

Ramjiawan Ram Vs. Gaya

Ramjiawan Ram Vs. Gaya

SooperKanoon Citation : sooperkanoon.com/460845

Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1886)ILR8All569

Judge : Straight, Offg. C.J. and; Tyrrell, JJ.

Appellant : Ramjiawan Ram

Respondent : Gaya

Judgement :

Straight, Offg. C.J.

1. I think this appeal fails. The Subordinate Judge, having regard to the language of the lease of the 24th July 1873, was of opinion that its proper interpretation was that it was not, as alleged by the defendant-appellant, a lease in perpetuity, or one that created any heritable interest. Now no doubt the word 'istimrari' is used in several places in this document, and it was contended by the learned Counsel for the appellant that the use of this word was sufficient of itself to show that what the parties intended was, that the lease should continue binding, not only so long as the fixed rent was paid, and that the interest granted by the plaintiff was not a mere life but a heritable interest. He supported this contention by referring us to the case of Lakhu Kowar v. Harikrishna Singh 3 B.L.R. 226 and no doubt if that authority is correct in law, it favours his view. But our attention has been called by the learned pleader for the plaintiff-respondent to a ruling of their Lordships of the

Privy Council in the case of *Tuishi Pershad Singh v. Ramnarain Singh* I.L.R. 12 Cal. 117 which appears to be directly apposite to the present case. Their Lordships here remark that 'the words *istimrari* and *muqarrari* in a *patta* do not per se, convey an estate of inheritance, but they do not accept the decisions as establishing that such an estate cannot be created without the addition of the other words that ere mentioned ('*bafazandan*' or '*naslan bad naslan*'), as the Judges do not seem to have had in their minds that the other terms of the instrument, the circumstances under which it was made, or the subsequent conduct of the parties might show the intention with sufficient certainty to enable the Courts to pronounce that the grant was perpetual.' Now as I understand these observations of their Lordships, the mere use of the word *istimrari* in the instrument with which we are dealing, does not *ex vi termini* make that instrument such as to create an estate of inheritance in the lessee. Their Lordships, as I understand them, also say that the words 'from generation to generation,' '*naslan bad naslan*,' must not necessarily be inserted in an instrument of lease in order to constitute a grant in perpetuity, and that the word *istimrari*, accompanied by other words and illustrated by the subsequent conduct of the parties, and in acting upon the instrument, may show that an estate of inheritance was intended. The learned Counsel urges that the words used in the lease before us, namely, 'so long as the rent is paid I shall have no power to resume the land,' are sufficient 'to show that the lease was one in perpetuity; but I confess that those words do not convey to my mind any such meaning or intention. Had the lease been clearly expressed as one for the life of the lessee, or for the joint lives of two 'lessees, or have been a lease for five or ten years, those words might equally as well have been used.

2. I cannot, therefore, hold that the construction put upon the lease by the Lower Appellate Court is erroneous. Its decision that the defendant-appellant (even should he be, as he claims to be, the legal heir and representative of one of the lessees is not a person who can resist the plaintiff's claim, is correct, and its finding appears to me to be quite in accord with the terms of the document and the facts of the case as evidencing the intention of the parties. The appeal therefore fails, and must be dismissed with costs.

Tyrrell, J.

3. I am entirely of the same opinion.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com