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Court : Allahabad

Decided On : Oct-25-1961

Reported in : AIR1962All604

Judge : S.S. Dhavan, J.

Acts : [Transfer of Property Act, 1882](#) - Sections 105, 107 and 116; Evidence Act; Limitation Act, 1908 - Schedule - Articles 142 and 144

Appeal No. : Second Appeal No. 503 of 1954

Appellant : Ram Nath and ors.

Respondent : Neta

Advocate for Def. : G.P. Goyal and ;S.S. Ali, Advs.

Advocate for Pet/Ap. : Yashoda Nandan and ;Radha Krishna, Advs.

Disposition : Appeal allowed

Judgement :

S.S. Dhavan, J.

1. This is a landlord's second appeal against the decision of the Civil Judge, Budaun dismissing their suit for possession of a house against the defendant. The plaintiffs Badri Prasad and Trilok Chand alleged in their plaint that they were the

owners of an abata in the town of Bisauli and the houses situate in it, having purchased it from the previous owners in 1950. They further state that the defendant's father and uncle were the tenants of the plaintiff's predecessor in interest, having taken a lease for ten years in the year 1915 and executed a qabuliat in token of it; that after the death of the defendant's father, in or about 1922, they inherited the tenancy rights and continued as tenants without interruption and paid rent at the rate of Rs. 4/- per month. The plaintiff's case is that the defendants defaulted in the payment of rent and they were compelled to terminate their tenancy by a notice under Section 106 of the Transfer of Property Act. The defendants, however, did not vacate the house in dispute; hence the suit.

2. The defendant contested the suit and denied that he was in possession of the house under any contract of tenancy. He denied that his father and uncle had executed any qabuliat, and pleaded in the alternative that it was obtained by fraud and that it was not binding on the defendant, at any rate. He denied even the plaintiff's title as owner, and alleged that his father had constructed the house in dispute. His case was that his father and uncle were not tenants but mere licensees of the plaintiff and the license terminated on the death of the father; after this the defendant continued in possession as a trespasser and perfected his title by adverse possession after twelve years. He pleaded that the plaintiff's suit was time barred.

3. The trial court disbelieved the version of the defendant that the house in dispute was constructed by his father and held that the plaintiffs were the owners of it. But it found that the plaintiff had failed to prove the relationship of landlord and tenant between himself and the defendant in other words, the defendant was in occupation of the house after the death of his father as a trespasser. Accordingly, it dismissed the suit as time-barred.

4. In appeal the learned Civil Judge upheld the view of the trial court that the plaintiff was the owner of the house and that the defendant's story that his father had built it was false. But he took the view that the qabuliat of 1915 did not create a lease and consequently the so-called lessee took possession of the house as a licensee. He also held that the licence was extinguished on the death of the

defendant's father and the defendant continued in possession on sufferance that is as a trespasser, the learned Judge rejected the evidence of the plaintiff that the defendant had paid rent to the plaintiffs even after the death of his father. Confirming the view of the trial court, he dismissed the suit as time-barred. The plaintiffs have now come to this Court in second appeal.

5. Mr. Radha Krishna, learned counsel for the appellants who argued this case with tenacity and thoroughness, urged that the view of the courts below that the defendant's father was not the tenant of the plaintiff's predecessor in interest is erroneous in law. Secondly, he contended that after the death of his father the defendant inherited the tenancy rights and continued in possession as a tenant. On the other hand, Mr. Sadiq Ali, learned counsel for the defendant respondent contended that the qabuliat of 1915 could not have created a lease and the view of the courts below that the defendant's father took possession as a licensee was correct. I heard learned counsel at considerable length and at one stage even adjourned the hearing to enable both counsel to place before the Court the authorities in support of their respective cases.

6. The first question is whether the relationship between the defendant's father and plaintiff's predecessor-in-interest was that of landlord and tenant, and secondly-- assuming that he was tenant whether his tenancy rights devolved on the defendant after his death. It is common ground between counsel that if the defendant did not inherit any tenancy rights, his possession was that of trespasser unless he accepted the relationship of landlord and tenant by a fresh agreement. It was conceded by Mr. Radha Krishna that it was not open to him to challenge in second appeal the finding of the appellate court that the defendant had paid no rent and entered into no fresh agreement with the landlord.

7. The document executed by the defendant's father in 1915 was a qabuliat that is a unilateral transaction. It is elementary that a qabuliat cannot create a lease which requires consensus between the two parties, the only question is whether there is any other evidence of a lease. In my opinion there is. The plaintiffs principal witness on this point was Chokhey Lal P. W. 2 who was the Mukhtar-e-Am of the plaintiffs predecessor-in-interest in whose favour the qabuliat had been

written by the defendant's father. He deposed that the defendant's father and uncle were the tenants of his employers and paid rent at the rate of Rs. 10/- per annum. (Ye donon das rupiya salana kiraedar the'.) The courts below appear to have been under the impression that the qabuliat was the only evidence of the tenancy and overlooked the testimony of Chokhey Lal.

Learned counsel for the respondent urged that this Court should not believe this man's testimony after his evidence on the question of any fresh agreement between the defendant and the plaintiff had been rejected by both the courts below. It is true that Chokhey Lal had deposed that the defendant made a fresh agreement after his father's death and paid rent for one house at the rate of Rs. 3/- per annum, and this part of his testimony has not been accepted by the lower courts. In second appeal the finding of the appellate court is binding on me. But I am not inclined to disbelieve the other part of Chokhey Lal's evidence simply on the ground that a portion of his testimony relating to another transaction has been rejected. I think that Chokhey Lal was telling the truth when he said that the defendant's father was a Kirayedar and paid rent at the rate of Rs. 10/- per year.

Learned counsel for the defendant was not able to suggest any explanation why the plaintiff's predecessor-in-interest should have allowed the defendant's father and uncle to take possession of the property in dispute except as tenants. It is the defendant's own case that his ancestors took possession under an agreement with the landlord. Thus the circumstances corroborate Chokhey Lal's testimony on this point. I have not taken into consideration the Qabuliat as evidence of the lease in view of a number of decisions of this Court cited by learned counsel for the defendant respondent. He urged that not only the qabuliat must be rejected as a lease but also as evidence of any other kind of transaction. He relied on four (sic) (five?) decisions of this Court, *Sardar Ali v. Ambika Prasad* : AIR1930 All678 , *Kedarnath v. Shankar Lal*, AIR 1924 All 514, *Anand Sarup v. Tayab Hasan* : AIR1943 All279 , *Shiv Dutt v. Ghasita* : AIR1953 All499 and *Shubrati v. Kunj Behan* : AIR1946 All403 . I have perused all these decisions with very great care but I do not think that they support learned counsel's argument that a qabuliat cannot be looked into as corroborative evidence for any purpose whatsoever even if it is rejected as a lease. In some of these decisions it has been held that a

qabuliat cannot be treated as independent evidence of a lease for more than a year or from year to year or reserving a yearly rent. With respect, I entirely agree. If a qabuliat is rejected as a document creating a lease, the whole purpose of Section 107 of the Transfer of Property Act would be frustrated if the same document is admitted as evidence of an oral lease exceeding a year or from year to year or reserving a yearly rent. But I do not find anything in any of the decisions cited by learned counsel for the respondent to suggest that a qabuliat cannot be looked into as corroborative evidence of a lease for a period of less than a year. Such a lease is permitted by Section 107 to be made by oral agreement, and it does not violate the principle of Transfer of Property Act or the Evidence Act to look into a qabuliat as corroborative evidence of an oral lease which is otherwise in accordance with law. Mr. Radha Krishna relied on a decision of a Full Bench of this Court in Sheo Karan Singh v. Parbhu Narain Singh, ILR 31 All 276 (FB) and on another decision of a Full Bench of the Lahore High Court in Mohan Lal v. Ganda Singh, AIR 1943 Lah 127 (FB). I do not think that the first case has much relevance to the present controversy but the Lahore decision fully supports counsel's contention that a rent deed, though not effective as a lease, can be looked into as evidence of an oral agreement. However, I have relied entirely on the evidence of Chokhey Lal for my finding that the relationship between defendant's father and the plaintiff's predecessor-in-interest was that of landlord and tenant.

8. The agreement was made on or about 7-10-1915. The oral lease expired on 24-10-1916, but the tenant continued in possession, and under Section 116 of the Transfer of Property Act he became a tenant from month to month. He died in 1922 and on his death the rights under the monthly tenancy devolved on his son, the present defendant. Raman Lal v. Bhagwan Das : AIR1950 All583 and Anwarali v. Jamini Lal Roy : AIR1940 Cal89 . Thus the defendant continued in possession not as a trespasser but a tenant. No question of adverse possession arises.

9. Learned counsel for the defendant argued that nonpayment of rent by the defendant throughout these years means that his possession became adverse. He pointed out that both the courts below have disbelieved the plaintiff's story that the defendant had paid rent. I am not inclined to accept this contention. Non-payment

of rent by itself raises no presumption of adverse possession. Non-payment may be due to several reasons as for example the sheer inability of the tenant to pay rent or smallness of the amount of rent which the landlord does not bother to collect, in this case the rent was at the rate of Rs. 3/- per year. It is very likely that the landlord thought that it would not break his back if the tenant did not pay rent regularly provided he acknowledged his position as landlord. Therefore, though I am bound by the finding of the courts below (however unsatisfactory it may be) that the defendant paid no rent, I am not prepared to draw any inference from this finding that the non-payment was due to a repudiation of the landlord's title.

10. In my view the relationship of landlord and tenant between the plaintiff and the defendant is established and the courts below erred in holding that the suit was barred by adverse possession.

11. I allow this appeal with costs and decree the plaintiffs suit for ejectment.

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