

E.P. George Vs. Thomas John

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Court : Kerala

Decided On : Dec-16-1983

Reported in : AIR1984Ker224

Judge : T. Chandrasekhara Menon and; G. Balagangadharan Nair, JJ.

Acts : [Specific Relief Act, 1963](#) - Sections 39; [Easements Act, 1882](#) - Sections 52 and 63

Appeal No. : S.A. No. 110 of 1978

Appellant : E.P. George

Respondent : Thomas John

Advocate for Def. : A.A. Abdul Hussan and; T.S. Venkiteswara Iyer, Adv.

Advocate for Pet/Ap. : Joseph Augustine, Adv.

Disposition : Appeal dismissed

Judgement :

Balagangadharan Nair, J.

1. The short facts necessary for the disposal of this appeal by the defendant can be easily stated. The suit building of which only the southern room is in dispute belongs to the plaintiff-respondent. On 3-7-1970 the plaintiff and defendant

entered into an agreement Ext. A1 by which the defendant was allowed to use the southern room which faces the K. K. Road for his plastic business on a consideration of Rs. 550/- a month or 6% of the total business turnover whichever was higher. The agreement was for a term of 3 years in the first instance and the parties were at liberty to extend it. Skipping the other clauses which have no relevancy, Clause 11 provided that if owing to any difference of opinion, the parties found it difficult to continue the arrangement it could be terminated by either party giving one month's notice. When the arrangement ceased for any reason whatsoever, the defendant should not cause any interference to the possession and business of the plaintiff. The 12th and last clause stated that the legal possession and ownership of the building should be with the plaintiff during the subsistence of the agreement. The term of the agreement came to an end on 3-7-1973. On 6-7-1973 the plaintiff issued a notice terminating the agreement on the expiry of one month and asking the defendant to settle the accounts. In reply the defendant sent an envelope which according to the plaintiff, contained only a blank sheet of paper. It reached the plaintiff on 4-8-1973. When informed about this the defendant sent a reply Ext. A6 on 22-8-1973 claiming inter alia that he was a tenant and that Ext. A1 was a lease deed. On 18-9-1973 the plaintiff brought the suit for recovery of Rs. 2860/- with interest at 6% from 3-7-1973, being the arrears of amount due to him under Ext. A1, settlement of accounts, recovery of damages at the rate of Rs. 500/- a month from 3-7-1973 till the defendant vacates the room after removing his articles, a mandatory injunction directing the defendant to remove his articles and a prohibitory injunction restraining him from trespassing into the room and interfering with the plaintiff's possession.

2. The defendant resisted the suit on a variety of contentions of which the principal defence was that Ext. A1 was a lease.

3. The trial court rejected this defence and held that Ext. A1 was only a licensee. While holding in favour of the plaintiff that Ext. A1 is only a licence the court rejected his claim for Rs. 2860/- in the view that it was not supported by sufficient proof. The court accordingly passed a decree directing the defendant to remove his articles within 2 months, with a provision that in default the plaintiff could get them removed through court. It restrained the defendant by a perpetual injunction

from trespassing into the room or interfering with the plaintiffs possession. It allowed the plaintiff Rs. 500/- a month till the date of decree and thereafter for 3 years or till the defendant vacated the premises whichever event first occurred. The plaintiff was directed to set off Rs. 1100/- that had been advanced to him by way of security and allowed to recover only balance.

4. The defendant appealed from this decision and the plaintiff filed a memorandum of cross-objections against the denial of Rs. 2860/-.

5. The lower appellate court formulated two questions which concerned the nature of the transaction and the plaintiffs right to get Rs. 2860/-. On the first point the court agreed with the Munsiff that Ext. A1 was only a licence and not a lease as pleaded by the defendant. It, however, disagreed with the Munsiff on the second point and held that on the evidence and probabilities the plaintiffs case was true. On these findings he dismissed the appeal and allowed the memorandum of cross-objections, both with costs.

6. In the course of the judgment the lower appellate court has observed that the defendant was in exclusive possession of the southern room. The appeal was admitted on the question whether the courts below were justified in decreeing the suit (that is in granting the injunction) in the face of the finding that the defendant was in exclusive possession of the room. At the hearing before the learned single judge counsel for the plaintiff-respondent relied upon *Rajappan v. Veeraraghava Iyer*. 1969 Ker LT 811, which has held that a licensor was entitled to get a mandatory injunction against the licensee after the termination of the licence following *Prabirendra Nath v. Narendra Nath*. AIR 1958 Cal 179. It was, however, noted that the latter decision was overruled by *Sisir Kumar Dutta v. Susil Kumar Dutta*. AIR 1961 Cal 229 (SB). Primarily because of this circumstance the learned judge referred the appeal to a Division Bench.

7. The only point urged before us by Mr. Augustine for the appellant is that the courts below were wrong in granting the reliefs of injunction sought by the plaintiff. He brought to our notice the observation of the appellate court that the plaintiff succeeded in getting exclusive possession of the northern smaller room and, the defendant succeeded in getting exclusive possession of the southern road side

room and contended that on this latter finding about the southern room there was no scope for granting the injunction. He reminded us that even a person in wrongful possession of property is entitled to maintain that possession and if necessary approach the court for its protection through injunction and contended that that being the position the plaintiff could not ask for an injunction against the defendant however wrongful his possession might be. Now the Munsiff has not entered any finding that the defendant was in exclusive possession of the southern room. (We may note here that the northern room does not figure in the controversy as it has throughout been in the possession of the plaintiff. The principal defence contention was that Ext. A1 was a lease deed and that the defendant was a tenant, a contention that has been rejected by the courts below and has not been repeated before us. In support of the finding that Ext. A1 is only a licence the learned appellate judge has noted in para 8 that 'to crown all these, it has been specifically stated that the legal possession of the building shall remain with the landowner himself.' In the face of this positive finding and the absence of any plea by the defendant we cannot agree that the learned judge meant to hold that the defendant had exclusive and independent possession. There was also no specific issue on the point obviously because there was no pleading. It was not thus a point in controversy between the parties in either of the courts below. In this state of the pleadings, contentions and evidence what the learned Judge could have meant was that the defendant had such exclusive rights over the southern room as a licensee. The defendant, in our view, is not entitled to found any argument on the above sentence.

8. Counsel then proceeded to urge what really turned out to be the only important point in the appeal, that the plaintiff as the licensor cannot seek a mandatory or prohibitory injunction against the defendant after the termination of the licence. This contention was strongly contested by Mr. Venkiteswara Iyer, counsel for the respondent. In support of their rival contentions counsel relied upon various decisions. Before turning to the decisions we might briefly note the statutory provisions bearing on the rights of a licensee. Section 52. Easements Act, defines 'licensee' in those terms :

'Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence.'

This definition makes it clear that a licensee has no interest in the property and that his right is only a right to do or continue to do something which would in the absence of that right be unlawful. Since he has no interest or estate in the property such possession as he might have for enjoyment of the right is no juridical possession but only an occupation. Quite in keeping with this position Clause 12 of Ext. A1 asserted that the legal possession and ownership of the room would always be with the plaintiff. We need not pursue this aspect further because the licence in the present case has come to an end and the arguments before us were also concerned with the position of a licensee whose term has expired.

9. Counsel for the appellant contended that whatever be the position of the licensee, he becomes a trespasser on the property after the termination of the licence and if he is a trespasser in possession, no injunction could be issued against him. This, according to him is the position of the defendant. We find it difficult to accept the contention. Section 63. Easements Act, provides that where a license is revoked, the licensee is entitled to a reasonable time to leave the property and to remove any goods which he has been allowed to place on the property. This means that the licensee does not become a trespasser the moment the licence expires or is revoked for he has a reasonable time to leave the land and where he has brought goods on the land to remove the goods. His continuance on the property during this period at least is by no means as a trespasser. A trespasser is a person in wrongful possession who has a hostile animus against the person entitled to the legal possession of the property. A licensee has no possession and having come on the property under a permissive arrangement with no possession of interest it cannot be assumed that the moment the licence is withdrawn he acquires the necessary physical and mental element to become a trespasser. He might usurp the possession and develop into a trespasser. but then it is not an automatic and necessary development the

moment the licence is over. If he is a trespasser he would perfect his possession and become an owner at the end of 12 years. As the Privy Council observed in *Kodoth Ambu Nayar v. Secretary of State for India*, (1924) ILR 47 Mad 572 (582) : (AIR 1424 PC 150) (154). 'Their Lordships think that a licensee cannot claim title only from possession, however long, unless it is proved that the possession was adverse to that of the licensor, to his knowledge and with his acquiescence.' We are not concerned with title but this passage is helpful to show that possession of licensee could become hostile, after the revocation of the licence only if the possession was adverse to the licensor to his knowledge and with his acquiescence. That is a matter to be pleaded and proved by the licensee. Lawful possession, however long, will not be adverse and it is only adverse possession that leads to the acquisition of title. A licensee's occupation does not become hostile possession, or the possession of a trespasser the moment the licence comes to an end. There is no plea or evidence or even finding that at any time after the expiry of the licence and before the institution of the suit the defendant was in possession as a trespasser or that the plaintiff had acquiesced in this change of status.

10. Turning to the cases filed by the appellant we will begin with *D.H. Maniar v. Waman*. AIR 1976 SC 2340. The case arose out of an application for evicting a tenant under the Bombay Rent Act. The respondent was a licensee. The licence expired on 1-1-1966. Under a new provision introduced by an amendment notwithstanding anything contained in the Act or in any other law or contract where any person was in occupation of any premises or part thereof on 1-2-1973 as a licensee he shall be deemed to have become the tenant of the landlord. The respondent claimed that by virtue of this amendment he should be deemed to be a tenant as he was in occupation of the premises as a licensee notwithstanding the expiry of the licence on 1-1-1966. The Supreme Court held that to get the benefit of this provision as a tenant the occupation must be as a licensee on 1-2-1973 and that if he was not then a licensee under a subsisting agreement he does not get the advantage of this provision. Their Lordships added 'A person continuing in possession of the premises after termination, withdrawal or revocation of the licence continues to occupy it as a trespasser or as a person who has no semblance of any right' to continue in occupation of the premises. Such a person

by no stretch imagination can be called a licensee.' (page 2343). This passage upon which counsel for the appellant placed strong reliance does not positively lay down that on the termination or revocation of a licence, a licensee becomes a trespasser for at least during the reasonable period permitted under Section 63, Easements Act, he is entitled to remain on the property and he cannot become a trespasser before the expiry of that period. What the Supreme Court meant was only that when the licensee becomes a trespasser he ceases to enjoy the benefit of the provision for to earn that benefit he should be in occupation as a licensee; it is not enough that he is a licensee. The passage, as inquired every judicial dictum must be understood in the context of the facts and so understood it does not, in our view, conclude the question in favour of the appellant.

11. The next decision quoted by counsel for the appellant is *Sisir Kumar Dutta v. Susil Kumar Dutta*, AIR 1961 Cal 229 (SB). The point that arose in that case concerned the proper valuation of a suit for the ejectment of a licensee after the termination of his licence for the purpose of court fees and jurisdiction. The plaintiffs filed the suit for eviction of the defendant describing him as a licensee whose licence had been revoked. The relief of ejectment was valued at Rs. 100/- which, according to the plaintiff, was the value of the relief. There were other reliefs also but no question arose on them. In the course of the judgment the Full Bench examined the rights of a licensee and held that on the termination of the licence by revocation or otherwise the licensee becomes a trespasser and that the suit must be treated on that footing for the purpose of jurisdiction and court fee. This decision did not expressly overrule *Prabirendra Nath v. Narendra Nath*, AIR 1958 Cal 179, as assumed in the reference order though it is clear the view taken by the Special Bench is against that decision. As for the law laid down by the Special Bench on the position of an ex-licensee we find it difficult, with great respect, to agree with the formulation in the absolute terms in which it was done.

12. *Jagdish Chandra v. Basant Kumar*, AIR 1963 Pat 308 (FB), quoted by the appellant follows, among others, AIR 1961 Cal 229. This also arose under the Court-Fees Act. The observations made by us about AIR 1961 Cal 229 apply to this decision also.

13. We now pass on to the cases placed before us by counsel for the respondent. Starting with the decisions of this Court, *Rajappan v. Veeraraghava Iyer*, 1969 Ker LT 811, is by a learned single Judge. That decision held following *Prabirendra Nath v. Narendra Nath*, AIR 1958 Cal 179, that the owner of an immovable property can on the termination of a licence, maintain a suit against his licensee for mandatory injunction directing him to vacate the property without praying for possession since the licensee's possession cannot exclude the owner's possession. *Aspinwall & Co. Ltd. v. Soudamini Amma* 1974 KLT 681, which is a Bench decision was concerned with the question of court-fee in a suit for a mandatory injunction against a licensee whose term has expired. In the course of the judgment the learned Judges examined the position of a licensee both during the term and after the termination. In para 5; they specifically posed the question, can he be treated as a trespasser after the termination of the licence and observed :

'Even after the termination of the licence the licensee may have to continue to be in occupation of the premises for some time, because in many cases the licensee may require some reasonable time to remove materials belonging to him and quit the place. But during such time the licensor will be deemed to be in possession through his licensee, because the licensee cannot have any independent or separate interest in the premises. In that case a licensee cannot possibly be treated as a trespasser. But there will be cases where even after the expiry of the licence the licensor sleeps over the matter and does not take prompt action to sack the licensee out of the premises. No doubt a licensee can continue in occupation of the premises for a reasonable time after the termination of the licence. But if the licensor is not vigilant and the licensee continues in occupation of the premises beyond this reasonable time, what will he be? Will he be still a licensee or will he become a trespasser? If he continues to cling on to the premises why should he still be a licensee? No doubt it will be difficult to make a distinction in actual practice as to when a licensee becomes a trespasser and up to what time he will continue to be a licensee. There can be a more definite test. If on the expiry of the licence an assertion of a hostile title is made by the licensee and the licensor sleeps over the matter then the occupation of the licensee can be considered to have been converted into one of possession of a trespasser. Under

such circumstances the licensor will have to sue for recovery of possession and a suit for a mandatory injunction under Section 39, [Specific Relief Act, 1963](#), will not be the remedy.'

The learned Judges followed Milka Singh v. Diana, AIR 1964 J & K 99, which was also concerned with the same question. After discussing the points at length Fazal AH, J., who delivered the judgment of the Bench held (so far as relevant) :

'1. That a suit for an injunction simpliciter against a licensee whose license has been terminated is maintainable.

* * * * * 3. That where a licensor approaches the court for an injunction within a reasonable time after the licence is terminated, he is entitled to an injunction. On the other hand, if the licensor causes huge delay, the court may refuse the discretion to grant an injunction on the ground that the licensor had not been diligent and in that case, the licensor will 'have to bring a suit for possession which will be governed by Section 7(v), Court-fees Act.'

We are in respectful agreement with this opinion.

14. We are not specifically quoting from AIR 1958 Cal 179 as that has been expressly followed in 1969 Ker LT 811. In Delhi Gate Service Private Ltd. v. Caltex (India) Ltd., AIR 1962 Punj 370, Falshaw C.J. held that after the termination of the licence a mandatory injunction could be issued to the licensee to vacate the premises. The learned Chief Justice followed AIR 1958 Cal 179.

15. This review covers all the decisions cited by counsel for the parties. We have already discussed the position above and indicated in what circumstances a suit for a mandamus would lie and where it would not. In the present case considering the promptitude with which the suit was brought and the defences taken we have no doubt that injunction could be properly issued and that it was not necessary to drive the plaintiff to a suit for possession. With respect we follow the decisions in 1969 Ker LT 811, the relevant observations in 1974 Ker LT 681, AIR 1962 Punj 370 and AIR 1964 J & K 99. There is no ground to upset the decisions of the courts . below.

We dismiss the appeal with costs.

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