

## Ghissu vs Hashim Ali And Anr. on 20 January, 1954

**Equivalent citations: AIR1954ALL683, AIR 1954 ALLAHABAD 683**

### JUDGMENT

Beg, J.

1. This is a defendant's second appeal arising out of a suit for perpetual injunction and possession.
2. The suit was brought by two persons as plaintiffs. It was brought on the allegation that plaintiff 1 had given a licence to the defendant to take away the crop of the grove on payment by the defendant of a yearly rent of Rs. 24/-. There was a further stipulation in the deed that the defendant would not be ejected so long as he continued to pay the yearly rent. The plaintiffs filed the suit alleging that the said licence had been revoked by plaintiff No. 1 and was no longer in force. In the alternative it was pleaded that plaintiff 2 who was a minor and was a co-sharer in the said grove being not a party to the said licence, the transaction was bad as a whole.
3. The suit was resisted by the defendant on the ground that he was not a mere licensee and under the terms of the deed, he could not be ejected so long as he continued to pay the yearly rent. It was also pleaded on his behalf that plaintiff 1 was managing the property on behalf of plaintiff 2 who was a minor and, therefore, plaintiff 2 was bound by the said transaction.
4. The trial court came to the conclusion that the transaction in question was a lease. Hence the defendant was liable to ejectment without notice at the instance of plaintiff 2 and the plaintiff 2 being not a party to the said transaction, the defendant could not resist the suit successfully. The trial Court, therefore, decreed the suit.
5. The appellate Court did not agree with the trial court on the point that the transaction in question was a lease. The appellate Court held the transaction to be a mere licence which could be revoked at the instance of the licensor, that is, plaintiff 1. As the licence stood revoked, the plaintiff was entitled to the relief claimed. It, therefore, upheld the decision of the trial court though on a different ground.
6. Dissatisfied with the judgment of the lower appellate Court, the defendant has filed this second appeal.
7. The first argument advanced by the learned counsel for the appellant is that the view of the lower appellate Court that the transaction in question is a mere licence is not correct. Having heard learned counsel I am of the opinion that there is force in his argument. In my opinion, the transaction in question cannot be construed to be a bare licence. A licence is defined in Section 52 of the Easements Act as follows:

"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."

8. In view of the above definition, if the plaintiff 1 had allowed the defendant merely to come to the grove, that would have been a licence pure and simple. Here plaintiff 1 allowed the defendant not only to enter the grove but also to take away something from it, namely, the crops of the trees. This is, therefore, not a case of bare licence. In this case the grant of a licence is coupled with the transfer of property, this property being the crop of the grove. The case would be akin to a case where a person allows another person to come to his park to hunt there and to take away the game. If the owner of the park merely allowed another person to enter the park and to do something there, namely, to hunt in the park, it would be a case of bare licence. If he allowed him not only to hunt in the park but also to take away the game, then it cannot be said to be a case of bare licence.

The licence in such a case would be coupled with a transfer of property, viz., the game hunted. This would be a complex right which in law would be termed as a licence coupled with a grant or licence with a 'profit a prendre'. The matter has been dealt with by Joshi in his Commentary on the Easements Act, 1948 Edition, page 274. The following extracts from pp. 274 and 275 are relevant :

"As a licence to go beyond the seas, to hunt in a man's park, to come into his house are only actions which without licence had been unlawful. But a licence to hunt in a man's park and carry away the deer killed to his own use; to cut down a tree in man's ground and to carry it away the next day after to his own use, are licences as to the acts of hunting and cutting down the tree, but as to the carrying away of the deer and the tree cut down, they are grants.....

It will thus be seen that what is called a licence is often something more than a licence. It may be a right coupled with an interest in land or a licence with 'profit a prendre' attached to it. A complex right, not merely a licence, is thus formed."

9. The rights thus created would not be revocable under Section 60, Easements Act, which states that a licence may be revoked by the grantor unless it is coupled with a transfer of property and such transfer is in force.

10. In this view of the matter I am clearly of opinion that it would not be open to the plaintiff No. 1 to revoke the said licence and I hold that the view of the lower appellate court is not correct.

11. In spite of it, the appeal cannot be allowed to succeed on another ground, which is urged on behalf of the plaintiffs-respondents. The grove, the crops of which were transferred, was admittedly the joint grove of both plaintiff 1 as well as plaintiff 2. It is not open to one of the co-sharers of joint property to create subsidiary rights or interests in favour of third parties in the entire property without the consent of the other co-sharer or co-sharers. In this view of the matter, plaintiff 1 was

not entitled to grant the licence in question in favour of defendant without joining plaintiff 2 in the transaction. Plaintiff 2 never consented to it. The whole transaction must, therefore, fail and cannot be given effect to. Under the circumstances this appeal cannot succeed. I accordingly dismiss it. Costs shall be borne by the parties.