Chotey Lal vs Mt. Durga Bai on 10 April, 1950

Equivalent citations: AIR1950ALL661, AIR 1950 ALLAHABAD 661

JUDGMENT

Bind Basni Prasad, J.

1. This is a second appeal by the defendants arising out of a suit for his ejectment from a room and a dalan and some open space in front of them situated in Mohalla Uncha Mandi of the city of Allahabad. One Mt. Kallo was the maid servant of the plaintiff. She stood in need of a house. The plaintiff permitted her to construct a house on the disputed site on the condition that the right of possession was for her lifetime, only and upon her death the plaintiff would be entitled to the possession of the site. Mt. Kallo died in 1940. The suit was brought by the plaintiff in 1944 on the ground that, in view of the conditions under which Mt. Kallo was allowed to construct and occupy the house, the plaintiff was entitled to the possession of the site. The defendants were the heirs of Mt Kallo.

2. It appears that subsequent to the oral agreement between the parties a deed was executed by Mt. Kallo on 19th November 1928, embodying the terms stated above and agreeing to pay a runt of Re. 1 per annum for the site. The trial Court decreed the suit for rent, but dismissed the suit for ejectment. In appeal the learned Judge of Small Cause Court decreed the suit also for the possession of the site and directed the defendants to remove the materials The defendants come in second appeal and contend that there being no valid agreement, they are licensees but under Section 60, Easements Act, the license cannot be revoked.

3. There can be no doubt that the sarkhat dated 19th November 1923, did not create a lease. The law requires that a deed of lease should be executed by the lessor and the lessee both or there should be counter-parts executed by each. When it is for a period of more than one year it should be registered also. These formalities were not complied with in this transaction. Therefore it cannot be treated as a lease. The fact remains, however, that Mt. Kallo did enter into possession of the site on the basis of the contract mentioned above. The question is as to what was the nature of her possession. It was certainly a permissive possession. There are a number of cases in which similar questions arose. In Mirza Mohammad Khan v. Budhu, 1937 A. L. J. 1297 : (A. I. R. (25) 1938 ALL. 32), it was held that though the registered kabuliat did not create a valid lease, it was never the leas admissible in evidence for the purpose of determining the nature of the defendant's possession. In Ganga Sahai v Badrul Islam, 1942 A. L. J. 386: (A.I.R. (29) 1942 ALL 330), there was a Kirayanama signed by the defendant; it was treated as license and the question was considered whether the suit was barred by Section 60, Easements Act. It was held that although the kirayanama could not operate as a lease, the defendant was legally bound by the terms of the document. The terms of document disentitled the defendant from deriving advantage conferred by Section 60, Easements Act.

4. There is also the recent case of Maqbool Ahmad v. Debi, A. I. R. (36) 1949 ALL. 455, in which it was held that a mere rent note or a qabuliat does not amount to a lease. The person executing the rent note is, however, bound by its terms as a matter of his undertaking although the other party who has not signed the document would not be bound by it.

5. The appellants' contention is that the qabuliat executed by Mt. Kallo is not admissible in evidence and that by virtue of Section 60, Easements Act they are not liable to ejectment. It is true that the appellants' predecessor, Mt. Kallo; made certain constructions on this site and thus executed a work of a permanent character by incurring expenses; but she knew full well that after her death her heirs would not have any right of residence. Section 60, Easements Act, does not override any such condition in a license. Where a licensee executes a work of a permanent character under a clear understanding that he or his heirs may be called upon after certain time to leave the land, it is not open to him to plead such work as a bar against his eviction on a suit brought by the plaintiff in pursuance of the solemn undertaking given by him.

6. The qabuliat executed by Mt. Kallo may not be admissible in evidence for the transaction of lease, but certainly when it is treated as license it is admissible. The law does not require any formalities for a license.

7. The appeal has no force and it is hereby dismissed with costs. Leave to appeal under Letters Patent was asked and it is refused.