Pheku Chamar And Ors. vs Harish Chandra And Ors. on 9 January, 1953

Equivalent citations: AIR1953ALL406, AIR 1953 ALLAHABAD 406

JUDGMENT

Chaturvedi, J.

1. This is a defendants' appeal arising out of a suit for possession of a piece of land situate in village Mirpur, district Jaunpur.

2. The plaintiffs and defendants 53 to 67 form a joint Hindu family and the plaintiffs are the descendants of the defendants mentioned above. These defendants 53 to 67 gave a licence in the year 1937 to defendants 1 to 52 permitting them to make constructions on the land in suit, and defendants 1 to 52 accordingly have made certain constructions. The main defendants are these defendants 1 to 52 and they will be hereinafter referred to as the defendants. The other defendants, namely, defendants 53 to 67, the grantors of the licence, will be referred to as pro forma defendants.

3. The plaintiffs' case was that they constitute a joint Hindu family with the pro forma defendants and the property in suit is the joint ancestral property of the plaintiffs. It was alleged that the pro forma defendants had no right to grant a licence of the land in suit to the other defendants and that the said licence was void and ineffective inasmuch ag the licence was not given for consideration and was not justified by legal necessity. The prayer of the plaintiffs, therefore, was that they should be put into possession of the property in suit and the constructions made by the defendants on the land be ordered to be removed.

4. The main defences to the suit were that the plaintiffs had nothing to do with the land in suit, that the pro forma defendants were the zamindars of the laud and that they had every right to grant the licence. It was also pleaded that the suit was barred by limitation and by the principles of estoppel and acquiescence. A plea under Section 11, C. P. C., was also raised.

5. The learned Munsif found that the property in suit was the ancestral property of the joint family consisting of the plaintiffs and the pro forma defendants and that it bore the character of sir land. He further held that the licence was without consideration and there was no legal necessity for it. The learned Munsif then considered the issues on bar by 8. 11, Civil P. C., and on estoppel and on acquiescence and decided those issues against the defendants. The suit was obviously not barred by time inasmuch as it was brought within 12 years of the date of the alleged licence. In the result, he decreed the suit for possession as prayed and allowed the defendants three months' time to remove their building material. In default, the building material was to be removed through the agency of the Court and the defendants were liable for payment of ex-penses incurred therein.

6. The defendants then went up in appeal from this decree and the learned Civil Judge upheld the findings of the learned Munsif on all the points mentioned above and dismissed the appeal. The defendants then filed a second appeal in this Court which came up for hearing before a learned single Judge on 14-11-1952. The learned single Judge was of the opinion that the findings arrived at by the Courts below were findings of fact which could not be challenged in second appeal, but because a new point was raised before him by the learned counsel for the appellants, he referred the case to a Division Bench. The new point that was raised before the learned single Judge was to the effect that the suit should fail because of the provisions of Section 9 of the U. P. Zamindari Abolition and Land Reforms Act, Act No. 1 of 1951. On this point the learned single Judge remarked that he stood committed to the view that the word "held" used in the section meant "lawfully held". But he referred the case because his previous decision was a single Judge decision. "We may note here that in referring the case, the learned single Judge has made it clear that he is referring the whole case and not any particular point arising in the case. We are, therefore, seized of the whole case.

7. The learned counsel for the appellants has argued the point raised before the learned single Judge, and has also raised a number of other points which will be considered in due course,

8. The first point urged by the learned counsel for the appellants was that in view of the provisions of Section 9 of the U. P. Zamindari Abolition and Land Reforms Act, the suit should be dismissed because the land underneath the buildings should be deemed to have been settled with the appellants by the State Government, and the buildings admittedly belonged to the appellants. Section 9 of the said Act reads as follows :

> "All private wells in holdings, grove or abadi, trees in abadi, and all buildings situate within the limits of an estate, belonging to or held by an intermediary or tenant or other person, whether residing in the village or not, shall continue to belong to or be held by such intermediary, tenant or person, as the case may be, and the site of the wells or the buildings with the area appurtenant thereto shall be deemed to be settled with him by the State Government on such terms and conditions as may be prescribed."

9. The argument of the learned counsel is that by virtue of the provisions mentioned above the defendants shall continue to hold the buildings constructed by them and the site of the buildings shall be taken to have been settled with the de. fondants. Ag we shall subsequently discuss while considering the rights of the defendants in this land, our view is that the defendants are in the position of persons in possession having no right to the land. The question, therefore, that arises for consideration is whether Section 9 of the Act con-fers a right on persons having no title to the land, or it is confined in its application to the case where the building is lawfully held by the person in possession. We find it difficult to understand why the Legislature should have given a preference to trespassers over the rights of persons having a title in the land. The Legislature has deliberately used the word "held" and this word connotes the existence of a right or title in the holder. The other words used are "belonging to" and that certainly refers to owner and the word "held" follows the words "belonging to" and, in our opinion, it has also been used in a sense so as to denote that the person in possession is there because of some right or title to the land. The learned counsel for the

appellants has referred to the marginal note where the word "occupier" has been used. But so far as the body of the section goes, the Legislature has not used the word "occupier" anywhere, and we think that it is the wording of the section itself which should have preference over anything that has been said in the marginal note.

10. The interpretation put by the learned counsel for the appellants would also militate against the provisions of Section 18 of the Act. Under this section Bhumidari rights have been granted to an intermediary in a sir, khudkasht and grove. So that according to the provisions: of Section 18, the plaintiffs have acquired Bhumidari rights in the very land which, according to the contention of the defendants-appellants, should be taken to have been settled with the defendants under the provisions of Section 9 of the Act. The well-known rule of interpretation of a statute is that different provisions of a statute should be given an interpretation which would make them con-sistent, rather than one which makes one provision inconsistent with the other. On this point the argument of the learned counsel for the appellants is that in Section 18, we find an expression "subject to the provisions of this Act" and this expression should be taken to mean that the provisions of Sectioin 18 are subject to the provisions con. tained in Section 9. In our view, the expression mentioned above refers to the rights and liabilities of the Bhumidars which are detailed in a subsequent chapter of this Act, and not to the provisions of Section 9. If the Legislature had meant that every occupier of a building, whether a trespasser or otherwise, would be entitled to the land under the provisions of Section 9, then the expression that would have been used would have been one which would make an exception with regard to cases covered by Section 9 and the general expression "subject to the provisions of this Act" would not be an appropriate expression. The argument of the learned counsel would lead to the result that if any person has made any construction whatsoever over any land lying within the limits of an estate, however wrongful or recent the possession might be, his construction will stand and the site of the building will be deemed to have been settled with him by the State Government. It is well-known that the main object of the passing of the U. P. Zamindari Abolition and Land Reforms Act was the abolition of the rights of the zamin-dars and it was not meant to interfere with the rights even of tenants or groveholders. The interpretation suggested by the learned counsel would make it impossible even for a tenant to eject a trespasser, in case the trespasser has made some sort of construction over the land before the suit has been brought. It may be that the land over which no rights at all exist, excepting those of the State Government, the State Government may not have thought it desirable to take actual possession of the land and to let the land remain in the possession of a person who has made some constructions over it. But it is impossible to imagine that the Legislature ever meant to deprive the other citizens of their lawful rights over the land simply because a trespasser has (succeeded in making some constructions over it. We, therefore, find ourselves unable to accept the contention of the learned counsel for the appellants and, in our opinion, Section 9 does not help the appellants. The point is decided against them.

11. The next point argued by the learned counsel was that this was a case of a mere licence and not of a transfer by the senior members of the joint family and, therefore, the rules of Hindu law, which prohibit the transfers without legal necessity, do not apply to a case like this. In our opinion, this argument has no force. The effect of a transfer like this is to deprive the joint family of the possession of the property for an indefinite period. If the licence were valid, the defendants would be

entitled to maintain possession of the land as long as the buildings stand and, in the ordinary course of nature, it is expected that the buildings may be there for an indefinitely long period. The practical effect, therefore, of the licence is the same as the effect of a sale or of a perpetual lease, and we think that the same principles should be applied to the case of a licence like this as apply to the case of transfers by the members of a joint Hindu family.

12. We may further refer bo the provisions of Section 53 of the Easements Act. That section says:

> "A licence may be granted by any one in the circumstances and to the extent in and to which he may transfer his interests in the property affected by the licence."

The provisions of this section make it quite clear that a licence can be granted only under the circumstances and to the extent, to which the transferor could execute a transfer of the property. On the findings arrived at by the Courts below, it is quite obvious that if the pro forma respondents had executed any transfer, it would have been void against the plaintiffs.

13. We further find that the land in suit was actually sir land of the members of the plaintiffs' family. Sir right has always been recognised to be a very valuable right in this State, and the different Tenancy Acts, that have been passed from time to time, have conferred special rights in the zamindar's sir land. Even in the U. P. Zamindari Abolition and Land Reforms Act, the zamindara have been granted Bhumidari rights in the sir land. If a valuable property like this is transferred without consideration or legal necessity, it is obvious that such a transfer cannot stand and, we have already mentioned above, that the case of an irrevocable licence really stands on the same footing.

14. The third point argued by the learned counsel was that the suit was barred by time. His argument is that there was a prayer for the demolition of the constructions, that the period of limitation provided for the grant of this relief is six years, that the present suit was brought more than six years aftpr the accrual of the cause of action and that, therefore, the suit was barred by time. We find ourselves unable to agree with this argument because the main prayer in the plaint is for the possession of the land in suit, and possession can only be granted by the demolition of the constructions because the constructions belong to the defendants. To a suit for possession of land, 12 years' rule of limitation applies and the present suit has been brought within 12 years. In our opinion, therefore, the suit for possession is not barred by time and the prayer for demolition is only an ancillary relief which necessarily follows the delivery of possession.

15. The only other point that was argued was that the land had ceased to be sir and had become abadi land and that under the provisions of the U. P. Village Abadi Act, the present suit wits liable to be dismissed. We find from the judgment of the learned Munsif that the land in suit was recorded as sir land even as early as the year 1882, and the land will be taken to continue as sir land unless under some provision of law it can be held that it has ceased to be sir. The only provision of law that has been brought to our notice is the one contained in the definition of "abadi" given in Section 2 of the Village Abadi Act. The way in which sir rights are created are mentioned in the U. P. Tenancy Act and the same Act also mentions as to how these rights come to an end. The Village Abadi Act was not concerned with the cessation of sir rights of zamin-dars in the land, and it only provides for the

raising of a presumption of the consent of the owner in case a building was found to exist on the land in August 1947. In the present case, there is no question that these constructions were made without the pet-mission of the plaintiffs, and, even if any presumption can be raised under the provisions of the Village Abadi Act, the same has been clearly negatived on the admitted facts of the case and the findings arrived at by the Courts below.

16. It does appear to be hard on the defendants that their constructions should now be removed and the learned counsel has drawn our attention to Section 51, T. P. Act. His contention is that the defendants are entitled to be compensated for the loss that they would suffer by the demolition of their buildings. Section 51 of the Act provides for a compensation being granted in case the transferee of immoveable property has made any improvement on the property believing in good faith that he is absolutely entitled thereto. In our opinion, the making of these constructions over sir land cannot be said to be an improve-ment of the land as sir land, the constructions being of no use to the proprietor of the land who will presumably use it for the purpose of cultivation. There is the further difficulty that it is impossible to say that the defendants believed in good faith that they were absolutely entitled to the property. On the admitted facts of the case they only could think that they were licensees, and under the provisions of the section no compensation can be granted to the defendants. Nor does Section 64 of the Easements Act help the appellants.

17. We therefore, find no force in this appeal and dismiss it. But, in the circumstances of the case, we make no order as to costs

18. The appellants are granted three months' time to remove the constructions and on their failure to do so, the constructions will be removed by the executing Court, and the costs incurred therein will be recoverable from the appellants.