Mahabir Prasad vs Enayat Elahi And Ors. on 18 December, 1950

Equivalent citations: AIR1951ALL608, AIR 1951 ALLAHABAD 608

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

V. Bhargava, J.

1. This is a deft.'s appeal arising out of a suit brought by the pltf.. resp. for recovery of a sum of Rs. 1000/- as value of mango fruits of a grove being the crop for 1351 Fasli. The case of the pltf.-resp. was that a lease of the crops of this grove was granted to one Riazuddin for five years, viz., 1347 to 1351 Fasli by one Baburam as Manager of a temple. The lessee rights of Riazuddin were acquired by the pltf.-resp. In 1351 F. inspite of the fact that these lessee rights still vested in the pltf.-resp. the crop had been removed by the deft.-applt. who claimed their title from Bhagwan Das, father of the deft.-applt. Consequently, the pltf.-resp. claimed the sum of Rs. 1000/- as the price of the fruits of the trees removed by the deft.-applt.

2. The applt. contested the suit denying that there was any valid lease in favour of Riazuddin under which rights could ultimately pass to the pltf.-resp. The case of the deft.-applt. was that, after Baburam, his father Bhagwan Das became the manager of the temple & Bhagwan Das, in his turn, entrusted the management of the temple to the applt. It was through Bhagwan Das & the applt. that the deft.-applt., who removed the crop, came into possession of the grove.

3. The lower appellate Ct. held that there was a valid lease in favour of Riazuddin by Baburam & under that lease, by subsequent transfers, the right of the lessee vested in the pltf.-resp. who was, therefore, entitled to claim the amount from the deft.applt.

4. The only point of law that arises in this second appeal is as to whether there was a valid lease in favour of Riazuddin by Baburam. The contention on behalf of the applt. is that the lease was a lease of immovable property for a period of five years & since the document creating the lease was not registered & was consequently inadmissible in evidence, the terms of the lease could not be proved. The lower appellate Ct. held that the lease was not in respect of immoveable property &, therefore, it was of the opinion that the document creating the lease was admissible in evidence & the lease was proved. The question in this appeal is, therefore, only one of interpreting the lease, created by the document dated 10-3-1940, executed by Baburam in favour of Riazuddin. This document laid down that a lease of the crop of the grove was granted for a period of five years by Baburam to Riazuddin. It was further laid down that, during this period of five years, it would be the duty of the lessee to

look after the trees & to irrigate them. The lessee was also given the right to appropriate the grass which might grow on the grove land during this period of five years. There was no specific mention that possession over the grove or its land would be transferred to the lessee, hut there was a clause laying down that, after the expiry of this period of five years, possession over the grove was to be returned by the lessee to the lessor. No doubt, the document prima facie & principally purports be create a lease of the crop of the grove only but it has been argued on behalf of the applt. that the other terms make it quite clear that what was transferred under it was not merely the crop of the grove but an interests in the land & the trees standing thereon. It appears to me that this contention must be accepted. The lease was for a period of five years & not for one season only. Had the lease been for a single season & had it related to the crop then in existence, it could have been treated as a lease of movable property irrespective of the fact that the crop was not mature & was yet to derive nutriment from the trees & the land, the case is, however, different where the lease is not in respect of standing crop but in respect of crops that have no existence at the time of the lease & are to appear in future. In this case, all the five crops in respect of which the lease was granted were yet to come into existence. These crops could not come into existence & grow so as to be fib to be taken away by the lessee unless the trees were allowed to continue on the land & were kept in a fit condition to give the crops. What was leased was, therefore, the produce which was to arise in future from trees standing on the land & this must be deemed to create an interest in the trees. For the purpose of getting crops of the trees, it was further necessary that the trees should continue to stand on the land & in this manner an interest in land was also created.

5. The lease had further directed that the lessee was to be entitled to the grass which might grow on the land over which the trees were growing. This grass was also not the grass which existed at the time of the lease but in fact the lessee was entitled to take the grass which was to grow on that land year after year. This was again a case where the interest created in favour of the lessee was in the land itself. No interest could have been created in the grass which was yet to grow in future by making a lease in respect of it. Thus this was a case where the lease created an interest in the trees & in the land & the lease, therefore, was in respect of immoveable property. The view expressed above finds support in the case of Marshall v. Green, (1875-76) 1 C. P. D. 35 and S. Kurdeppa v. G. Nagireddi, 6 M. H. C. R. 71. The lease being in respect of immoveable property, the document creating lease required registration & since it was not registered, it cannot be taken into evidence. Therefore, there remains no evidence at all that there was a lease in favour of Riazuddin under which any rights could pass to the pltf.-resp. As a result, the pltf.-resp. could not claim any damages or any sum as a price of the fruits of the mango trees in pursuance of this lease. The pltf's suit should have been dismissed.

6. I, therefore, allow this appeal dismiss the suit of the pltf.-resp. with costs in all Cts.