

Ganpat Rai and ors. Vs. Multan and ors.

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Court : Allahabad

Decided On : Feb-01-1916

Reported in : AIR1916All121; (1916)ILR38All226; 33Ind.Cas.97

Judge : Henry Richards, C.J. and; Muhammad Rafiq, J.

Appellant : Ganpat Rai and ors.

Respondent : Multan and ors.

Judgement :

Henry Richards, C.J. and Muhammad Rafiq, J.

1. This appeal arises out of a suit for possession of a house, Both the courts below have decided against the plaintiffs. The plaintiffs allege that the relation of landlord and tenant existed between the plaintiffs and the predecessors in title and the defendants and their predecessors in title; that the defendants denied the title of the plaintiffs and that consequently they were entitled to possession. The point we have to decide is a question of law. If we decide it in favour of the appellants it is admitted that the case must go back for trial on the merits. If on the other hand we decide it in favour of the respondents it is admitted that the appeal should be dismissed. The learned District Judge held that the defendants were not estopped from denying the title of the plaintiffs because they or their predecessors in title were not originally put into possession by the plaintiffs or their predecessors in title and that consequently it lay on the plaintiffs to prove their title, which they had

failed to do. The learned Judge quotes the Calcutta ruling in the case of Lal Mahomed v. Kallanus (1885) I.L.R. 11 Calc. 519. Section 116 of the Evidence Act is as follows: 'No tenant of immovable property, or person claiming through such tenant shall, during the continuance of such tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property.' It seems to us quite clear that once a person is the tenant of another person he cannot be allowed to deny that the person whose tenant he was, was the owner when the tenancy was created. He can, no doubt, admit that his landlord was the owner at the commencement of the tenancy and allege and prove by evidence that the landlord's estate has subsequently come to an end, but he cannot deny that at the commencement of the tenancy the person with whom he entered into the contract was the owner of the property. The words 'at the beginning of the tenancy' are expressly inserted in the section to show that the tenant is not prevented from showing that after the tenancy commenced the estate of the landlord devolved on some other person. It is urged that the moment a person ceases to be a tenant the section no longer applies. This is not the view of the law taken by their Lordships of the Privy Council in the recent case of Bilas Kunwar v. Desraj Ranjit Singh (1915) I.L.R. 37 All. 557. In that case the defendant was put into possession by the plaintiff as tenant. He never gave up possession, but was served with a notice to quit. He subsequently sought to show that the plaintiff had no title to the property. He claimed that although he could not deny the plaintiff's title so long as the relation of landlord and tenant subsisted, the bar was removed when the tenancy came to an end on the expiration of the notice to quit. Their Lordships of the Privy Council say: 'Section 116 of the Indian Evidence Act is perfectly clear on the point, and rests on the principle well established by many English cases, that a tenant who has been let into possession cannot deny his landlord's title, however defective it may be, so long as he has not openly restored possession by surrender to his landlord.'

2. In our opinion the view taken by the learned District Judge was not correct. If the plaintiffs can prove that the relation of landlord and tenant existed between them, or the persons through whom they claim, and the defendant, or persons through whom the defendants claim, then the defendants are not entitled to deny that the plaintiffs or the persons through whom they claim were the owners of the

property during all the time the relation of landlord and tenant subsisted and right up to the time that that relationship ceased to exist.

3. We allow the appeal, set aside the decree of the learned District Judge, and remand the case to him under Order XLI, Rule 23, with directions to re admit the appeal under its original number on the file and proceed to hear and determine the same on the merits. Appeal decreed and cause remanded.

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