

Amjad Khan and ors. Vs. Shafiuddin Khan and ors.

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Court : Allahabad

Decided On : Jul-24-1923

Reported in : AIR1925All203

Appellant : Amjad Khan and ors.

Respondent : Shafiuddin Khan and ors.

Judgement :

Kanhaiya Lal, J.

1. The dispute in this appeal relates to a house situated in the town of Ferozabad. The plaintiffs claim to be the owners of the site occupied by that house and allege that Mt. Khairatan and Hasan Amjad Khan, who were occupying that house have been wrongfully denying the title of the plaintiff's to the land in question. They seek the ejectment of the said occupants and implead certain other persons whom they describe as having been once in possession as - the heirs of Nur Khan, the original ryot.

2. According to the plaintiffs the land' in question belonged to Azimuddin Khan by virtue of a purchase made from Rahim Ali on the 4th of December 1859 and Nur Khan had built a house thereon with the permission of his predecessor-in-title. It was also stated that after the death of Nur Khan two of his sons, Kale Khan and Sardar Khan, executed an agreement' on the 3rd of July 1865, by which they agreed to pay a ground rent of one anna per mensem and to vacate the land in

case default was made in payment thereof.

3. It appears that Nur Khan died, leaving three sons, Kale Khan, Sardar Khan and Munir Khan and a daughter named Mt. Khairatan. According to the plaintiffs the heirs of Kale Khan and Sardar Khan, namely Mb. Mariam Bibi, Mt.. Mammau and Hamid Khan, had left the house long ago and gone to live in another house in the town and Munir Khan, had similarly left the house 15 or 18 years ago and had gone to live elsewhere. The defendants, Mt. Khairatan and Amjad Khan, who are in occupation of the house deny the plaintiff's title to the land occupied by the house in dispute and plead that they have been in adverse possession of the same. They also deny the genuineness of the lease purporting to have been executed by Kale Khan and Sardar Khan on which the plaintiffs relied in support of their claim. The lease did not specify the boundaries or number of the land to which it related and no attempt was made by any of the Courts below to find out whether it related to the land, occupied by the house of Nur Khan, which was referred to in the sale-deed of the 4th December 1859 executed by Rahim Ali in favour of Azimuddin Khan. The trial Court refers to an admission said to have been made by Amjad Khan that he and his mother or Nur Khan had no other house in the town except the one in question. But while the Court of first instance held that the Sarkhat of the 3rd of July 1865 executed by Kale Khan and Sardar Khan was not binding on the other defendants, the lower Appellate Court thought that it had been presumably executed by Kale Khan and Sardar Khan on behalf of the entire family and was binding on the other defendants also. Both the Courts below eventually agreed in passing a decree in favour of the plaintiffs for the ejectment of the defendants on the ground that they denied the title of the plaintiffs to the land in question and were liable to be evicted whether they occupied the same as licensees or tenants.

4. It appears that there were two houses in the occupation of the descendants of Nur Khan at the time of the settlement of 1877. In the sale-deed the boundaries of the entire land sold were mentioned and it was also stated that a portion of that land was occupied by a house belonging to Imamuddin and another portion by a house belonging to Nur Khan, both of which had been built with the permission of the former proprietor. In the sarket no boundaries were given but a house existing

on the land leased was described as having been occupied by Kale Khan and Sardar Khan. In the khasra abadi of 1877 A.D. ahata No. 261 comprising house No. 184 was entered as having been occupied by Gul Khan (alias Munir Khan) son of Nur Khan, and ahata No. 382 comprising house No 261 was described as having been occupied by Kale Khan, son of Nur Khan. The trial Court thought that the latter house was the one received by Kale Khan from his father-in-law, and the former was the one referred to in the sale deed and the sarkhat.

5. Be that as it may, the sarkhat is not binding on the present occupants. Mt. Khairatan derived her title directly from Nur Khan, and Amjad Khan is her son. They are not bound by any sarkhat which Kale Khan and Sardar Khan may have executed in favour of Azimuddin Khan, agreeing to pay ground rent and to vacate the land in lease of non-payment. In the plaint it was admitted that Mt. Mariam had been living with her husband in another house for 14 or 15 years, and that Hamid Khan and Mt. Mamman had left the house long ago, and were living in another house belonging to the Plaintiffs. In these circumstances the contesting defendants cannot be treated as tenants liable to ejectment for nonpayment of rent which as the Court of first instance found was never actually realized even from those who are said to have agreed to pay the same. In the Municipal khara prepared in 1896 house No. 323 was entered as having been occupied by Munir Khan son of Nurkhan as a tenant of the present plaintiffs, but there is nothing to show which that house was. That entry is of no value.

6. The contesting defendants can therefore be treated as only licensees, holding the land in dispute in succession to Nur Khan by virtue of a license which was granted by one of the former proprietors when the house was built. The existence of the license is indicated by the sale-deed of 1859 which was executed when there was no dispute between the parties, and the recital there contained is admissible in evidence both as an admission made by a party before the controversy arose and otherwise. It is not shown that the license was granted subject to any restrictive covenant entitling the licensor to revoke it at his will. The house in dispute has been in the continued occupation of Nur Khan and after him by that branch of his line which is now represented by the contesting defendants without the payment of any rent, and the mere fact that being ignorant of the origin

of their title they have denied the title of the plaintiffs would not render them liable to ejectment. As pointed out in *Akbar Ali Khan v. Shah Muhammad* (1917) 39 All. 621 a licensee, unlike a lessee, does not forfeit his license by merely denying the title of his licensor. In *Nasind Zaman Khan v. Azimullah* (1906) 28 All. 741 it was held that a license could not be revoked, if the licensee acting upon the license had executed a work of a permanent character. It was further pointed out that a *kachaha* thatched house might be a work of a permanent character and the fact that the thatch was renewed from time to time did not make it a work of a temporary character. On behalf of the plaintiffs-respondents reliance has been placed on the decision in *Jai Chand Bahadur v. Girwar Singh* (1919) 41 All. 669. There the question was one of burden of proof of adverse possession and a licensee who had set up an adverse right was held to have no title to claim the same, unless he succeeded in establishing his title by adverse possession. There is no question of burden of proof here. The title of the plaintiffs as owners of the land and of the defendants as licensees from the former proprietor is beyond dispute. The only question is whether that license has been forfeited by reason of the denial set up in this case. There was no denial prior to the suit. Unless the license is shown to have been granted under restrictive condition of the nature set up, no revocation can be allowed to the prejudice of the heirs of the licensee, by whom a permanent structure has been built.

7. The appeal must, therefore, be allowed and the claim of the plaintiffs dismissed, but in view of the fact that the defendants have improperly denied the title of the plaintiffs to the ownership of the land occupied by the house in dispute I direct the parties to bear their own costs throughout.