

Seshamma Shettati and ors. Vs. Chickaya Hegade and ors.

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Court : Chennai

Decided On : Feb-14-1902

Reported in : (1902)ILR25Mad507; (1902)12MLJ119

Judge : Bhashyam Ayyangar and ;Moore, JJ.

Appellant : Seshamma Shettati and ors.

Respondent : Chickaya Hegade and ors.

Judgement :

1. The proprietor of the land in question mortgaged it with possession to one Davappa Kamti in 1832. The plaintiffs, as the assignees of the equity of redemption, discharged the mortgage-debt and redeemed the mortgage in 1894. It is alleged in the plaint that the defendants have been holding the land as tenants from year to year under the usufructuary mortgagee, that the tenancy has been terminated by due notice to quit given by the plaintiffs and the suit is accordingly brought to eject them from the land. The defendants contend that the land was given to their assignors by the proprietor, apparently in conjunction with the mortgagee, on a permanent lease, that out of the total annual rent of Rs. 130-14-9 they have been paying Government assessment and the balance of Rs. 60 to the mortgagee and that subsequent to the redemption of the mortgage by the plaintiffs, they remitted the said sum of Rs. 60 by postal money order to the plaintiffs who refused to accept the same. They also confined that plaintiffs' suit to eject them is barred by the law of limitation.

2. (sic)as alleged by the plaintiffs, the defendants came into possession of the land as tenants under the mortgagee, plaintiffs' title to eject thorn is clear, whether the mortgagee let them into possession as tenants from year to year or professed to let them as tenants with a permanent right of occupancy. A permanent lease granted by a mortgagee can hold good only as against the mortgagee and that until the redemption of the mortgage. It cannot bind the mortgagor or persons claiming under him. Whether a tenancy created by a mortgagee will ipso facto terminate with the redemption of the mortgage or whether it can be determined only by the mortgagor giving notice to quit as in the case of a tenant from year to year, it is unnecessary to consider in this case, as in fact notice to quit has been given and the suit brought within four years after the redemption of the mortgage.

3. But if, as alleged by the defendants, their right of permanent occupancy is founded upon a lease granted by the mortgagor, the plaintiffs, of course, are bound by such lease and they cannot sue to eject the defendants. This is the substantial question in the case, but both the Courts have dismissed the suit as barred by the law of limitation, under Article 144 of the Limitation Act, on the ground that the defendants have, to the' knowledge of the plaintiffs, or rather their predecessor in title, been setting up a right of permanent occupancy for upwards of 12 years before date of suit and that plaintiffs became assignees of the equity of redemption, with notice of such claim on the part of defendants

4. The suit being brought by the plaintiffs, as landlords, to recover possession from tenants, the article of the Limitation Act applicable thereto is prima facie Article 139 and certainly, according to the case of the defendants, that article must govern the suit. Article 144 of the Limitation Act can be applied only to a suit not otherwise specially provided for, and if a suit be otherwise specially provided for, the defendants' plea of adverse possession, for whatsoever length of time, is perfectly immaterial for purposes of limitation. Both the lower Courts have fallen into an error (*Runchadas Vandravandas v. Parvathy Bhai* L.R. 26 IndAp 71 by no means an uncommon one, that every other article of the law of limitation relating to immoveable property should be subordinated or read subject to Article 144 and have dismissed the suit as barred by the law of limitation, notwithstanding that, according to the defendants' own case, they did not come into possession of the

land as trespassers, but as tenants let in by the plaintiffs' predecessor in title.

5. The land in question was held in proprietary right under a raiyatwari settlement with Government by the plaintiffs' predecessor in title and if, as the defendants allege, they derived a permanent right of occupancy therein from such proprietor-the onus of establishing which is entirely on them *Rangasami Reddi v. Gnanasammantha Pandara Sannadhi* I.L.R. 22 Mad. 264 and the unreported decision in *Chidambara Pillai v. Tiruvengadath Ayyangar* Appeal No. 1 of 1886 (unreported) therein cited)-it is, of course, a complete answer to the plaintiffs' suit, inasmuch as it is not based on the footing of the defendants having incurred a forfeiture of a permanent right of occupancy and the suit is bound to fail on that ground.

6. In considering the question of limitation, and dismissing the suit on such preliminary ground, it must, of course, be assumed that the plaintiffs' case, i.e., that the defendants came into possession of the lands as tenants from year to year and not as permanent tenants-as alleged by the defendants-is true. If so if; is impossible to uphold the decision of the lower Courts that the defendants have, by adverse possession extending over a period of 12 years, acquired, under the combined operation of Article 144 of the Schedule II and Section 28 of the Limitation Act, the limited right of permanent occupancy subject to the payment of a fixed rent. Defendants do not say that they came into possession of the land really as trespassers, though professing to have come into possession as permanent lessees-in which case no doubt Article 144 would be applicable; nor do they say that the plaintiffs' predecessor in title was dispossessed or that he discontinued possession of the land and that they have taken possession claiming to hold under a permanent right of occupancy in which case Article 142 would be applicable, the result in either case being the same. A person who lawfully came into possession of land as tenant from year to year or for a term of years, or as mortgagee, cannot, by setting up, during the continuance of such relation, any title adverse to that of the landlord or mortgagor, as the case may be, inconsistent with the real legal relation between them,-and that however notoriously and to the knowledge of the other party-acquire, by the operation of the law of limitation, title as owner or any other title inconsistent with that under which he was let into

possession. In the case of a mortgage, the title of the mortgagor will be extinguished only at the expiration of the period prescribed for redemption of the mortgage, and in the case of a lease, the landlord's title can be extinguished only at the expiration of the period prescribed by Article 139 of the Limitation Act, and under the latter article such period will commence to run only when the tenancy is determined. A reference to Section 111 of the Transfer of Property Act will show when a tenancy in respect of immoveable property determines. If, after the determination of the tenancy, the tenant remains in possession as trespasser for the statutory period, he will, by prescription, acquire a right as owner or such limited estate as he might prescribe for. A person coming into possession of land under a lease which is invalid or void as against the person seeking to eject him is really a trespasser and as such, after the expiration of the period prescribed by Article 144, acquires by prescription the limited right under the lease, whether it be a lease for a term of years or a lease in perpetuity.

7. In the present case, on the footing that the defendants were let into possession by the mortgagee, whether as tenants from year to year or professedly as tenants with a permanent right of occupancy, the tenancy between them and the mortgagee would have continued until the redemption of the mortgage in 1894, and such possession cannot be adverse either to the mortgagee or much less to the mortgagor, and the plaintiffs' cause of action would have accrued-and the period of limitation commenced to run- only in 1894, if such tenancy ceases by the mere fact of redemption, or subsequent thereto, when the term of notice to quit had expired, if the right view should be that a lease given by the mortgagee as being incidental to the management of the mortgaged property, is binding upon the mortgagor-at any rate, as a lease from year to year,-until he determines the same.

8. If, as alleged by defendants, they were let into possession by plaintiffs' predecessor in title as tenants, but they fail to establish that they were let into such possession with rights of permanent occupancy, their position will be only that of tenants from year to year see *Vasudeva Patrudu v. The Zamindar of Salur* 3 M.H.C.R. 1 and they can acquire by prescription no right of permanent occupancy by the fact that they were setting up a right of permanent occupancy, to the knowledge of plaintiffs' predecessor in title for upwards of twelve years before date

of suit *Srinivasa Ayyar v. Muthusami Pillai* I.L.R. 24 Mad. 246.

9. There being in this case no plea of dispossession of the mortgagee by the defendants or their assignors, as trespassers, it is unnecessary to consider whether in the case of such forcible dispossession, there could be any adverse possession against the mortgagor, within the meaning of Article 144 of the Limitation Act, until the mortgagor had redeemed the mortgage *Ammu v. Ramakrishna Sastri* I.L.R. 2 Mad. 226; *Vittobha Bin Chaba v. Gangaram* 12 Bom. H.C.R. 160; *Puttappa v. Timmaji* I.L.R. 14 Bom. 176; *Chinto v. Janki* I.L.R. 18 Bom. 51.

10. In support of the position that a tenant cannot, by the operation of the law of limitation, prescribe for a higher title than he has under the tenancy, by setting up such higher right during the tenancy, I may quote the following passage from the judgment of their Lordships of the Judicial Committee of the Privy Council in *Maharani Beni Pershad Koeri v. Dulh Natk Roy* L.R. 26 IndAp 216: 'Their Lordships, however, think that the argument fails on a broader ground. -They have already expressed their opinion that Ramglam was, at that time, entitled to hold the noouzah for his life and that no suit for possession could than have been brought against him. And they do not think that a mere notice by a person holding for his life, that he claimed to be holding on a hereditary or perpetual tenure, would make his possession adverse within the meaning of the Limitation Act so as to bar a suit for possession on expiration of the life tenancy. Even if, therefore, the plaint of 1879 did convey the notice which the respondent attributes to it, their Lordships do not think it would support the defence of limitation.'

11. The case of *Budesur v. Hanmanta* I.L.R. 21 Bom. 509, relied upon by the District Judge-in which it was held that a 'landlord allowing the tenant to assert the validity of an invalid lease for the statutory period of more than twelve years may be debarred from subsequently questioning the right of the tenant to hold under its terms '-proceeds upon the footing that the tenancy alleged by the landlord to be only from year to year was determined and a suit brought to eject the tenant was dismissed for default of prosecution. According to the case of the landlord, therefore, the tenant remained in possession as a trespasser. He, however, having

claimed to hold possession as a tenant with a permanent right of occupancy and such possession having continued for upwards of twelve years after the tenancy was determined, according to the case of the landlord, it was held that he acquired a right of permanent occupancy by prescription. That case is thus clearly distinguishable from the present one.

12. The case of *Drobomoyi Gupta v. Davis* I.L.R. 14 Calc. 323 is also clearly distinguishable from the present case. In that case a Hindu widow granted a permanent lease to certain tenants, which, on her death, was void as against her two daughters, the survivor of whom died nearly twenty years after the death of the widow. The lessees having, as trespassers from the date of the death of the widow, continued to hold the lands for upwards of the statutory period, professing to hold the same as permanent tenants under the lease granted by the widow, it was held (at page 345) that they had acquired a right of permanent occupancy by prescription against the daughters and therefore, under the provisions of the Limitation Act (XIV) of 1859, also as against the male reversionary heirs who succeeded the surviving daughter.

13. In *Gossain Dalmar Puri v. Bepin Behary Mitter* I.L.R. 18 Calc. 520, a permanent lease of certain mouzahs was granted by the judgment-debtor, after his right, title and interest therein had been sold in execution of the decree and the purchaser, who obtained only symbolical possession against the judgment-debtor in a suit brought by him for the recovery of his shares, against the judgment debtor and his co-sharers, subsequently brought a suit against the alleged permanent lessee to recover possession of the share purchased by him. The lessee having been let into possession under a permanent lease by the judgment-debtor, it was void as against the prior purchaser, and the lessee, therefore, was in possession really as a trespasser as against the purchaser, professing to hold for upwards of thirteen years the land as a permanent lessee. It was, therefore, held that he acquired a right of permanent occupancy by prescription.

14. The decision of the Privy Council in *Tekaetnee Goura Coomaree v. Mussamat Saroo Coomaree* 19 W.R. 252 which was also cited on behalf of the respondent has no bearing upon the present case. In that case the plea of limitation was

overruled on the ground that the landlord had had no notice that the tenant was claiming a permanent right of occupancy. It also appears in that case that, according to the plaintiffs case, the tenant was holding wrongfully after the termination of a lease for a term of years.

15. In *Maidin Saiba v. Nagapa* I.L.R Bom. 96, the tenant had a permanent lease granted to him of certain lands, but he trespassed and encroached upon certain lands not comprised in the lease and professed to hold the same as if it was part of the land comprised in the lease, and such trespass and encroachment having continued for upwards of twelve years, it was held that he had acquired a right of permanent occupancy as regards that land also, by the operation of the law of limitation.

16. It will thus be seen that in the cases above referred to, in which it was held that title to a right of permanent occupancy in land subject to the payment of a fixed rent was acquired by the operation of the law of limitation, the person who thus acquired title was, at the time from which the period of limitation was reckoned, in possession of the land really as a trespasser under an invalid lease or under a lease which prior thereto had been determined either by the landlord having given notice to quit or otherwise.

17. The District Judge having disposed of the appeal on the preliminary question of limitation, alone, which forms the subject of the seventh issue, and as his finding on that issue cannot be supported, the decree is reversed and the appeal remanded to him for disposal according to law, with reference to the remaining issues in the case. The costs of this second appeal will abide and follow the result.