the defendants could not stay on the land and properly look after it. They also denied the plaintiff's right to recover mesne profits and damages.

2. The main issue raised in the case was whether the plaintiff was bound to provide a house for the residence of the tenants, or whether the tenants should themselves provide it. With this is to be read the third issue in the trial Court: 'Have defendants committed breach of duties as alleged by the plaintiff.' Both those issues were answered in favour of the plaintiff by the learned Subordinate Judge. He held that the land was certainly in a most neglected state. A Commissioner was appointed to report about it, and found that cattle were grazing in the land which was left uneared for. Admittedly the defendants were living at a distance of about a mile from the land and for three years nobody had been staying upon it. The defendants admitted that the land was not in good order, at any rate for a year and a half prior to the trial. There was no compound-wall round the land to keep out cattle, nor any hedge or fence to supplement the small portion of wall that there was on one side of the land. The trees existing on the land were admittedly at least forty years old, and no new trees had been planted, although there was spare space for doing so.

3. In regard to the question about the hut, the Subordinate Judge accepted the testimony of the defendants' witnesses that 'when a house falls down, the landlord has to supply materials and the tenant is to build the house.' But in this case, according to defendant No. 2's own admission, he had taken some of the materials from the old house and allowed others to steal the remainder. Accordingly he held that materials were available to the defendants for building a new hut, and that the plaintiff was not liable to build it for the defendants. In the result he passed a decree awarding the plaintiff possession of the land, Rs. 30 for damages on account of the defendants having neglected to keep the land in good order, and Rs. 50 for the plaintiff's share of the produce of the land for one year before suit. He also gave the plaintiff their costs of the suit.

4. Defendants Nos. 1 and 2 appealed to the District Judge, who held that the garden in question had certainly been neglected. He says in his judgment:- 'It is common ground that the house has been allowed to collapse and that the rafters have been stolen away. It is hardly disputed that there is no fence about the garden, and it is admitted that there is no tree of less than forty years of age.' But he held that under the Nadgi tenure, it was the business of the plaintiff, being the overlord, to bear the expense of planting trees, keeping up fences, and other things necessary for improving the land; while the defendants as tenants were responsible for performing the manual work which would be entailed. Accordingly, although the property had suffered from neglect, he held that the neglect was as much the. neglect of the plaintiff himself as the neglect of the tenants, and that the plaintiff was not entitled to terminate the tenancy on the ground of breach of condition and to get immediate possession. The decree of the lower Court was accordingly reversed and both the parties were ordered to bear their own costs throughout.

5. The plaintiff has come here in second appeal on the main ground that the District Judge has misunderstood the nature of the Nadgi tenure, and that having found that the property had suffered from neglect, he should have given the relief asked for against the defendants. It appears to me that there are no sufficient grounds for laying down as a definite rule that the overlord in Nadgi tenure has to bear the expense of all improvements in the way the District Judge has stated. So far as the present suit is concerned, no evidence has been adduced which would justify a finding to that extent. It is quite clear that the main dispute between the parties was in regard to the hut which had fallen down, and that was the only expense which the defendants alleged the plaintiff had to bear and which was put in issue on the ground that the plaintiff not having built a new hut, the defendants could not be held responsible for not keeping the garden in a proper state. So far as any other expenses are concerned, there is no evidence which would justify this Court in finding who was liable for them and holding for instance that the expense of building a compound wall should necessarily fall upon the plaintiff.

6. In this connection I may refer to the litigation which came before this Court in S.A. No. 830 of 1907 and related to the condition of this Nadgi tenure, and where the District Judge, Mr. Boyd, has laid down the main condition of the tenancy in a form that is generally referred to as authoritative in a ease of this kind. In the suit out of which that litigation arose, the judgment of the Subordinate Judge shows that the plaintiff's Contention was that the tenants (the defendants in that suit) ought to have kept the land in proper condition by erecting a compound wall and planting trees. They had, however, not done this, and hence it was contended they had lost their Nadgi right. No contention was apparently raised in that case that the landlord was liable for the expense of keeping up a compound wall or even the expense of planting new trees. The District Judge, Mr. Boyd, in his judgment, does not mention this as a main condition of the tenancy. He says: 'It is undoubtedly a permanant tenancy, but with a condition attached to it. The condition is that the tenant shall water and manure the trees, repair the fence or wall round the garden and plant new trees from time to time so that the garden shall always have in it about as many trees as it can contain with profit to thosa who enjoy its produce.' He held that a breach of this main condition made the tenancy liable to forfeiture at the will of the landlord, and this view was upheld by this Court in second appeal.

7. In the judgment of the Court given by Chief Justice Sir Basil Scott and Heaton, J., it is said: 'The defendants were Nadgi tenants of the plaintiffs. There was no dispute in the Courts below as to condition of the Nadgi tenure. It is a condition of the tenure that the tenant should cultivate garden land. It is found as a fact in both the Courts that the defendants have broken the condition by neglecting the cultivation and according to the custom of the tenure the landlord on breach of the condition acquires a right to oust the tenant' They held that there had been a clear breach of condition justifying forfeiture, and that the plaintiffs were entitled to possession.

8. In view of this judgment, it requires greater authority than is now available in the materials before us before it can be laid down as a condition of Nadgi tenancy that the landlord necessarily has to bear the expanses of keeping the land in proper condition. No doubt the description of the tenure given in the Bombay Gazetteer, Vol. XV, Part 11, relating to the District of Kanara, at p. 186 includes a statement that 'an occupant

bears the expense of planting trees and the tenant bears the expenses of rearing them.' That is an authority which must be given due weight, but it seems to me it is not necessarily conclusive.

9. The same point as regards the cost of planting trees was one that arose in another suit from this same taluka of Honavar; Bibi Khatija Shamsuddin Kavada v. Ram Rao Santayya Ghikarmane Honavar S.A. No. 694 of 1922 (decided on 30-6-1924 by Shah, Ag. C.J. and Fawcett, J.). The District Judge relied upon this passage from the Gazetteer in the appeal before him. But in this Court the judgment given by the learned Acting Chief Justice and myself on June 30, 1924, left the point open, as it was unnecessary to decide it, except in so far as it was conceded before us that, when plants are sown for the first time, they have to be paid for by the landlord.

10. Therefore, in deciding this appeal on the evidence before us as regards the liability of the plaintiff to supply materials of a residence required for persons looking after the land, I think that, having regard to the defendants' admission as to their removing materials and allowing others to steal the rest, the view of the Subordinate Judge that there was no obligation on the plaintiff to supply other materials is correct. It is a case where there has been conduct on the part of the tenants which is entirely against their acting bona fide and reasonably, and it is not right in those circumstances to hold that the plaintiff is as much to blame for the neglect of the garden after the house had fallen down as the defendant.

11. But the ease against the defendant goes further than that. It is clear from the findings of both the Courts that there had been a great neglect of this garden even prior to the falling down of the hut, and I think that the case is not one where it can properly be held that the property has suffered from the neglect of the plaintiff as much as from the neglect of the defendants. That is a finding of the learned District Judge which, as I have already shown, is based on a view of this Nadgi tenure, that is not supported by the evidence in the case or authority and is not binding on us.

12. In regard to the question whether any equitable relief against the forfeiture should be allowed to the defendant, it is shown by Mr. Boyd's judgment, to which I have already referred, that in 1907 he found only one case in which a decree allowing the tenants a chance of relieving themselves against forfeiture had been passed, viz., an appeal of 1883. In the case before him Mr. Boyd held that the defendants by their conduct were not entitled to any such relief. Such preliminary decrees have, however, no doubt since been frequently passed, and in the present case we have been asked to give the defendants a further chance of complying with the condition of their tenancy, but in view of all the circumstances I do not think this is a case calling for any such indulgence. The defendants' conduct in misappropriating the materials of the hut and neglecting the land for several years goes strongly against this.

13. Consequently it seems to me that, as was held by this Court in S.A. No. 830 of 1907 the plaintiff was entitled to a decree such as the Subordinate Judge passed in his favour. I would, therefore, allow the appeal, restore the judgment of the Subordinate Judge, and order the defendants to pay the costs of the plaintiff in this Court and the lower Appellate Court.

Marten, J.

14. I agree. The learned District Judge cites no authority in support of his proposition as to the conditions of Nadgi tenure, nor is there any real support for it from the evidence in the case. On the other hand, there is an unreported case in this appellate Court, S.A. No. 830 of 1907, which my brother Fawcett has referred to. That case contains no trace of the obligations on the part of the landlord, which the lower Appellate Court in the present case thought was a part of the conditions of this particular tenure.

15. As regards the other unreported case of Bibi Khatija Shamsuddin Kavada v. Ram Rao Santayya Chikarmane Honavar S.A. No. 694 of 1922 (decided on 30-6-1924 by Shah, Ag. C.J. and Fawcett, J.) the question whether, generally speaking, a landlord has to provide or pay for new plants in the case of a Nadgi tenancy was expressly left open. In that particular case it would appear that the portion of the garden in dispute had

never been planted at all. Consequently the plants had to be planted for the first time in the history of that portion of the garden, and it was conceded by the parties that under those circumstances the landlord had to pay for the plants. In the ease now before us it is clear that the garden is an old one, and accordingly it differs essentially from Bibi Khatija Shamsuddin Kavada v. Ram Rao Santayya Chikarmane Honavar S.A. No. 694 of 1922 (decided on 30-6-1924 by Shah, Ag. C.J. and Fawcett, J.).

16. But in the view I take it is unnecessary in the present case to decide all the precise conditions of this Nadgi tenure. It is sufficient to say that one of those conditions is that a tenant should properly cultivate the land. Here it is clear on the evidence that the tenant has seriously neglected the cultivation of the garden land; and in our judgment this neglect cannot be put down to the fault of the landlord.

17. Then as regards the hut, inasmuch as the defendant himself has wrongfully appropriated the old building materials, such as the rafters, it hardly lies in his mouth to complain that the landlord has not furnished him with some new buildling materials.

18. I agree, therefore, that the judgment of the learned District Judge was erroneous in the view of the law which he took, and of the legal inferences to be drawn from the evidence before him. I accordingly agree that the appeal must be allowed.

19. I will only add, speaking for myself, that I hope that 9if another case involving the conditions of Nadgi tenure should be brought in the lower Court, care should be taken that proper evidence is called as to the conditions of this tenure. At present I think it cannot be considered that all the conditions of this tenure are established by conclusive authority as part of the settled law of this Province.