

Gauri Shankar Vs. Mithai

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Court : Allahabad

Decided On : Apr-16-1924

Reported in : AIR1924All750; 84Ind.Cas.264

Judge : Neave, J.

Appellant : Gauri Shankar

Respondent : Mithai

Judgement :

Neave, J.

1. These are two plaintiff's appeals arising out of suits for arrears of rent and recovery of possession of certain houses. The plaintiff-appellant is the same in both and the cases have been argued together. Both will be governed by this order.

2. The plaintiff-appellant is the owner of the compound in which the two houses in suit are situated. His case was that the defendants were tenants from year to year and liable to ejectment. He' also alleged that they had not paid their rent, and sued for arrears. The defence was that the defendants were licensees who had obtained a license from the predecessor-in-interest of the appellant under which they had built the houses and were entitled to continue in possession of them. The First Court allowed the, plaintiffs claim and ordered the defendants to be ejected.

The lower Appellate Court, however, accepted the defendants plea and held that it was proved that the land was leased to the defendants for building purposes though no written lease was executed. The learned Judge relied on a ruling in *Jahooree Lall Sahoo v. H. Dear* 23 W.R. 399 in which it was held that where land is given to a lessee for the purpose of building a house to live in without any term being fixed for his tenancy, the tenure of the house and land cannot be taken away from the lessee's heir or his assignees so long as he continues to pay the rent assessed on it.

2. In appeal it is contended that the learned Judge was not justified in finding that the land had been leased when the defendant pleaded that it had been given to him under a license, that in any case the plaintiff was not bound by the license under Section 59 of Act V of 1882 as he is the transferee of the person who is said originally to have granted the license, and that the license may in any case be revoked under Section 60(b) Act V of 1882 as the work erected by the licensee is not of a permanent character, but only a kachcha thatched house.

3. It does not appear that in using the word lease the learned District Judge really meant to refer to something distinct from the license set up by the respondents. It has been held by this Court in *Nasir-ul-zaman Khan v. Azimullah* 28 A. 741 : 3 A.L.J. 765 : A.W.N. (1906) 216 that a kachcha thatched house may be a work of a permanent character and this appears to be true of the house referred to in the present case. It has evidently been used as a residence for a good many years and there is no evidence to indicate that it is only a temporary structure. It was held by this Court in *Rash Behari Lal v. Akhoy Kumar* 26 Ind. Cas. 445 : 19 A.L.J. 1 : 37 A. 91 that Section 59 of the Easements Act means that when the grantor of a license transfers the property, the transferee has no higher rights than those of his transferor. The buildings in suit being of a permanent character the appellant is not entitled to revoke the license granted. The appeals fail and are dismissed with costs including costs in this Court on the higher scale.

4. A further question has arisen in this case. The appellant asks for permission to withdraw his appeal with leave to file a fresh suit. The original respondent Mithai is dead. So far as the appellant has been able to discover, his only heir is his sister,

Musammat Mitania. She, however, is not living in the house which is occupied by one Allah Rakhu. Both this man and Musammat Mitania have been impleaded in place of Mithai. It is contended that Allah Rakhu is a mere trespasser, who has not shown that he has any right to possession of the house in suit, and has no locus standi in the case. The appellant desires to make enquiries and find out whether there are any other heirs of Mithai and exactly by what title Allah Kakhu claims to remain in possession. This is no sufficient reason for granting leave to withdraw and bring a fresh suit. It appears that Musammat Mitana who is prima facie the heir of Mithai has at least acquiesced in Alia Rakhu's occupation of the house, and their respective rights inter se do not affect the present appeal. The application is rejected.

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