

Sahab Ram Vs. Banarsi (Since Deceased) and Represent by Lrs.

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Court : Allahabad

Decided On : Dec-18-1996

Reported in : AIR1997All222

Judge : A.P. Singh, J.

Acts : Easement Act, 1882 - Sections 59, 61, 62, 62(1) and 65; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 100

Appeal No. : Second Appeal No. 378 of 1980

Appellant : Sahab Ram

Respondent : Banarsi (Since Deceased) and Represent by Lrs.

Advocate for Def. : A. Sanghal and ;Arjun Singhal, Advs.

Advocate for Pet/Ap. : Rajesh Tandon, Adv.

Judgement :

1. This appeal has been filed by the plaintiff impugning the judgment and decree passed by Vth Additional District Judge, Bulandshahr allowing Civil Appeal No. 19 of 1979 filed by the defendant-respondent whereby the suit filed by the appellant, being Suit No. 188 of 1972 was dismissed.

2. In brief, the facts are that the plaintiff is purchaser of land in suit from one Ram Chandra who was its admitted owner. Prior to the transfer of the land in favour of

the plaintiff-appellant Ram Chandra had granted a licence to the defendant for use of the land in suit as his Sahan for the period of his entire life. Licence was granted vide a written document, which is Ex. A-2, having been executed on 9-12-1962. Ram Chandra subsequently, however, transferred the said land in favour of the plaintiff-appellant vide sale deed dated 6-3-1964. The suit was filed thereafter by the plaintiff seeking injunction against the defendant for restraining him to interfere in his possession and for demolition of a wall and other miscellaneous reliefs.

3. The defendant-respondent appeared and contested the suit. It was pleaded that the land in suit had been given to him by Ram Chandra, the owner of the land, for his life time and, therefore, so long he is alive, he has right to continue in possession of the land. It was also pleaded that the plaintiff was not in possession and he was in possession; therefore, the question of granting injunction did not arise.

4. Whereas the plaintiff relied on the sale deed dated 6-3-1964 in support of his plea, defendant placed reliance on licence dated 9-12-1962, Ex. A-2 in support of his contention of right to stay in the land in suit. The plaintiff-appellant also examined Ram Chandra who stated that the licence was in respect of some other property and not in respect of the land in suit. It was stated by Ram Chandra that by committing fraud, the defendant-respondent had converted licence, which was granted by him, in respect of some other land, to be one in respect of the land in suit, which was never the subject matter of the licence. It was also argued on behalf of the plaintiff-appellant that even if it was found that the licence was given by Ram Chandra to the defendant in respect of the land in suit, the same stood revoked with the transfer of the land by Ram Chandra in favour of the plaintiff-appellant.

5. After considering the case set up by the parties, in the light of the evidence led by respective parties, the trial Court decreed the suit holding that the licence, which was granted by Ram Chandra in favour of the defendant was in respect of some other property and not in respect of the property in suit. It was also held that even if the property in suit was subject matter of licence, which was granted by

Ram Chandra to the defendant, the same stood revoked as soon as Ram Chandra transferred the land in suit to the plaintiff-appellant.

6. Against the judgment and decree passed by the trial court, the defendant-respondent filed appeal under Section 96 of the Code of Civil Procedure. Lower Appellate Court examined the matter afresh in the background and pleadings as well as evidence on record.; On appraisal of evidence, it came to the conclusion that the land in suit was subject matter of the licence which was granted by Ram Chandra in favour of the defendant-respondent, It was also held that since the licence was granted for the whole life of Banarsi Das, the defendant-respondent, therefore, licence could not be revoked during the life time of Banarsi Das. For coming to this view, the lower appellate court placed reliance on clause (c) of Section 62 of the Indian Easements Act, 1882 (hereinafter referred to as 'the Act'). On the above findings, recorded by the lower appellate Court, the appeal was allowed and the suit was dismissed. Hence the plaintiff has filed this appeal under Section 100 of the Civil Procedure Code.

7. I have heard Sri Rajesh Tandon, learned counsel for the appellant and Sri Arjun Singhal, learned counsel for the respondent.

8. Sri Rajesh Tandon has pressed only one point as the substantial question of law, which according to him has been wrongly decided by the lower appellate Court. The substantial question of law may be stated thus:--

'Whether despite transfer of the land which is subject matter of the licence by the licensor, the licence will continue to subsist in favour of the licensee?'

9. In support of his contention that the licence will automatically stand revoked as soon as the property which is subject matter of licence is transferred in favour of the third person, he has placed reliance on the provisions of Sections 59 and 61 of the Act. Section 59 of the Act reads as follows:--

'59. Grantor's transferee not bound by licence -- when the grantor of the licence transfers the property affected thereby, the transferee is not assuch bound by the licence.'

10. Section 61 of the Act deals with the implied and express revocation of licence. It provides that revocation of licence may be express or implied. By illustration (b), it has been made clear that the licence stands revoked impliedly with the transfer of property under licence to a third person by the licensor.

11. On the other hand, Sri Singhal has banked upon Clause (c) of Section 62 of the Act and contends that until the period for which licence was granted expired, the licence granted by licensor cannot be deemed to have been revoked. 12. In my opinion, the contention raised by Sri Singhal on the basis of clause (c) of Section 62 of the Act is totally misconceived. A licence, which is given for a limited period, is to stand revoked as provided by clause (c) of Section 62 as soon as the period for which licence was granted comes to an end. That does not, however, debar revocation of the licence under any other provisions, i.e., under Section 61, by an express revocation. Even if a licensor has granted a licence, it is open under Section 61 of the Act to revoke the licence by express words. Similarly, the licence for a fixed period shall also stand revoked automatically as soon as property which is subject matter of licence is transferred by the licensor to a third person. Clause (c) of Section 62 will be attracted where provisions of Sections 59 and 61 of the Act are not attracted, at all, i.e. except for express or implied revocation of licence, or revocation of licence on account of sale of property under licence to a third person, the licence shall continue to be in operation and valid and shall remain valid till the period for which it was granted expires. Therefore, Sections 59 and 61 of the Act are exceptions to the situations provided under Section 62 for deemed revocation of the licence. In my opinion, the lower appellate court was not correct in holding that since the licence was for the lifetime of the defendant-respondent, it could not be said to have been revoked on account of transfer of the property in suit in favour of the plaintiff-appellant. The lower appellate court has thus committed grave illegality in deciding the question against express provisions of law.

13, It was next contended by Sri Singhal that be that as it may, since the defendant-respondent has already made pucca construction on the land in suit, therefore, the licence becomes an irrevocable licence, which could not be deemed to have been impliedly revoked on account of transfer of the land in suit. The

contention is not borne out from the pleadings of the parties. A licence granted for raising permanent construction will become irrevocable if a construction, of permanent nature, after incurring expenditure, has been raised. No such plea has been raised by the defendant-respondent in his written statement that after the grant of licence by Ram Chandra, he has raised pucca construction on the land in suit by incurring expenses. The lower appellate Court also has not dwelt on that issue. This argument, which has been made for the first time before this court, for which there is no support from the pleadings of the parties, therefore, cannot be allowed to be raised.

14. Learned counsel for the parties have not raised any other contention.

15. In the light of discussion made above the appeal succeeds and is allowed with costs. The judgment and decree dated 15-11-1979 passed by Vth Additional District Judge, Bulandshahr is set aside and the suit of the plaintiff stands decreed.

16. Appeal allowed.