

State of U.P. and anr. Vs. Phool Chand Agarwal and anr.

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Court : Allahabad

Decided On : Jan-27-1982

Reported in : AIR1982All260

Judge : Deoki Nandan, J.

Acts : [Constitution of India](#) - Article 299; [Transfer of Property Act, 1882](#) - Sections 107

Appeal No. : Second Appeal No. 1873 of 1978

Appellant : State of U.P. and anr.

Respondent : Phool Chand Agarwal and anr.

Advocate for Def. : V.K. Gupta, Adv.

Advocate for Pet/Ap. : A.P. Misra, Adv.

Disposition : Appeal dismissed

Judgement :

Deoki Nandan, J.

1. This is a second appeal by the State of Uttay Pradesh, Hem Chandra Joshi, District Industries Officer has been added as the second appellant. The two respondents who are indisputably the owners of a house situate at Vikasnagar in

the district of Dehradun the boundaries of which are described at the foot of the plaint, instituted the suit giving rise to the present second appeal, against the State of Uttar Pradesh, the said Hem Chandra Joshi, District Industries Officer Dehradun and K. N. Rai. Foreman. Training-cum-Extension Centre. Vikasnagar for possession over the house and for compensation for use and occupation, or mesne profits at Rs. 200/- per month for the period commencing 1st March. 1974 up to the date of delivery of possession over the house to the Plaintiffs. The facts as alleged in the plaint were that in August, 1980, the then District Industries Officer, Dehradun, approached Ramesh Chandra, the second plaintiff for taking the house on rent for the residence and office of the Incharge or Foreman, of the Training cum-Extension Centre, Vikasnagar. The second plaintiff, it is alleged, 'offered to give the same on monthly rent of Rs. 200/-', which was accepted by the then District Industries Officer by letter dated 22nd Aug. 1968, but certain additions and alterations were required to be carried out and it was agreed that the house would be taken after the same were carried out. That having been done, the then Incharge of the Training-cum-Extension Centre, Vikasnagar, took the house on 1st Oct 1968 at the agreed rent of Rs. 200/- per month for five years and the second plaintiff executed, as the lessor, on 1st Oct. 1968, a lease deed in duplicate on the form supplied by the office of the District Industries Officer. Dehradun, and his signatures having been witnessed, the same was transmitted for due execution on behalf of Government of U. P. as the lessee.

2. The plaintiff proceeds on to allege that the second plaintiff believes that the deed had not been executed on behalf of the lessee, nor was the same registered, and under the circumstances 'no valid lease existed between the Government and the plaintiffs; nor the relationship of landlord and tenant, or lessor and lessee has ever come into existence.' and that the occupation of the Incharge, Training-com-Extension Centre. Vikasnagar (Foreman, Rajkiya Prashikshan Evam Prasar Kendra) 'purporting to be on behalf of the State of Uttar Pradesh has all along been permissive.' It is then alleged that the stipulated period of five years having expired, the further occupation of the house by the Incharge, Training-cum-Extension Centre, Vikasnagar, has become unauthorised and illegal. This is followed by the allegation that the property could be let out on a monthly rent of more than Rs. 200/- and that the amount of Rs. 1400/- was due for the period 1st

August, 1973 to 28th Feb. 1974 but on the service of the notice dated 2nd March, 1974 by the plaintiffs, the amount of Rs. 1400/- had been received by the plaintiffs and the defendants were in arrears from 1st Mar. 1974 onwards.

3. The defence was that the property was taken on rent for a period of five years and the defendant 'did continue in the property as tenant since thereafter.' It was denied that the occupation of the house by the Incharge, Training-cum-Extension Centre was unauthorised and illegal; that the property was occupied by the State of Uttar Pradesh and the said centre had no independent existence apart from the State. The liability to pay rent at the agreed rate was admitted but the claim of compensation for use and occupation was denied. The claim for possession was also refuted. The plea of undervaluation and deficiency in court-fees was also raised. In para 24 of the written statement, under the additional pleas, it was said that 'in any case the plaintiff had himself executed the lease deed and it is for the defendant to complete the same in case it has not been completed. The lease deed is operative and binding on the plaintiff and the plaintiff is not entitled to challenge the same. It was then claimed that the house was held by the defendant as a tenant on payment of rent from the coffers of the Government which was accepted as such by the plaintiff and that the compliance of the provisions of Article 299 of the Constitution has been fulfilled by implication. It was further pleaded that the contract had been ratified by holding over and payment of rent and retaining the possession, it was pleaded that 'Article 299 of the Constitution is for the benefit of the defendant and it did not give any cause of action to the plaintiff to challenge the non-compliance thereof.' It was then pleaded that no contract was being enforced by the suit and the provisions of Article 299 had been enacted 'to enable the parties to enforce the contract' and 'as such the non-compliance of Article 299 does not give any cause of action to the plaintiff to maintain this suit.' Lastly, it was pleaded that 'after the period of lease the plaintiffs has accepted the defendant as his tenant by holding over and by the provisions of U. P. Act XIII of 1972' that the plaintiff has also elected to treat the defendant as tenant and is now estopped from challenging the said character of the defendant and its interest in the property and finally the tenancy between the parties can be created by payment of rent and delivery of possession according to law which has been done in this case as such valid tenancy between the parties has been

created by operation of law.

4. A replication was filed. It is not necessary to refer to it. The following were the issues on which the parties went to trial, namely:--

1. Whether the defendant is not tenant of suit premises? If so its effect?
2. To what relief, if any, is the plaintiff entitled?
3. Whether the suit is undervalued and the court-fees paid thereon is insufficient?

The third issue was decided as a preliminary issue in favour of the plaintiff on 30th Mar. 1977. On issue No. 1, the trial court held that the relationship of a lessor and lessee or of a landlord and tenant did not come into existence between the parties and the possession of the defendants of the premises in suit was permissive but not of a tenant, and the plaintiff was accordingly entitled to evict the defendants and to recover compensation for use and occupation until delivery of possession to the plaintiff. With these findings the suit was decreed for possession and recovery of compensation at the rate of Rs. 200/- per month from 1st Mar. 1974 up to the date of delivery of possession over the premises in suit.

5. On appeal by the defendants, the learned District Judge modified the decree by confining it against the defendant State of Uttar Pradesh alone, and set it aside against defendants Nos. 2 and 3; but on the controversy between the parties, it confirmed the finding of the trial court holding that the relationship of landlord and tenant did not come into being between the parties in the absence of a duly executed contract in conformity with the provisions of Article 299 of the Constitution

6. It appears that after the suit was instituted, the pro forma deed of lease which had been signed by the second plaintiff Ramesh Chandra, as alleged by the plaintiffs, was signed by the Joint Director of Industries Northern Zone, Bareilly, in token of his acceptance of the same 'as per D. I. O. D Du recommendations.' The date put by the officer who signed as Joint Director Industries under his signatures, appears to be 1-9-1976, though the figure 1976 is not very clear. This was after the written statement had been filed.

7. After hearing the appeal under Order 41 Rule 11 of the Civil P. C. the substantial question of law formulated, by this Court, while issuing notice of the appeal to the plaintiffs-respondents, was:--

'Whether the appellant State of U. P. could be treated to be a tenant of the house in suit although the deed of lease was signed by and on its behalf in accordance with the provisions of Article 299 of the Constitution only after the institution of the suit '

8. The pro forma lease signed by the second plaintiff and the Joint Director of Industries is Ext. Ka-6. It appears to have been put forth as the first plank of its defence before the trial court by the learned counsel for the State of Uttar Pradesh. The trial court met the argument based on that document by saying that the period of five years from 1st Oct. 1968 had already expired when it was signed on behalf of the lessee on 1st Sept. 1976. The trial court appears to have accepted the argument of the plaintiffs that the document was not properly in conformity with the requirement of Article 299 of the Constitution and was not registered, and being unregistered, it was inadmissible in evidence.

9. The contention raised on the said pro forma lease. Ext. Ka 6, was repeated before lower appellate court. The lower appellate court held that having been signed on behalf of the State long after the expiry of the period of lease and after the institution of the suit, it could have no value in the eye of law and even if the signatures on behalf of the State were accepted to be proper, the document was inoperative inasmuch as it was unregistered.

10. The learned standing Counsel appearing for the State urged that whether there was no valid lease on account of non-compliance with the provisions of Article 299 of the Constitution, or whether the deed of lease even if properly executed was inadmissible in evidence for want of registration, the effect was the same inasmuch as in either case a lease as contemplated by the parties did not come into existence or could not be given effect to for non-compliance with the mandatory provisions of law. He did not urge that any lease for five years came into being as envisaged by the parties when the pro forma lease was signed by the second plaintiff and was delivered to the local officers for being executed on

behalf of the State of Uttar Pradesh, as the lessee by an officer competent to sign and authenticate it on its behalf in accordance with the requirements of Article 299 of the Constitution. He further conceded that even if it were duly signed and authenticated in accordance with the requirements of Article 299 of the Constitution, and that too before the expiry of the term of five years, it would have been useless for being inadmissible on account of being unregistered. According to the learned standing Counsel the decision of the case did not, therefore, turn on the answer to the question formulated by this Court, while issuing notice of the appeal to the plaintiff-respondents after hearing under Order 41 Rule 11 C. P. C. I think the learned standing Counsel was right in saying so. but he urged that the absence of a duly executed registered deed of lease, which is necessary according to law. does not necessarily lead to the result that the position of the defendants was not that of tenants. According to the learned standing Counsel, the delivery of possession over the property with the intention to create a lease, in the present case with the express intention of granting a lease for five years as evidenced by the delivery of the pro forma lease signed by the second plaintiff, coupled with the payment and acceptance of rent, in the absence of a contract, attracted the applicability of Section 106 of the T. P. Act. The result was that if, the letting was taken to be for manufacturing purposes, a lease from year to year, and if it was taken to be for residential purpose, a lease from month to month came into being by operation of law.

11. The contention on behalf of learned counsel for the plaintiff-respondents was that a lease, by its very definition cannot come into being without a contract between the parties and a contract with the Government, in the sense of being an agreement enforceable at law, is impossible of coming into being without complying with the mandatory requirements of Article 299 of the Constitution, Consequently a lease to which the Government is a party cannot, come into being without an instrument in writing that complies with the requirement of Article 299 of the Constitution, and that being so a lease of immoveable property could be made in favour of the Government only by a registered instrument, even if it was for a term of less than one year. Learned counsel confined his argument to the case of a lease in favour of the Government for he did not want to enter into the controversy whether in view of Section 2 of the Government Grants Act, the

provisions of Section 107 of the T. P. Act. could properly be applied to a lease made by and on behalf of the Government. The question which thus arises for determination in this appeal is whether on the facts and in the circumstances of the case a tenancy from year to year or month to month could come into being in favour of the State of Uttar Pradesh under Section 106 of the T. P. Act.

12. The question so raised in the arguments before me is surely a substantial question of law on which the decision of the case turns, and in view of the importance of it I readily permitted it to be raised at the hearing of the second appeal under the proviso to Sub-section (5) of Section 100 of the Civil P. C. I must observe at the outset that the possession of the appellant State over the premises was throughout permissive. That is the plaint case itself. There was no dispute between the parties about the amount payable for the use and occupation of the premises by the State. The dispute is whether the possession of the appellant State was as a lessee or a tenant, because as a lessee or a tenant the appellant State could not be evicted without terminating the lease or tenancy by notice under Section 106 of the T. P. Act. I say so for two reasons, U. P. Act No. III of 1947 did not apply to the premises as it appears to have been built shortly before its being let out to the appellant State, and U. P. Act XIII of 1972 had not become applicable when the suit was instituted in 1974 as 10 years had not expired from the date of the completion of its construction, and even if that Act became applicable at any time during the pendency of the suit in the trial court or in the lower appellate court or in this Court, the necessary application under Section 39 of U. P. Act XIII of 1972 was not made by the appellant State. Secondly there could be no question of the applicability of Section 106 of the T. P. Act as a lease for the fixed term of five years as contemplated by the parties never came into being for want of due execution and registration of an instrument of lease. On the other hand, if the possession of the appellant State in the premises in suit was merely permissive and not that of a lessee or a tenant, the plaintiffs are entitled in law to be put into possession on their mere demand, by suit if necessary, without the requirement of any formal notice determining their right of occupancy. It would be useful at this stage to read Sections 105, 106 and 107 of the T. P. Act :

'105. 'Lease' defined :-- A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.'

'106. Duration of certain leases in absence of written contract or local usage :-- In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy.'

'107. Leases how made:-- A lease of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument,

All other leases of immovable property may be made either by a registered instrument or by agreement accompanied by delivery of possession.

Where a lease of immovable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee :

Provided that the 'State Government' may from time to time, by notification in the Official Gazette, direct that lease of immovable property, other than leases from, year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such lease, may be made by unregistered instrument or oral agreement without delivery of possession.'

Section 105 contemplates the prior existence of an agreement for creation of a lease. So does every other transaction resulting in a transfer of property by the act of parties inter vivos, but it is not necessary in every case to enforce the

agreement after the transfer is complete. Once an agreement results in a transfer of property, the transfer itself creates certain rights and obligations which are enforceable as such. In the case of certain transfers, as for example a sale or an exchange of property almost the entire agreement between the parties which precedes the sale or exchange is given effect to or wholly executed, when the sale takes place on payment of price and possession over the property sold is simultaneously delivered to the purchaser. In the case of a lease reserving a rent, the payment of rent is generally periodical and it may be said in a sense that a person enforces a contract of lease when he enforces payment of rent that was agreed upon before the lease was created. But even as once a lease comes into being in pursuance of the agreement between the parties, to enforce payment of rent reserved in the lease is enforcement of the obligation of the lessee to pay rent, which the law imposes upon him under Section 108(1) of the T. P. Act. It is not at case of a bare contract, Section 106 of the T. P. Act provides that 'in the absence of a contract to the contrary a lease of immovable property for.....manufacturing purposes shall be deemed to be a lease from year to year for any other purpose.....from month to month.'" It plainly means that in a case where the contract between the parties does not make a provision whether the lease is from year to year or from month to month, it shall be deemed to be a lease from year to year, in case it is granted for manufacturing purpose and from month to month in case it is granted for any other purpose. Does it also include a case where there is a complete absence of any contract between the parties relating to the lease in question Now, if a lease could not be brought about without the existence of a prior contract in the sense of an agreement enforceable at law, there could be no lease without a contract, and a complete absence of a contract between the parties would be ruled out by the existence of the lease. The question which arises in the context of the present case rather is whether Section 106 of the T. P. Act can take the place of a valid and enforceable agreement of lease between the parties and create a lease between them, if, in spite of the absence of a contract between them, the owner of the property lets the other occupy it and accepts rent from him. Before answering the question, it is necessary to refer to Section 107 which says that a lease of immovable property from year to year or for any term exceeding one year or reserving a yearly rent, can be made only by a

registered instrument, that all other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession; and that in case a lease is made by a registered instrument 'such instrument shall be executed by both the lessor and the lessee'. A lease of immovable property from year to year cannot, therefore, be made except by a registered instrument. It would, therefore, not be possible to read Section 106 as a provision under which a lease from year to year could be deemed to come into existence in the absence of a registered instrument signed by the lessor and the lessee both. Conformably with that view it should not be possible to read Section 106 to create a lease from month to month in case the requirement of Section 107, if any, for the creation of a lease from month to month is not satisfied. That requirement is contained in the second paragraph of Section 107 which says that all other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession. It is in this context that when a lease from year to year or for a term exceeding one year or reserving a yearly rent fails to come into being on account of the absence of a registered instrument duly executed by the lessor and lessee, and yet the owner delivers possession to the purported lessee and accepts rent from him. It is sometimes regarded to be a lease from month to month rather than a licence simpliciter. However, in case the purported lessee is the government no oral agreement enforceable at law can be made with the Government and, therefore, it appears that leases of immovable property for any period whatsoever in favour of the Government can be made only by registered instrument. This inference is reinforced by the provisions of Article 299 of the Constitution and seems to be based on good reasons of public policy for a lease does not merely confer a benefit, it imposes obligations also, particularly the obligation to pay rent. For example, an officer of the Government, may be in all good faith, were to hire a building for his office in a hurry on terms which may be neither prudent nor acceptable to the authority competent to contract on behalf of the Government and enter into possession and even pay rent of a month or two from out of the funds at his disposal, it would be impolitic to saddle the government with the liability for payment of the rent unless his action is ratified by the Government by the execution of a proper lease in conformity with the provisions of Article 299 of the

Constitution, and if that were necessary, the insistence on registration would not be a long step in applying Section 107 of the T. P. Act for the creation of a lease, for, its terms show that wherever a lease is created by an instrument in writing, the instrument must be registered.

13. A Full Bench decision of the Patna High Court in *Bastacolla Colliery Co. Ltd. v. Bandhu Beldar* (AIR 1960 Pat 344) was cited before me. It was held in that case that the duration of a tenancy which comes into existence by payment and acceptance of rent after delivery of possession under a void lease is determinable on the basis of the provisions of Section 106 of the T. P. Act. That was not a case of a purported lease in favour of the government and for the reasons indicated above it does not seem possible to say that any lease for any period or of any nature whatsoever could be created in favour of the Government except by a registered instrument duly signed both by the lessor and the lessee and as far as the Government is concerned, signed and executed on its behalf in the manner prescribed by Article 299 of the Constitution.

14. In the result it must be held that the conclusion arrived at by the two courts below that the relationship of landlord and tenant or lessor and lessee did not exist between the parties in this case was correct. Since the possession of the Government through its officers was permissive the position of the appellant-State in the premises in suit was that of a licensee and it was liable to restore possession to the plaintiff in the suit and to pay the sum of Rs. 200/- per month as compensation until it does so.

15. The appeal fails and is dismissed with costs.

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