

Madar Sahib and anr. Vs. Kader Moideen Sahib and ors.

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SooperKanoon Citation : sooperkanoon.com/821321

Court : Chennai

Decided On : Oct-13-1914

Reported in : 33Ind.Cas.705

Judge : Ayling and ;Hannay, JJ.

Appellant : Madar Sahib and anr.

Respondent : Kader Moideen Sahib and ors.

Judgement :

1. The plaintiffs and defendants are co-owners of the suit house. The defendants in 1896 bought an undivided moiety of the house from the father of plaintiffs Nos. 1 to 7, and later in the same year executed a lease to him in respect of the other moiety for a period of three years. That lease expired in 1899 and since that time the defendants have been in possession of the whole house without executing any fresh lease to the plaintiffs or paying them rent. The plaintiffs' suit is for possession of their half of the house after partition and for recovery of arrears of rent and rent subsequent to suit. They have succeeded in both the lower Courts, and have been given a decree for partition and possession of, a moiety of the house and for rent for six years before suit under Article 120 of the Limitation Act. The only question for determination in this second appeal is whether the lower Courts were right in according arrears of rent for six years. For the appellants it is contended that either Article (sic) or 115 should have been applied and that the claim for the period prior to three years before suit is barred.

2. The lower Courts in applying Article 120 have followed the decision in *Robert Watson & Co. Ltd. v. Ram Chand Dutt* 23 Cal. 799. It is argued for the appellants that that case is distinguishable from the present on the facts, because on the facts there found, there was no contract between the parties so as to bring the case within either Article 110 or 115 of the Limitation Act, whereas in the present case there was a lease between the parties, and an implied contract to pay rent after expiry of that lease. In support of the contention that the defendant in this case are in the position of tenants holding over and as such liable for rent at the rate reserved in the lease of 1896 *Leigh v. Dickeson* (1884) 15 Q.B.D. 60 : 54 L.J.Q.B. 18 : 52 L.T. 790 : 33 W.R. 38 is cited and the judgments of Cotton, L.J., and Lindley, J., appear to support that view. That also was a case where one tenant-in-common had possession of a house by virtue of a lease from the other tenant-in-common and the fact that there was such a lease was evidently the basis of the conclusion that the lessee tenant-in-common was bound to pay rent at the rate reserved, though the lease had expired and notwithstanding the existence of the tenancy-in-common.

3. In this case, as in the English case above referred to, the defendants may be said to have continued in possession of the house as tenants on sufferance from the expiry of the lease in 1899, as there is nothing to show that the plaintiffs assented to their remaining in possession as lessees (their possession might in the circumstances be referable to their rights as co-owners) and it is not the plaintiffs' case that any rent was paid. But as pointed out in the decision in *Subravei Ramiah v. Gundala Ramanni* 4 Ind. Cas. 1080 : (1910) M.W.N. 145 : 19 M.L.J. 732 : 7 M.L.T. 289 : 33 M. 260 it is doubtful whether in this country the fiction of tenancy by sufferance should be kept up after the Transfer of Property Act.

4. In these circumstances the decision of the question whether Article 110, 115 or 120 is to be applied to this case depends, in our opinion, on the answer to the question whether the relationship between the expiry of the lease in 1899 was based on a contract, express or implied. Articles 110 and 115 both presuppose the existence of such a contract. If the suit is in reality a suit for rent or for damages for use and occupation then Article 110 or 115 may apply, but if not then the

remaining Article 120 would be properly applied.

5. In this connection, the respondents rely upon Sections 111 and 116 of the Transfer of Property Act. Under Section 111, the lease of 1896 was determined by efflux of time in 1899, and as the plaintiffs did not accept rent from the defendants after that or otherwise assent to the defendants continuing in possession as lessees, it cannot be said that there was any renewal of the lease as provided in Section 116 of the Transfer of Property Act. In these circumstances and having regard to the fact that the defendants are co-owners of the suit house, we think there is much force in the contention for the respondents that they cannot be regarded as tenants holding over or that there was any relationship of landlord and tenant subsisting between them and the appellants subsequent to 1899 so as to bring the case within either Article 110 or 115. The respondents' possession after 1899 may reasonably be referred to their rights as co-owners and in that view the decision in *Robert Watson & Co. Ltd. v. Ram Chand Dutt* 23 C. 799 was, in our opinion, rightly applied to the case notwithstanding the difference in the facts which has been referred to above.

6. The decree of the lower Court is confirmed and this second appeal is dismissed with costs.