Sheo Dulare Lal Sah vs Anant Ram And Anr. on 31 July, 1953

Equivalent citations: AIR1954ALL475, AIR 1954 ALLAHABAD 475

JUDGMENT

Malik, C.J.

1. The facts of this case are given in the judgment of the lower appellate Court but it may be convenient to state them briefly here. Lala Saheb Dayal was the owner of the house in suit. He got indebted and there was a decree against him in favour of one Devendra Nath for about Rs. 1,200/-. On 15-8-1932, Sahib Dayal executed a sale-deed of the house in favour of Sri Krishna Das for Rs. 1,260/-. Sahib Dayal was related to Sri Krishna Das and was also working as his servant. This document was presented for registration and was registered on 17-8-1932. On the date of the registration of the document Sahib Dayal executed a 'sarkhat' in favour of Sri Krishna Das to the effect that he would continue to remain in possession of the house for one year and pay him rent at the rate of Rs. 13/- per mensem.

Sri Krishna Das, after he purchased the property, paid off Davendra Nath and satisfied the decree. Sahib Dayal and his two sons, who are the defendants-respondents, continued to live in this house taut no rent was ever paid to Sri Krishna Das in Sahib Dayal's lifetime or demanded by him. In 1944 Sahib Dayal died. After his death on 14-8-1944, Sri Krishna Das gave a notice, Ext. A-21, that the defendants were in possession of the house as his tenants but they had not paid rent and they should pay the rent at Rs. 13/-per month and also demanded payment of rent for the last three years previous to the date of the notice. On 17-8-1944, the defendants sent a reply that the house was their ancestral property, that they were not his tenants and that he had no right to demand any rent from them.

Sri Krishna Das sold the house to the plaintiff and the plaintiff then filed a suit No. 42 for arrears of rent and for ejectment of the defendants treating them as tenants. The defendants, however, took the plea that they were not tenants of the plaintiff, that no proper notice in accordance with the provisions of Section 106, T. P. Act had been given and that no rent was due from them. The learned Munsif held that it was not established that the relationship of landlord and tenant existed between the plaintiff and the defendants, that the notice was invalid and that no rent was due from the defendants to the plaintiff. The suit was, therefore, dismissed with costs.

2. Thereafter, the plaintiff filed the suit out of which this appeal has arisen and in the plaint no mention was made that the plaintiff was the landlord or that the defendants were tenants. All that the plaint stated was that the plaintiff was the owner by purchase of the house, that Sahib Dayal on 17-8-1932, had executed a 'keraya nama' in favour of Sri Krishna Das and had remained in possession, that the defendants had denied the title of the plaintiff that they were liable to ejectment

and were liable to pay a sum of Rs. 400/- for use and occupation of the house.

3. In the written statement filed on behalf of the defendants it was pleaded that the sale deed as well as the 'sarkhat' executed by Sahib Dayal were fictitious documents, that Sahib Dayal had executed the sale deed to save the property from his creditors and that Sahib Dayal, and after his death the defendants, had all along remained in possession as proprietors, that there had never been any relationship of landlord and tenant between them nor had any rent been ever paid. A plea was, however, also taken in the written statement that the plaintiff's suit was barred by limitation though no particular article of the Limitation Act was mentioned in the written statement.

4. The learned Civil Judge framed the following issues:

> 1. (a) Did Sahib Dayal execute a sale-deed on 15-8-1932, in favour of Sri Krishna Das as alleged?

(b) If so, was the sale-deed fictitious and without consideration as alleged by the defendants?

2. Are the defendants not entitled to plead that the sale-deed was fictitious without admitting execution of the sale-deed?

3. Is the suit within time?

4. Have the defendants perfected title to the property in suit by adverse possession as alleged?

5. Has the plaintiff lost title under Section 28, Limitation Act?

6. To what relief, if any, is the plaintiff entitled? The learned Judge was of the opinion that the sale-deed by Sahib Dayal in favour of Sri Krishna Das had not been proved to be a genuine document intended to take effect, Sri Krishna Das had, therefore, no title to sell the property to the plaintill and the plaintiff's suit was dismissed on that ground and some other grounds.

(4a) On appeal, the learned District Judge came to the conclusion that the sale-deed was a genuine document and was for consideration, that Sahib Dayal had sold the property to raise money for payment of the decretal amount due to Davendra Nath, that Sri Krishna Das had in fact paid up Davendra Nath and that there was no reason for holding that the sale-deed was either fictitious or was "not intended to be given effect to. After having recorded a finding to that effect the learned Judge went into the question of limitation and held that the plaintiff's suit was barred by Article 139, Limitation Act.

5. The only point for decision in this case, therefore is which Article of the Limitation Act is applicable and whether the plaintiff's suit is barred under Article 139.

6. Article 139, Limitation Act is in these terms:

> "A suit by a landlord to twelve years from the date recover possession from a when the tenancy is deter, tenant mined."

It is not difficult to understand what the Article means. The article applies to a case where a suit is brought for possession by dispossession of a person who had entered into possession of the property as a tenant but had continued to remain in possession of the property after the tenancy had been determined. It is not necessary for us to go into the question why the legislature put this limitation of twelve years on the right of a person to file a suit who had let out the property to a tenant and, after the termination of the tenancy, had for a period of twelve years taken no steps to eject the tenant and get back possession of the property. It may be that the legislature intended that the landlords should also be vigilant of their rights and if, for twelve years they had not brought a suit for dispossession, after the tenancy had been determined, they should not be allowed to recover possession of the property.

The words in the third column of Article 139 are "when the tenancy is determined". In Section 111, T. P. Act (No, 4 of 1882; more or less the same words have been used. A lease of immovable property, it is said, determines among other causes by efflux of the time limited thereby. It is not necessary to quote the other clauses in that section. Here, if the sarkhat is taken as establishing a tenancy between Sri Krishna Das and Sahib Dayal for a period of one year then the tenancy was determined at the expiry of one year, i.e., on 17-8-1933. The suit should, therefore, have been filed within twelve years from that date. This is the view that has been taken by the learned District Judge.

7. On behalf of the appellant, however, three points have been raised by learned counsel. The first point is that this was not a suit to which Article 139, Limitation Act at all applied as the plaintiff had come into court on the basis of his title claiming to be the owner of the property. He had not claimed that he was the landlord and the defendants were his tenants nor had the defendants pleaded that they had ever been his tenants and, as it was not the case of either party that there was a tenancy which had determined, Article 139, Limitation Act had no application. It is pointed out that the previous suit No. 42 of 1946 on the basis of tenancy had failed on the ground that the plaintiff was not the landlord and the defendants were not his tenants.

8. The second point raised by learned counsel is that the 'sarkhat' dated 17-8-1932, executed by Sahib Dayal, in the absence of any corresponding document by Sri Krishna Das, could not create a lease for a period of one year and it could not, therefore, be said that there was a tenancy which was determined at the expiry of one year.

9. The third point is that even if Sahib Dayal was a tenant and the lease was determined on 17-8-1953, Sahib Dayal's possession, and after his death that of his sons, was merely that of a tenant holding over &, on 14-8-1944, when Sri Krishna Das gave him notice to pay rent at the rate of Rs. 13/-per month he assented to their continuance in possession as his tenants and under Section 116, T. P. Act the defendants became tenants and, the property being house property, they must be deemed thereafter to be tenants from month to month and a fresh cause of action arose in plaintiff's favour on the repudiation of the tenancy by the defendants on 17-8-1944.

10. Taking up the third point first, on the expiry of a lease for a period, Section 108(q), T. P. Act imposes a duty on the lessee to put the lessor into possession of the property. Sahib Dayal, therefore, on the expiry of the period of one year fixed under the lease was bound to put Sri Krishna Das in possession of the property in accordance with the provisions of Section 108(q) T. P. Act. If he did not do so, he was merely a tenant whose lease had expired and who had continued to remain in wrongful possession of the property on the expiry of the lease. It was open in such a case to the landlord to regularise the position by giving his assent to the continuance of possession and in that case the provision of Section 116, T. P. Act would apply and the lessee would, in accordance with the provisions of that section, become a month to month tenant.

In the case before us the question, therefore, is whether the notice given by Sri Krishna Das on 14-8-1944, demanding from the defendants to pay rent at the rate of Rs. 13/- per mensem amounts to recognition of the defendants as tenants, or, in the words of the section, amounts to his assenting to their continuing in possession. It must be noted that there is no suggestion, on behalf of the defendants, that before 14-8-1944, Sahib Dayal or his sons had ever repudiated the tenancy and so they must be deemed to have continued in possession in the same right as before. Learned Counsel for the respondents has urged that this notice demanding payment of rent does not amount to an "assent" and has relied on a decision in -- 'Doe on the demise of Godsell v. Inglis', (1810) 128 E R 22 (A). That case was entirely different and is distinguishable. There the landlord gave a notice in which he asked the defendant to quit the premises which he had held under him and the term of which had long since expired. The argument on behalf of the defendant was that the notice itself amounted to a recognition of the possession of the defendant as a tenant but Mansfield, C. J., observed : "This writing is not in the least like a notice to quit, but is a mere demand of possession. the defendant's term having then some time since expired."

What his Lordship's decision would have been if the plaintiff had given the usual notice to quit that is given by a landlord to a tenant it is not necessary for us to speculate on.

11. It is not necessary in this case to go into the question whether, in a case where a defendant has repudiated the tenancy, the landlord can, after such repudiation, give his assent and thereafter claim that the defendant's possession of the property was that of a tenant holding over, as these questions do not arise in this case. It is admitted that barring the fact that rents had never been paid even from the beginning of the tenancy there was nothing else to show that the defendants or Sahib Dayal had at any time repudiated the title of Sri Krishna Das as owner of the property. If they had, therefore, merely, continued to remain in possession after the expiry of one year, their possession is merely that of tenants whose tenancy had terminated by efflux of time and, on the expiry of the tenancy, to regularise their possession all that was needed was the owner's consent so that possession which, after the expiry of the tenancy was without any right, after the consent was given became lawful.

No case in point has been cited at the Bar and we have, therefore, to decide the point as a question of first impression but, as the section is worded, we are inclined to the view that the assent of the landlord to the continuance in possession of the tenant, after the determination of the tenancy, would create a new tenancy and make the tenant a tenant holding over in accordance with the provisions Of Section 116, T. P. Act.

12. In order to create a tenancy at sufferance the tenant should have lawfully entered into possession in recognition of the landlord's superior title and should have continued to remain in possession in the same right after the termination of the tenancy without asserting any title hostile to that of the landlord and without his assent or dissent. The continuance in possession should be due to the laches of the owner in not asking for payment of the rent or vacation of the premises or taking over possession of the property. In Corpus Juris Secundum, Vol. 51, p. 730, 175, it is pointed out that :

> "The holding of a tenant at sufferance is the most shadowy estate recognized at common law, and practically the only distinction between such a tenant's holding and the possession of a trespasser is that the land-owner may, by his acquiescence, at any time base on the tenancy at sufferance the relation of landlord and tenant, which he cannot establish at law against a mere trespasser, and that the tenant cannot be subjected to an action in trespass before entry or demand for possession."

The law thus enunciated is in line with the provisions of Section 116, T. P. Act (NO. 4 of 1882) which pointed out that:

> "If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased as specified in Section 106." In the case before us the tenant had remained in possession after the determination of the tenancy and, by giving the notice demanding rent for the period after the termination of the tenancy, the landlord must be deemed to have assented to his continuing in possession. The requirements of Section 116, T. P. Act were thus fulfilled and the tenant at sufferance became a tenant from month to month,

13. The courts in England seem to have taken a slightly different view and no fresh tenancy after the termination of tenancy seems to arise in England unless both parties agree. In -- 'Right v. Darby', (1786) 1 TR 159 (B), Lord Mansfield said:

> "If there be a lease for a year, and by consent of both parties the tenant continues in possession afterwards, the law Implies a tacit renovation of contract. They are supposed to have renewed the old agreement, which was to hold for a year."

14. In -- Day v. Day', (1871) 3 PC 751 (C), it was a case where a tenant had continued, to remain in possession for more than thirty years after the termination of the lease. The question arose whether by reason of the provisions of the Statute for the Limitation of actions relating to land, 3 and 4 Will. 4, c. 27(1) the suit for possession could still be maintainable by the landlord. It was pointed out by their Lordships that the Statute was in no way impeded. Their Lordships said:

> "Doubtless, an agreement for a fresh tenancy may be implied from acts and conduct, if such are proved, as ought to satisfy a jury that the parties actually made such an agreement, and in that event it is proper to be found by a jury as a material fact in issue..... The language and policy of the Statute require that to constitute this new 'terminus a quo', the agreement, for a new tenancy should be made by the parties with a knowledge of the determination of the former tenancy, and with an intention to create a fresh tenancy at will."

15. In -- 'Dougal v. McCarthy', (1893) 1 QB 736 (D), the premises were let under an agreement in writing for one year. After the expiry of one year the landlord wrote a letter demanding a quarter's rent due in advance. The tenant did not answer but remained in possession. After a month, however, he sent a reply in which he said that he did not wish to continue the tenancy and the landlord might take over possession on a date specified in the reply. Lord Esher, Master of the Rolls held:

> "The evidence appears to me clearly to show that the landlord consented to their so remaining in possession as tenants; and that he treated them as tenants from year to year on the terms of the previous tenancy, i.e., at the same rent payable at the same periods as before; for on February 25, he wrote to them demanding a quarter's rent on that footing."

He then went on to say :

> "Here there is the landlord's consent, and the fact that the tenants remained in possession, after the letter written by rum. I take it that it would be a question for a jury in such a case, whether there was the consent of both parties that the tenant should remain in possession after the termination of the expired tenancy. If the tenant under such circumstances remained in possession without saying anything, I should say that a jury ought to conclude that he consented to continue in possession as tenant."

No importance was attached to the fact that after a month of the receipt of the notice the tenant sent a letter that he did not want to continue the tenancy and would like to give it up and asked the landlord to take over possession of the property.

16. In Field's Landholding and the Relation of Landlord and Tenant, 1883, dealing with the relationship of landlord and tenant in America the learned author in 196 at p. 372 said: "In every case in which there is no agreement as to the term, the presumption is that the tenancy is for one year only. No tenant is considered to have a right to continue to occupy his holding without his landlord's consent; but if he is allowed to hold over for a month after the expiry of his lease, the law presumes the revival of the tenancy of a whole year but not longer."

Prom the quotation it would appear that all that is necessary is the landlord's consent and no fresh agreement between the landlord and the tenant.

17. In Foa's General Law of Landlord and Tenant, 7th Edition, p. 388, para. 606 it is said: "Though the act of holding over after the expiration of the term does not necessarily create a tenancy of any kind--it being in such case a question of fact what the intention of the parties was -- yet when a tenant continues in possession after such expiration by consent of his landlord, he is deemed 'prima facie' a mere tenant at will."

18. In Hill and Redman's Law of Landlord and Tenant, 11th Edn., p. 19, in the notes on that page it is said:

> "Any consent by the landlord to the holding over constitutes a tenancy at will, though a written acknowledgment that the tenant holds "on sufferance only" has been held to be a mere acknowledgment and not to require to be stamped as an agreement for a tenancy."

19. As we have already said no case of the courts in India has been cited at the Bar and we have been asked to decide this question as a matter of first impression. After having however looked into the various authorities on the point we are of the opinion that after the expiry of one year of the lease dated 17-8-1932, Sobha Ram continued in possession of the property as a tenant holding over. It is not suggested that he, or, after his death, his legal representatives had at any time asserted any adverse title to the property before 14-8-1942, when the landlord demanded payment of rent and also the arrears for three years and thereby assented to the tenant's continuing in possession which gave rise to a fresh tenancy in accordance with the provisions of Section 116, T. P. Act and on 17-8-1944, the defendants having repudiated the tenancy and set up an adverse title a fresh cause of action arose in plaintiff's favour to file a suit for possession of the property. The plaintiff, however, first filed a suit for ejectment treating the defendants as tenants but that suit having failed on the ground that there was no relationship of landlord and tenant between the parties this suit was brought on the basis of title and the cause of action for the suit arose on 17-8-1944, when the plaintiff's title was repudiated.

20. It is urged by learned Counsel that even If it was possible for the lessor by giving his assent to convert a tenant holding over, he could not by his mere assent convert the representative of a tenant by sufferance into a tenant. Reliance is placed on a ruling of the Madras High Court in -- 'Vadapalli Narasimham v. Dronamraju Seetharamamurthy', 31 Mad 163 (E). In that case the learned Judges held that if a tenant after the expiry of the lease in his favour had continued to remain in possession as a tenant by sufferance and had then died, the position of his legal representative in possession of the premises was that of a trespasser and not a tenant by sufferance and in case of the legal representative any implication that a tenancy was subsequently created by consent was negatived. In other words, though n\the case of a tenant in possession after the expiry of the tenancy the law will presume a tacit renovation of that contract if the landlord agrees to the tenant's continuance in possession the same presumption would not arise in the case of a legal representative of a tenant who had died after the termination of the tenancy.

In that. case it was held that "The representatives of a tenant by sufferance who enter after his death cannot, in our opinion, be said to have ever been tenants within the meaning of Article 139, and a

suit against them would appear to fall within Article 144."

Though reliance is placed by learned Counsel for the respondents on the first part of the judgment, that Section 116, T. P. Act will not apply to a legal representative of a tenant whose tenancy had terminated, learned counsel has urged that the decision that Article 139 would not apply and it was Article 144 that was applicable was wrong and was not accepted by the same High Court in -- 'Sub-braveti Ramah v. Gundala Bamanni', 33 Mad 260 (F). In the latter case the learned Judges doubted, the correctness of the whole of the decision in -- 'Vadapalli Narasimham's case (E)' and said--"It seems doubtful whether the fiction of a tenancy by sufferance should be kept up after the T. P. Act, according to which a lease is determined by efflux of the time limited thereby (see Section 111). Such a tenancy does not operate in England to interrupt the running of the time. See -- '(1871) 3 PC 751 at p. 761 (C)'. Nor under Article 139, is it of any avail to the landlord. Whether for purposes of Article 144 a distinction should be made between Kondanna. and his sons appears to be doubtful. But however this may be, there seems to us to be nothing wrong in holding that if the plaintiff would be barred against Kondanna if now alive, he would be likewise barred against his sons."

Whether we use the words "tenancy by sufferance" or not, the position is that a possession lawfully obtained would not become adverse unless an assertion has been made setting out an adverse title against the owner of the property.

21. When a suit is filed and a particular article of the Limitation Act is said to apply the question arises, whether on the facts stated or found that Article of the Limitation Act is applicable. Article 139, Lim. Act applies only to a case where a suit is brought by a landlord against at tenant for possession of the property and such a suit should be filed within twelve years of the determination of the tenancy. If the defendants being the legal representatives of Sahib Dayal were not tenants on sufferance but held the property under an independent title of their own then Article 139 would not apply at all. If, on the other hand, they held the property in the same right as Sahib Dayal, being his legal representatives, there is no reason why the position should be different and the landlord should not be able to give his assent to their continuing in possession as he could have done if Sahib Dayal was alive. We may point out that the view expressed. by the learned Judges that a tenant or his legal representative in possession of the property after the expiry of the lease is in adverse possession of the property has not been uniformly accepted and the Madras High Court itself has in a later decision in -- '33 Mad 260 (P)' taken a contrary view.

22. In our view, therefore, when Sri Krishna Das, before the expiry of twelve years from the date of the termination of the tenancy, gave the notice demanding payment of rent on 14-8-1944, the defendants became from that date tenants holding over. The cause of action on which this suit is brought is the repudiation of the tenancy and the assertion by the defendants that they were the owners of the property. So a fresh cause of action arose against them by reason of their notice, Ext. 14 dated 17-8-1944, and Sri Krishna, Das or the plaintiff to whom he sold the property could bring a suit for possession of the property within twelve years under Article 144, Limitation Act.

23. A reference may also be made to a decision of their Lordships of the Judicial Committee in

-- 'Mt. Allah Rakhi v. Mohammad Abdur Rahim', AIR 1934 PC 77 (G). The facts of that case were very different from the facts of this case, but there is an observation of their Lordships which may be quoted with some benefit. The defendants in that case had relied on Article 144, Limitation Act and they had also in the alternative relied on Article 139. Their Lordships observed--"The learned Counsel for the appellants referred to Article 139 as well as Article 144. It may be noted at once that the appellant's plea of adverse possession is obviously inconsistent with the application of Article 139, which relates to the case of a landlord suing to recover possession from a tenant."

No doubt it does not appear from the judgment of their Lordships that there had ever been a tenancy created in defendants' favour and the defendants were claiming that from the date cf their removal by Sajjadanashin they ceased to be mujawars and were in adverse possession of the property, but the observation of their Lordships pointed, out above is that in a case where after the determination of a tenancy a tenant has remained in possession a suit by the landlord for his ejectment would be governed by Article 139; where, however, a different title is set up, that is of adverse possession, Article 144, Limitation Act would become applicable.

24. The last point that now remains to be decided is whether it could be said that there was a lease created in favour of Sahib Dayal for a period of one year, when Sri Krishna Das had not executed any written document in his favour and Sahib Dayal had merely executed a kabuliat. Learned counsel has placed reliance on Section 107, T. P. Act and has urged that a lease of immove-able property must be executed by both the lessor and the lessee, and as there was no lease executed by the lessor no lease came into existence. As regards leases not exceeding one year, however, a lease of immoveable property can be created by oral agreement accompanied by delivery of posses-

sion. The lessor did not execute any document and it is the lessee alone who executed a 'kabu-liat' but, as the lessee was in possession of the property after the execution of the 'kabuliat' and after he had handed over the 'kabuliat' in the original to the lessor from whose possession it was filed, we may presume under Section 114, Evidence Act that there must have been an oral agreement between the lessor and the lessee agreeing to the terms on which the lessee was being put in possession of the property and there was, therefore, an oral agreement accompanied by delivery of possession which satisfies the requirements of Section 107, T. P. Act.

Learned Counsel has drawn our attention to two single Judge decisions, -- 'Ganga Sahai v. Badrul Islam', AIR 1942 All 330 (H) and --'Chotey Lal v. Mst. Durga Bai', AIR 1950 All 661 (I). In the first case a learned single Judge held that in the absence of a deed of lease executed bv the lessor by the execution of a 'kabuliat' by the lessee no lease is created and the position of a lessee is that of a mere licensee. In the second case the learned single Judge has not decided what the position of the lessee would be but merely contented himself by saying that there was no valid lease created. It does not appear to have been argued before the learned Judges that it was not necessary in the case of a lease which was not for a period of more than one year or did not reserve an yearly rent that a written document should be executed by the lessor and it was open to the parties to enter into an oral agreement accompanied by delivery of possession. The circumstances enumerated above, that is, the execution of the 'kabuliat' by the lessee, the handing over of the 'kabuliat' to the lessor, and the lessor thereupon putting the lessee in possession, can lead only to one conclusion that there had

been an oral agreement in accordance with the terms of which the lessee was put in possession. We are, therefore, satisfied that there was a lease as contemplated by Section 107, T. P. Act.

25. The result, therefore, is that, in, our view, the plaintiff's suit was within time and the lower Court wrongly dismissed it on that ground. This appeal is, therefore, allowed. The decrees of the lower Courts are set aside. The plaintiff's suit for delivery of possession by ejectment of the defendants is decreed and the plaintiff is entitled to the compensation claimed.

26. The plaintiff will be entitled to his costs in all the Courts.