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CASE - LAW

SEWAK RAM AND ORS

VERSUS

MUNICIPAL BOARD OF MEERUT

Citation

AIR 1937 ALL 328

Parties

Sewak Ram And Ors

VS
Municipal Board of Meerut

Court

Allahabad High Court

Judgement
Date

On 19-November-1936

Judges

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Fact Of The Case :-

On 12 March 1887, one Pt. Ganga Ram, a brother of the plaintiff's father, granted a lease to the Municipal Board of Meerut, for a period of 21 years in the respect of the properties specified in the plaint. Under the terms of the lease, the lessee was allowed 20% on gross-rental realized by him. The lease further had a covenant for its renewal for a further period of 21 years.

On 23rd September 1895, Pt. Ganga Ram died and one Mt. Sundar Kunwar, his widow succeeded to his estate as a Hindu female.

On 16th May 1908, Mt. Sundar Kunwar executed a fresh lease under the terms of which lessee was to get 25% of the gross-rental instead of 20%. This lease also contained a covenant for its renewal for a further term of 21 years. In 1912 Mt. Sundar Kunwar died.

The plaintiff is one of the reversioners of Ganga Ram and under a partition-decree in a suit for partition between him and other reversioners of Ganga Ram he got $\frac{3}{10}$ the share in the estate of Ganga Ram and further became the owner of $\frac{1}{15}$ th share more by purchase. The period of the lease executed by Mt. Sundar Kunwar on 15th May 1908 terminated on 31st March 1929.

The plaintiff alleges that the defendant was anxious to obtain a renewal of the lease created by Mt. Sundar Kunwar, but he did not agree to the terms. He gave a notice to the defendant, the Municipal Board of Meerut, to give up possession over the premises leased; but the defendant failed to comply with his demands.

The plaintiff, therefore, instituted a suit against the defendant for ejectment and for mesne profits. He alleged that the defendant had no rights to claim the renewal of the lease and that further the covenant for renewal of the lease by Mt. Sunder Kunwar, who was in the possession of the estate of Ganga Ram as a Hindu widow, was not binding upon the reversioners. The claim was resisted by the defendant on various grounds.

It was pleaded that the plaintiff was not entitled to eject the defendant. It was also asserted that the plaintiff and other reversioners not having raised any objection to the renewal of the lease by Mt. Sunder Kunwar, in 1908, were estopped from objecting to the terms of the lease. Defendants case was that the covenant in the lease created by Mt. Sundar Kunwar, entitling the defendant to renew the lease for another term of 21 years, was binding on the plaintiff and other reversioners of Ganga Ram Earn. The correctness of the amount claimed by the plaintiff as damages was also challenged.

The learned Subordinate Judge, who tried the case came to the conclusion that under the terms of the lease, which Ganga Ram had executed, the defendants were entitled to claim a right of a renewal perpetually and therefore the plaintiff could not eject them. The plea of estoppel raised by the defendants was not accepted by the Court below. The amount of mesne profits was left undetermined. The defendant had also asserted that they had acquired a permanent right and were entitled to get a renewal of the lease according to the terms of the lease created in 1887 and 1908.

The suit of the plaintiff was dismissed on the ground that the defendants, under the terms of the lease executed by Ganga Ram, could always

claim a right to the renewal of the lease whenever the period of lease expired.

This is a plaintiff's first appeal arising out of a suit to eject the defendant, the Municipal Board of Meerut, from a market styled "Gaiserganj market" and to recover a sum of Rs. 6091 on account of mesne profits together with profits and interest.

The plaintiff has come up in appeal to this Court, against the decision of Learned Subordinate Judge.

Court Observations :-

The learned Subordinate Judge, clearly went wrong in taking into consideration the circumstances under which the lease was granted. When the terms of an agreement are reduced to writing, then the rights of the parties are governed by the terms agreed upon and the Court is not entitled to look into the circumstances under which the lease was created. Nor is the Court justified in going into the history of the negotiations which led to the formation of a completed contract between the parties. In order to decide the rights of the parties, the Court has to look only to the terms agreed upon and not on the previous negotiations which resulted in the formation of a completed contract. As regards the expression used by the Learned Subordinate Judge.

Issues to be decided :-

Whether under the terms of the lease executed by the widow of Ganga Ram in defendants favour, the defendant got a right to renew that lease for a further period of 21 years??

If the widow had been full owner of the estate, then certainly the defendant would have been entitled, under the terms of the lease granted by the widow, to a further renewal for a period of 21 years. Mt. Sundar however was holding the estate as Hindu female and could not make an agreement which would bind the estate beyond her lifetime. She has, as has already been pointed by us, no power to enter into a contract which would be binding on the estate after her death.

Whether defendants has right to claim perpetual or renewal?

The result is that we hold that the defendant has no right to claim perpetual, renewal of the lease which was granted by Ganga Ram to the defendants. Even if the point relating to the perpetual renewal of the lease had been found in favour of the defendant, his defence would have failed on another ground.

On expiry of the lease, the defendant could sue the plaintiff for the specific performance of the contract as regards the

renewal of the lease. He however is incompetent to resist the claim of the plaintiff for his ejectment after the expiry of the Lease in the view of the provisions of Section 53-A, T.P. Act.

Are the plaintiffs entitled to recover any mesne profit? If so, to what extent?

The Learned civil Judge has held that the plaintiffs are entitled to mesne profits at the rate of Rs. 598-7-0 a month, less a deduction of 10% for collection charges. He had found that the total mesne profits due to the plaintiffs from 1st April 1929 to 31st January 1930 (the date of the suit) amounts to Rs. 5385-15-0.

Both the plaintiffs and the defendant filed objections and it has been made for collection charges. There is authority of this Court and of their Lordships of Privy Council that no deduction should be made for collecting charges where there has been a gross and contemptuous trespass, but such is not the case here.

The defendants held over after the expiry of the lease under the mistaken impression that they were entitled to a renewal of such lease. In the circumstances we think that they are entitled to deduct a sum for collection charges and we agree with the learned Civil Judge that the deduction of 10% is a reasonable one. The defendant, the Municipal Board, claimed that the deduction for collection charges should be on

a moragenerous scale, viz. 25% In our view 25% is too far goeat. and unreasonable.

Are the plaintiffs entitled to get any interest?
If so, to what extent?

The learned Civil Judge held that the plaintiffs were entitled to get interest at the rate of annas 8% per mensem, that is 6% per annum. The learned Civil Judge was of opinion that the plaintiffs should be given interest upon the amount found due as mesne profits and with this view we agree. The plaintiffs had been kept out of this money for a considerable time by the conduct of defendants and in these circumstances it is only fair and proper that the defendants should pay a reasonable rate of interest upon the sum awarded. The learned Civil Judge, however, held that interest should not be payable on Rs. 2963-13-0, part of the mesne profit awarded, by reason of the fact that a cheque for this sum had been tendered by the defendants to the plaintiffs on 31st March 1930. and that it had been improperly refused by the plaintiffs. In our judgement the plaintiffs were entitled to refused to take this cheque because it is clear that it was offered to them in the discharge of all sums due.

Judgement passed by Hon'ble High Court :-

In the result therefore we hold that the plaintiffs are entitled to mesne profits amounting to Rs. 5,385-15-0 up to the date of suit together with a sum of Rs. 107 as interest up to the date of suit. The plaintiffs are also entitled to pendente lite and future interest at the rate of 6% per annum. The plaintiffs for the reasons which we have given in previous judgement are entitled to possession of the property and mesne profits as stated in the latter judgement.

Conclusion :-

The appeal therefore is allowed and the decree of the lower court set aside and the plaintiff suit decreed as indicated above. The plaintiff-appellants must have their costs of this appeal and of the proceedings in the Court below.