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Court : Chennai

Decided On : Nov-20-1945

Reported in : AIR1946Mad310; (1946)1MLJ92

Appellant : Jonnada Sayi and ors.

Respondent : Jonnada Subbanna and ors.

Judgement :

Chandrasekhara, Aiyar, J.

1. The suit was brought by the plaintiffs to recover possession of certain properties described as washerman service inam lands on the allegation that they belonged to the first plaintiff and were given on lease to the second plaintiff under Ex. P-I on the 10th March, 1941 and that the defendants trespassed into the lands on 29th April, 1941. Certain very material facts which have been found to be true were suppressed by the plaintiffs. The first plaintiff had put the defendants in possession of the properties under arrangement evidenced by a letter marked as Ex. D-I, dated 3rd January, 1932. Under this arrangement they were to have possession of the lands belonging to her, rendering village service as per mamool and giving her a half share in the produce. In case, the lands were given on lease they were to give her a half share of the rent received. The arrangement was to enure for her life and possession was delivered to the defendants under the arrangement. The second plaintiff took a lease of the lands from the defendants and the first plaintiff on 8th June, 1937, for a period of four years under Ex. D-2. The lease expired on

27th March, 1941. It was after this that the first plaintiff is said to have granted a lease in favour of the second plaintiff under Ex. P-1 on 10th March, 1941.

2. Both the lower Courts which dismissed the plaintiffs' suit have found that the defendants were not trespassers and that the lease which the first plaintiff granted in favour of the second plaintiff could not prevail against their rights under Ex. D-I. They have held that even though Ex. D-I is unregistered, the doctrine of part performance enunciated in Section 53-A of the Transfer of Property Act applied to the case.

3. Two points have been argued on behalf of the appellants. One is that the defendants must be treated as trespassers because the lease under Ex. D-2 expired on 27th March, 1941 and the second plaintiff got a lease in his favour from the first plaintiff on 10th March, 1941. This argument overlooks the fact that the arrangement under Ex. D-I was not terminated and could not be because, as stated already, it is to enure during the period of the first plaintiff's life. So the possession which the defendants have is referable to Ex. D-I, not having anything, to do with any trespass into the property on 29th April 1941 or on any other date. It is true that the first plaintiff expressed her intention to throw the arrangement evidenced by Ex. D-I overboard by granting a lease in favour of the second plaintiff, but this surely does not bind the defendants who have got rights under Ex. D-I.

4. The second point taken on behalf of the appellants is based on the observation of the Privy Council in *S. JV. Banerji v. Kuchwar Lime and Stone Co., Ltd.* (1942) 1 M.L.J. 1 : I.L.R. 21 Pat. 243 that it is possible that the doctrine of part performance does not apply to transfers of partial interests in immovable property. A fleeting doubt was expressed in this decision on the question and was not followed up by any reasoning, for it was unnecessary for their Lordships to decide any such point. The partial interest which they referred to in that case was not a lease but an interest to go upon property for the purpose of cutting timber, or digging mines, which without anything further can only be regarded as a license, which was the case dealt with in *Traders and Miners, Ltd. v. Dhirendranath Banerji* I.L.R.(1943)Pat. 115. That Section 53-A of the Transfer of property Act applies to

leases has been held in quite a number of cases and one of them is the decision of Sulaiman, C.J. and Bennett, J., in *Shyam Sundar Lai v. Din Shah* I.L.R. 1937 All. 312. There, the learned Judges point out that though Section 53-A speaks of a transfer of im-moveable property and Section 105 describes a lease as a transfer of a right to enjoy immoveable property, leases really amount to transfers of property within the meaning of Chapter II of the Act and a transfer by way of a lease is also governed by Section 53-A. The only argument that Mr. Bapiraju could urge in this connection is that Ex. D-1 is not a lease at all because the right to enjoy the property could not be said to have been transferred in the face of the provision in the latter that the plaintiff was to get a half share in the produce and was liable for a half share of the tax payable and moreover she was also a party to the lease under Ex. D-2. Ex. D-1, however, refers to the fact that possession of the lands had been handed over to the defendants and that they were to enjoy such possession during the term of her life rendering village services on her behalf also and giving her a half share in the produce or rent. The half share in the produce is the rent that she was to get and there is no room for doubt that the letter evidences a lease within the meaning of Section 105 of the Transfer of Property Act, which contemplates share of the produce or service or any other thing of value being rent.

5. The second appeal is dismissed with costs. No leave.

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