Ramdas vs Shree Ram Lakshman Janki on 5 August, 1953

Equivalent citations: AIR1953ALL797, AIR 1953 ALLAHABAD 797

JUDGMENT

Chaturvedi, J.

1. These two appeals arise out of the same suit filed on behalf of a deity Sri Ram Lakshman Janki, through Durga Prasad, 'Sarbarakar' of the deity. Second Appeal No. 879 of 1949 has been filed by defendant 1, and Second Appeal No. 1012 of 1949 has been filed by defendant 2. Defendant 3 is one Mst. Vidyawati, who took no interest in the case, because she had executed a deed of relinquishment in favour of the plaintiff. Briefly put the facts of the case are these.

2. House No. 76/100 situated in Coolie Bazar, Kanpur, along with other property belonged to one Smt. Janki Kuar. It is not disputed by any of the parties that Smt. Janki Kuer was the absolute owner of this house. Smt. Janki Kuar died on 6-6-1946, and the case of the plaintiff is that Smt. Janki Kuar executed a will on 2-6-1946 bequeathing the house mentioned above, to the plaintiff idol, and appointing Durga Prasad as the 'Sarbarakar' of the idol. The plaintiff thus became the owner of this house, ad it is said that defendant 1, who was admittedly a tenant of Smt. Janki Kuar in the house, paid one month's rent to Durga Prasad as 'Sarbarakar' of the plaintiff. After that defendant 1 refused to pay rent to the plaintiff, and the plaintiff brought a suit against the said defendant in the Court of the Judge of Small Causes at Kanpur. The suit was numbered as suit No. 191 of 1947.

Defendant 1 filed a written statement in the suit clearly denying the plaintiff's title to the house, and the learned Small Cause Court Judge returned the plaint because the question of title to immoveable property was raised in the suit, by the said defendant. After the return of the plaint, on 28-7-1947, the plaintiff gave a notice to defendant 1 terminating his tenancy on the ground of forfeiture, and asked the defendant to vacate the house by, 5-8-1947. After the expiry of the period mentioned in the notice, the present suit was filed, and the reliefs claimed in the plaint were that defendant 1 be ejected from the house, and a decree be passed against him for the recovery of Rs. 122/1/- as arrears of rent at the rate of Rs. 9/- per mensem.

After the date fixed in the notice, the defendant was treated as a trespasser and the sum of Rs. 9/- per mensem was claimed as being mesne profits instead of rent as from the date. The claim for ejectment of defendant 1 was based on two grounds. The first ground was (hat the defendant had denied the plaintiff's title, and this denial acted as forfeiture of the defendant's tenancy. The second ground was that the defendant had committed wilful default in the payment of rent. Defendant 2 was added as a party because he was a brother of Smt. Janki Kuar, and defendant 3 was impleaded as she had previously alleged herself to be the daughter of Smt. Janki Kuar.

3. The main pleas taken in defence by defendant 1 were that the allegations contained in the written statement filed by the defendant in Suit No. 191 of 1947 did not effect forfeiture of his tenancy, and that there had been no wilful default by the defendant in the payment of rent. The defendant admitted that he had taken the house on rent from Smt. Janki Kuar. but pleaded that, after her death. Smt. Vidyawati, defendant 3, took possession of her properties alleging herself to be the daughter of Smt. Janki Kuar, and defendant 1 in good faith paid a sum of Rs. 108/- to her as advance rent for a year.

He denied ever having paid rent to Durga Prasad, and did not admit the will said to have been executed by Smt. Janki Kuar in favour of the plaintiff. The main defence of defendant 2 was that the alleged will dated 2-6-1946 was not genuine, and the plaintiff was, therefore, not the owner of the property. On the other hand, defendant 2. as a brother of Smt. Jank; Kuar, inherited the house from her. As already stated, defendant 3, Smt. Vidyawati, did not contest the Suit at all, as she had executed a deed of relinquishment in favour of the plaintiff and had received a sum of Rs. 4000/- as consideration for executing the deed.

4. The learned Munsif held that the will was not proved to be a genuine document, and appeared to be a forged one. and defendant 2. therefore, was the owner of the property in suit as an heir of Smt. Janki Kuar. On the question of payment of rent, the learned Munsif held that defendant 1 had paid advance rent for one year to defendant 3, but as there were a number of claimants on the scene, he should not have paid the rent to any one of them. He, therefore, directed defendant 1 to deposit the entire arrears of rent in Court. In view of the fact that he held that the will was not a genuine one, he did not enter into any discussion as to whether the defendant's tenancy had come to an end by forfeiture. But he remarked that the denial of the plaintiff's title by the defendant was bona fide. On the findings mentioned above, he dismissed the suit.

5. The plaintiff went up in appeal, and the lower appellate Court disagreed with the findings of the learned Munsif, and decided all the points in favour of the plaintiff. The learned Civil Judge held that the execution and proper attestation of the will by Smt. Janki Kuar had been fully established, and the plaintiff had acquired the right of ownership over the house under this will. He has further held that the denial of the plaintiff's title by defendant 1 in the written statement, filed in the previous suit, was not a bona fide denial, and it acted as forfeiture of the defendant's tenancy. On these findings, the learned Civil Judge decreed the claim for the ejectment of defendant 1 from the house in suit, and also for the recovery of arrears of rent as claimed by the plaintiff.

6. Two separate appeals have been filed against this decree, one by defendant 1 and the other by defendant 2. In the appeal filed by defendant 1, the learned counsel argued two points. His first submission was that, taking all the circumstances existing at the time into consideration, the allegations made in the written statement filed in the Small Cause Court should not be interpreted as denying the plaintiff's title; and the other Submission was that, in any case, the denial of a title of an assignee or an heir of the landlord did not effect forfeiture of the tenancy. In the other appeal filed by defendant 2, the only point argued was that the execution and attestation of the will by Smt. Janki Kuar had not been duly proved.

7. I shall take up the appeal of defendant 2 first because the question whether the plaintiff is the owner of the house in Suit comes first in order of time, and the points raised by defendant 1 fall to be considered only after it has been proved that the plaintiff is the owner of the house in suit. As I have already stated. in this appeal the only question that arises for consideration is whether due execution and attestation of the will by Smt. Janki Kuar has been proved while she was in a sound state of mind. The finding of the lower appellate Court on this point is a finding of fact, and. after going through the judgment, I do not find that it is vitiated by any error of law. ('His Lordship considered the evidence and dismissed the appeal. His Lordship then proceeded :)

8. I shall now deal with the points raised by the learned counsel for the appellant in Second Appeal No. 879 of 1949, which is the tenant's appeal. The first question is whether the allegations, contained in the written statement, filed by this appellant in the Small Cause Court, amount to a denial of the plaintiff's title, and, therefore, effect a forfeiture of the appellant's rights as a tenant. In this written statement, the appellant clearly stated that Smt. Janki Kuar never executed the will relied upon by the plaintiff, and that the plaintiff was not the owner of the house in suit.

The denial was very emphatic and was accompanied by an assertion that Durga Prasad was a very clever man. It could not be argued that there was really no denial of the plaintiff's title in the written statement, but what was argued was that, taking into consideration all the facts and the circumstances of the case, the denial should not be treated as a denial but should be read as a mere omission to admit the plaintiff's title with a view to putting him to proof of it. In support of this argument, the learned counsel cited two cases reported in -- 'Sm. Mallika Dassi v. Makham Lal', 9 Cal WN 928 (A) and -- 'H. Mathewson v. Jadu Mahto', 12 Cal WN 525 (B).

9. In the first case, the tenant in her written statement had only stated that she did not know anything about the purchase set up by the plaintiff and had no belief in it. This statement was taken to be merely putting the plaintiff to the proof of his title and not amounting to a disclaimer of his title. It was observed that to constitute the disclaimer there must be a direct repudiation of the relation of landlord and tenant. The other point decided in this case was that denying the plaintiff's title to a portion of the property did not act as forfeiture; and the third point decided was that the denial of title in the suit for ejectment itself could not be made the basis of ejectment in that suit. Such a denial must have been made before a suit was brought.

The second and the third points do not arise in this case. As regards the first point, the wordings of the written statement filed in that case appear to be very different. The defendant there had denied all knowledge of and belief in the purchase set up by the plaintiff, and this was treated not as a denial of his title, but merely a pleading putting the plaintiff to the proof of his title. In the present case, the position is very different and the denial of the execution of the will, and of the ownership of the plaintiff, is very specific and emphatic.

10. In the second case 12 Cal WN 525 (B).

the note made by the Judge of the tenant's statement was as follows :

> "I have no relation of landlord and tenant's with Mr. Mathewson, the plaintiff in this suit. I owe no money to him. I am tenant of Lalit Ghosh to whom I pay rent."

After quoting from the Judge's note, the learned Judges then proceeded to consider the law on the point referred to in a number of cases in which different statements were held not to amount to a disclaimer. The statements referred to in the cases, considered by the learn ed Judges, were very different from the statements made in the Calcutta case itself. As regards the allegations made in the written statement, they were not so specific and clear and with reference to that statement the previous cases were considered, and it was (sic) that the allegations in the written statement did not amount to a disclaimer. As far as the Judge's note of the statement made in Court was concerned, the learned Judges observed as follows :

> ''The terms of the Judge's note of the defendant's deposition go further, as they undoubtedly represent the defendant as setting up a title in Lalit Ghosh. But we find it impossible to act on this Statement as it comes before us."
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> The learned Judges then considered certain provisions of the Code of Civil Procedure and came to the conclusion that they could not trust to this note alone for purposes of proving the statement made by the defendant in Court. In this case also, the statement made in the written statement was very much different from the statement made in the written statement in the present case, and the statement contained in the Judge's note was not relied upon. To my mind, these cases do not help the appellant. In my opinion, the allegations contained in the written statement, filed by the appellant, do amount to a disclaimer of the plaintiff's title and, therefore, effect a forfeiture of the tenancy.

11. On the second point, the learned counsel cited an English case reported in -- 'Jones and Wife v. Mills', (1861) 142 ER 664 (C), In this case, the tenant had merely said that he would not pay any more rent until he knew who was the right owner, and it was held that this did not amount to a disclaimer or repudiation of the title of the heir-at-law, so as to entitle him to eject the defendant without any notice to quit. The tenant's statement which was relied upon in this case was also very different from the statement made by the appellant in the present case. The case, therefore, does not help the appellant in any manner. On the other hand, a reading of this case shows that the doctrine of forfeiture by disclaimer of the landlord's title applies as much to the heir of the landlord as to the original landlord himself. If the title of the heir of the landlord is denied, the denial acts as a forfeiture of the tenancy, and the heir is entitled to eject the tenant on this ground.

12. To the similar effect is the decision in another English case reported in -- 'Doe v. Long', (1841) 173 ER 1047 (D), which was also a case of the disclaimer of the title of an heir of the original lessor.

13. The other case relied upon by the learned counsel, which really appears to help him, is a case reported in -- 'Abdulla v.

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Mohammad   Muslim', AIR    1926  Cal   1205   (E).
this case is   similar in   many respects   to the
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present case, and concerning the law on the
(sic) under consideration, the learned Judges observed as follows :

"There cannot be any doubt whatsoever that the denial of the right of an assignee from the original lessor by the tenant does not work a forfeiture of the tenancy. This principle has been long settled and this cannot and is not disputed at the Bar."

No authorities have been cited in support of
(sic) proposition in this case, because the
correctness of the proposition was not disputed

(sic) the Bar. The learned counsel for the appel(sic) has also failed to cite a single previous (sic) in which this proposition of law has been (sic) down. So besides this case, no other case (sic)been brought to my notice which sup(sic) the proposition so emphatically laid down (sic) this Calcutta case.

14. As I have already said, the two English (sic) cited above point to a contrary conclu(sic) and as far as the decisions in India are (sic), the learned counsel for the respondent brought to my notice only one single judge decision of this Court reported in --

(sic) Sarup v. Taiyab Hasan', AIR 1943 All (sic). This case goes so far as to hold that mere non-admission of title amounts to a denial and, therefore, forfeiture comes into existence when the lessee fails to admit that he is holding the property as such. In this case no decision was cited by the learned counsel wherein a contrary view was taken, and the learned Judge was of the opinion that a mere non-admission causes forfeiture. The refusal to admit the zamindar's right was made by the purchaser in execution of a decree, and the plaintiff here was one of the zamindars, though it does not appear that he was one of the lessors of the defendant.

15. I might also refer to a decision of the Privy Council reported in -- 'Maharaja of Jaypore v. Rukmani Pattamahdevi', AIR 1919 PC 1 (G). In this case, their Lordships quoted the provisions of Section 111(g), T. P. Act and held that the rule of law, which had already been adopted in India, was put in a statutory form by the said provision. They further held that the rules of English law as to forfeiture were held to be in accordance with justice, equity and good conscience, and, therefore, applicable to India also.

16. A Madras case reported in -- 'Venkata-chariar v. Rangaswami Ayyangar', AIR 1919 Mad 266 (H), appears to be a clear authority in favour of the plaintiff respondent. It has been held in this case that the denial of a derivative title will work a forfeiture as much as the denial of the original landlord's title. If a tenant, honestly and not intending to identify himself with a third party, merely puts the alleged derivative title of the landlord to the proof of the latter's title before recognising him as such, such conduct may not work a forfeiture. But if the denial of the derivative title is clear and specific, there is no reason why it should not work as a forfeiture of the tenancy.

17. To the same effect is another Madras case reported in -- 'Rama Iyengar v. Guru-sami Chetti', AIR 1919 Mad 897 (I). In this case also it has been held that Section 111, T. P. Act, applies not only to disclaimer of the landlord's title but also to the title of his heirs, transferees and assigns.

18. From a consideration of the cases cited above, it would appear that the proposition laid down in the Calcutta case AIR 1926 Cal 1205 (E), is not such a universally accepted proposition as was remarked by the learned Judges. The two English cases cited by me above, as also the two Madras cases, are clear authorities against that view. The decision of this Court mentioned above appears to be in conformity with the decisions of the Madras and the English Courts.

19. Reliance was also placed by the learned counsel for the appellant on the wordings of Section 111(g), T. P. Act. The relevant portion of the said clause runs as follows :

> "By forfeiture, that is to say (2) in case the lessee renounced his character as such by setting up a title in a third person or by claiming title in himself,"

a lease of immoveable property is determined. It was argued that, in the present case, the appellant did not renounce his character as a tenant, nor did he set up a title in a third person or in himself. What he did merely was to clearly deny the title of the plaintiff. It was urged that, in such a case, the denial does not act as a forfeiture, but I find it difficult to accept this argument. In case it were necessary to set up a title in a third person, or in himself, before forfeiture could be incurred, the legal position would be that if the title of even Smt. Janki Kuar herself had been denied without setting up a title in any body else, the denial would not act as a forfeiture. This result, to my mind, is an impossible one. When the title of the real heir or of the original lessor is denied, it certainly amounts to setting up a title in somebody else, because the property does not remain in vacuum. If the title of the plaintiff is denied, that certainly means that a title in some other person has been set up.

20. The argument of the learned counsel comes to this that the clearest denial of even the defendant's original landlord's title would not by itself amount to a disclaimer till title was specifically set up in somebody else. In my opinion, this is not the correct legal position, nor any case has been cited before me which lays down any such proposition. In the present case, the appellant clearly denied the execution of the will and also the plaintiff's title acquired under it; the result- of this denial was that the appellant set up a title in the heir of Smt. Janki Kuar, though such an heir may not have been named in the written statement. In the written statement, the appellant did state that defendant 3 entered into possession of the house after the death of Smt. Janki Kuar; and his further allegation that he had paid a sum of Rs. 108/- as rent to her shows that he was setting up a title in her, though in the written statement he did not, in so many words, say that defendant 3 was the daughter of Smt. Janki Kuar.

On a proper reading of the written state ment, the position taken by the appellant appears to be that he was setting up a title in the heir of Smt. Janki Kuar. It is difficult to believe that he had actually paid a sum of Rs. 108/- as advance rent for the whole year to defendant 3. But he did manage to obtain a receipt from her and was therefore, till the date of the written statement, trying to help the

said defendant. The conduct of the appellant shows that his denial of the plaintiff's title was not bona fide, and he was actually taking the side of defendant 3 from whom (sic) had managed to obtain a receipt for the payment of a whole year's rent in advance, thoug(sic) as a matter of fact, it is very doubtful whether the appellant could possibly have act(sic) so foolishly as to have paid advance rent in(sic) case, where there were at least three contestants in the field, to the knowledge of the appellant himself.

I am, therefore, of the opinion that the (sic)nial of the plaintiff's title was not bona fide and it, being a clear and unequivocal denia(sic) of its title, acts as a forfeiture of tenancy. The decree of the learned Civil Judge, therefore appears to be perfectly correct. (21) The result is that both the appeals (sic) and are hereby dismissed with costs.

22. Leave to appeal to a Division Bench (sic) granted to the appellant in S. A. No. 879 of 1949; and it is refused to the appellant in S. A. No. 1012 of 1949.