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Court : Allahabad

Decided On : Feb-05-1936

Reported in : AIR1936All383; 163Ind.Cas.244

Appellant : Ram Gopal

Respondent : Mt. Ganga Devi

Judgement :

Bennet, J.

1. This is a Letters Patent appeal by a defendant under the following circumstances: The plaintiff sued as zamindar and co-sharer in a certain village stating that defendant was simply a ryot. The plaint further set out that about 60 years ago Kallu Khan and Babbu Khan who were settled on the land claimed by the plaintiff in the abadi went away for purpose of service and that in the year 1887 the then zamindar brought a suit for the ejectment of the father of the defendant from the house in question but the defendant's father at that time alleged that the house was in his possession on behalf of Babbu Khan and Kallu Khan, and that the Court dismissed the suit. The plaint further claimed that the land remained vacant for 20 years before the suit and that only three months before the suit the defendant had begun to build on it. The written statement was that defendant and his father had all along been in possession of the house in dispute and that the possession had originally begun as tenant of Kallu Khan and Babbu Khan and that

the defendant's father used to repair the house in lieu of rent, that Kallu Khan and Babbu Khan died more than 30 years ago without leaving any heir and that since that time the defendant's father and defendant had been in proprietary possession and adverse possession of the house in dispute, and that the plaintiff or other zamindars had not been in possession of the site within 12 years before the suit. The defendant also pleaded that he was not the plaintiff's ryot, but in a later statement, on 8th June 1931, the defendant stated that he was the ryot of the plaintiff. The defendant also pleaded that 10 or 11 years previously the house had fallen down and he had rebuilt two rooms in it and that three months before the suit was brought in the rainy season those rooms had again fallen down and he began to rebuild them and the dispute with the plaintiff then arose. The lower appellate Court found that the facts alleged by the defendant were correct and it dismissed the suit of the plaintiff on the following finding:

Kallu Khan and Babbu Khan tenants and raiyats, were originally the owners of the house standing on the land in dispute. They left the village 17 years before April 1887. The defendant's father occupied the house on their behalf and used to repair it in lieu of rent. Kallu Khan's son Babbu Khan was in existence in 1887. Kallu Khan and Babbu Khan are dead now. Babbu Khan died about 30 years ago without leaving any heir. Since then the defendant's father and the defendant have been in possession of it. The house fell down ten or eleven years ago. A part of it was reconstructed by the defendant and the other part is still a khandhal. The plaintiff or any of the zamindars was never in possession of it.... Babbu Khan the last owner died heirless about thirty years ago. The defendant has all along been in possession of his house since over sixty years. No doubt the house fell down ten or eleven years ago. But the defendant reconstructed a part of it and he has been in possession of the building and the vacant site since then.... On the death of Babbu Khan the cause of action to sue the defendant for ejectment accrued to the plaintiff. It has been found above that Babbu Khan died thirty years ago. This suit was filed in March 1931. The plaintiff alleges possession and dispossession within twelve years before the institution of the suit. Under the circumstances the plaintiff's claim is barred by twelve years limitation, under Article 142, Limitation Act. I therefore hold accordingly.

2. The Court further found that there was no adverse possession proved. Now, when this case came in second appeal before a learned single Judge of this Court, he granted a decree in favour of the plaintiff. He has set out the facts in a manner rather inconsistent with the plaint; for instance he states: 'Several years ago Kallu Khan and his son Babbu Khan left the village.' The admission in the plaint is that this was 60 years ago. He says that the predecessor of the plaintiff then instituted a suit against Gulab, the predecessor-in-title of the present defendant. That suit however was as long ago as the year 1887. The learned single Judge also stated:

It is significant that there is no evidence in the case as regards the death of Babbu Khan and Kallu Khan.

3. Now learned Counsel for the plaintiff did not file any certificate that the finding of fact on this point had been arrived at without any evidence before the lower appellate Court. There was in fact the statement of the defendant to that effect. It was therefore not a case in which there was no evidence. We see no reason therefore to interfere with the finding of the lower appellate Court that the death of Babbu Khan and Kallu Khan took place 30 years ago. Now the difficulties in this case arise from the position of the defendant. It is no doubt found that the defendant was not in adverse possession, but it is clear that if the defendant was a tenant of Babbu Khan and Kallu Khan then with the termination of their rights to remain in the house on their death 30 years ago the plaintiff had a right to eject the defendant.

4. This right to sue arose 30 years ago before the present suit. We are of opinion that the Limitation Act is meant to be exhaustive. In our view, on the death of Kallu Khan and Babbu Khan, one of two things must have happened: either the plaintiff did not allow the defendant to remain in possession and therefore the possession of the defendant became adverse, in which case there would be a period of 12 years for the plaintiff to bring his suit under Article 144, Limitation Act, or on the other hand the plaintiff did tacitly allow the defendant to remain in possession as a ryot. It is also found as a fact that 10 or 11 years ago the defendant was allowed to rebuild the two rooms in question. Therefore the defendant in our view acquired the rights of a ryot to reside in this house as an addition to and extension of his

own house which is found to adjoin the house in question. In this view the defendant having acquired the right of a ryot to inhabit this house or the rooms which he rebuilt has a right which the plaintiff cannot deprive him of by any suit for ejectment. Learned Counsel stressed the fact that these rooms had fallen down again in the rainy season. We consider that the mere falling down of these rooms does not give the plaintiff a right to sue. The case is not different from the falling down of rooms and houses during the rainy season in the case of any other ryot, and such a fact does not give a zamindar a right to sue for ejectment. It is only where the site is abandoned that the site reverts to the zamindar. We may note another error in the judgment of the learned single Judge of this Court. He stated as follows:

There is a clear admission of the defendant: 'My father took this house in this village from Kallu Khan and Babbu Khan on rent.' This being the position adopted by the defendant in his defence his position was no better than that of a tenant even according to his own statement.

5. This pleading of the defendant was in regard to the time when Kallu Khan and Babbu Khan were alive, but with their death the defendant ceased to be their tenant because the deaths terminated the tenancy. We consider therefore that the decree of the lower appellate Court was correct and accordingly we allow this Letters Patent appeal with costs, and we restore the decree of the lower appellate Court and dismiss the suit of the plaintiff with costs throughout.