

Bhaga And Ors. vs Girwar And Ors. on 4 November, 1952

Equivalent citations: AIR1953ALL439, AIR 1953 ALLAHABAD 439

JUDGMENT

Brij Mohan Lall, J.

1. This is a second appeal by the plaintiffs against a decree of the learned Second Civil Judge of Meerut who reversed a decree of the learned Additional Munsif of Ghaziabad and dismissed the appellants' claim with costs.

2. The appellants lived as ryots in two houses situate in village Ramala, pargana Chaprauli, Tahsil Baghpat in the district of Meerut. They were labourers. They brought the suit which has given rise to this second appeal, to recover possession of the said houses. They alleged that during their temporary absence the respondents (Zamindars) had taken forcible possession of the said houses and had ejected their women folk and cattle.

3. The respondents' defence, so far as material for the purpose of this second appeal, was that the appellants had abandoned the village and the house, had taken up residence in a different village and thereupon, they (respondents) had taken possession of the houses. It may be stated, however, that the respondents had proceeded in a very cautious and lawful manner. They had sent a report to the District Magistrate that the houses had been abandoned and they had obtained possession of the said houses through police help.

4. The learned Munsif overruled the defence and decreed the suit. An appeal was preferred by the Zamindars. The learned Civil Judge came to the conclusion that abandonment had been proved. On that finding he allowed the appeal and dismissed the suit with costs.

5. This appeal was first argued before me on 2-5-1952. Two points were raised, viz., (1) that the inference of abandonment was not justified; and (2) notwithstanding the finding of abandonment the revocation of licence could not take place because it was provided by Section 62(h), Easements Act that a licence could be deemed to be revoked only when it ceased to be used as such for an unbroken period of twenty years.

6. In my order dated 2-5-1952 I considered the question of abandonment and held that the intention to abandon the house and the appellants' residence in village Ramala had been proved beyond doubt. A finding was called for from the Court below as to whether the two houses had been constructed by the appellants or their ancestors or whether ready built houses had been given to them by the Zamindars. The finding returned by the learned Second Civil Judge is that house No. 1 was not constructed by the appellants, while house No. 2 was constructed by Bhaga (one of the appellants) or his ancestors.

7. So far as house No. 1 is concerned the appellants were mere licensees and the license could be revoked at any time. The Zamindar certainly revoked it when the appellants left the village Ramala and took up residence in a different village and the Zamindars took possession with police help.

8. Since house No. 2 had been constructed by the appellants the Zamindars could not revoke the license at their sweet will. Section 60(b), Easements Act lays down that the license cannot be revoked when the licensee, acting upon the license, has executed a work of a permanent character and incurred expenses in the execution. But it must be remembered that Section 60 is not the only section under which a license is revoked. This section deals with a case when the license is revoked at the will of the licensor. Section 62 enumerates the circumstances, on the happening of any of one which a license is revoked by operation of law. Clause (h) of Section 62 lays down that where the license totally ceases to be used as such for an unbroken period of twenty years, and such cessation is not in pursuance of a contract between the grantor and the licensee, the license shall be deemed to be revoked. There is no gainsaying the fact that license cannot be deemed to have been revoked under this clause. Twenty years have not yet elapsed since the appellants abandoned the residence of this village. But if the case does not fall within, Clause (h), it does not mean that the license is totally irrevocable. If any other clause applies the licensor shall be entitled to take the benefit thereof. Each clause is independent of the other. If a licensor can prove that his case falls under any one clause, the license stands revoked even if the remaining eight clauses do not apply. The respondents rely in the present case on Clause (f) which says that where a license is granted for a specified purpose and the purpose is attained, or abandoned, or becomes impracticable the license is deemed to be revoked. In the present case the land was given to the appellants so that they may make a house and live in the village. The moment they abandoned the residence of the village the purpose is abandoned. Clause (f), therefore, applies and the license stands revoked.

9. I am, therefore, of the opinion that the decision given by the learned Second Civil Judge was correct. There is no force in this appeal. It is dismissed with costs.