Mt. Aisha Begam Vs Daulat Singh

Court: Allahabad High Court

Date of Decision: Jan. 27, 1927

Hon'ble Judges: Lindsay, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Lindsay, J.
The suit in this case was a suit for ejectment. The plaintiff claimed, as the Zemindar of a village called Pali Muqimpur, to eject

the second defendant who claimed to be rightly in possession of the site of a house situated in the village. The plot on which the house stands is

described as No. 84. The case of the plaintiff was that this defendant, Daulat Singh, had no right whatever to occupy this plot against her will.

Admittedly this plot was once in the occupation of an agricultural tenant named Chhidda Khatik. The story of the plaintiff was that Chhidda

abandoned the village without paying his rent. She stated that for this reason the site of the house had escheated to her as zemindar. It was alleged

that on the 28th of January 1921, Chhidda had sold the materials of his house under a registered sale-deed for Rs. 100 to the first defendant Nand

Ram Khatik who was his relation. After this Nand Ram is said to have sold this house to the second defendant Daulat Singh. The suit was

contested by Daulat Singh on various grounds and amongst other pleas taken was a plea of custom which, is described as follows in para. 7 of the

written statement:

It is a custom in the village that every inhabitant of it has been mortgaging and selling his house and they have been sold by auction. The plaintiff or

his predecessor-in-title never took any objection to it.

2. The Court of first instance decreed the claim. The lower appellate Court has reversed the decree of the first Court being of opinion that there

was a custom enabling a tenant to transfer his right to the occupation of the site of his house. One of the grounds which is taken in appeal is that the

finding of the Court below regarding the existence of the custom is not supported by any legally sufficient evidence. It may be observed here that

this is recognized as a good ground in second appeal, and in this connexion I need only refer to the Full Bench decision of this Court reported as

Ram Bilas v. Lal Bahadur [1908] 30 All. 311. At page 313 of the report Stanley, C.J., stated that he agreed in the view expressed in the case of

Hashim Ali v. Abdul Rahman [1906] 28 All. 698 that where a question arises as to the existence or non-existence of a particular custom where the

lower appellate Court has acted upon illegal evidence or on evidence which was legally insufficient to establish an alleged custom the question is

one of law.

3. I have decided, therefore, to examine the evidence which was before the Court below in support of this alleged custom. The burden of proof

was on the defendant. A copy of the wajib-ul-arz, Article 25, was produced by the plaintiff. In this it is stated that in this village the tenants'' houses

have all been built by the tenants themselves with their own materials and their own labour and so the tenants are the owners of the materials. It is

further stated that tenants are entitled to occupy the houses so built so long as they remain settled in the village and after their death their children

have the right to occupy. It is also stated that if a tenant abandons the village or dies without heirs the house becomes the property of the zemindar.

There is nothing here by which any right to transfer the site of a house or to transfer the right to occupy it is recognized. The defendant produced

three documents of sale for the purpose of showing that sale had taken place purporting to be sales of houses with their sites, or with the right to

occupy the sites. One of these is of the year 1898, another of the year 1919 and the third of the year 1922. Two other documents apparently were

put in. (His Lordship after considering evidence proceeded.) I am satisfied that there is no sufficient evidence on the record to prove the custom set

up by the defendant.

4. The general law on this question of the rights of tenants with respect to their houses was laid down in the case reported as Sri Girdhariji Maharaj

v. Chhote Lal [1898] 20 All 248. There it was held that where an agriculturist is allowed to build a house for his occupation in the abadi he

obtains, in the absence of a special contract to the contrary, merely a right to use that house for himself and his family so long as he maintains the

house and so long as he does not abandon the house by leaving the village. It was further held that in the absence of a special grant by the zamindar

the tenant has no interest which he can sell by private sale or by sale in execution except such interest as he has in the timber, roofing and

woodwork of the house.

5. In that case it was also stated that if the defendant had set up a local custom by which an occupier could sell his right to occupy, the Judges

would have been prepared to hold that such special custom was bad. This, however, in the circumstances was an obiter dictum, and there is at

least one case in which a right to transfer the right of occupancy has been recognized: see the ruling in Syed Tajammul Husain Vs. Banwari Lal and

Others, . But there, it will be observed, there were no less than 126 instances cited ranging over a period of sixty years.

6. In the present case the evidence is of the flimsiest possible description, and in my opinion, the lower appellate Court was wrong in holding that a

tenant in this village of Pali is entitled to transfer the right of occupancy of the site on which a house has been built. It is quite true that there is

evidence to show that Pali is a very large village. The Patwari stated that at the last Census it contained 1800 inhabitants, and there is also evidence

to show that there are a number of shops in the village. Nevertheless it does not appear to me that Pali has ceased to be an agricultural village; and

in the present case the man, Chhidda, who transferred the house in the first instance was, undoubtedly, an agricultural tenant.

7. The appeal is allowed, the decree of the Court below is reversed and the decree of the Court of first instance is restored. The plaintiff-appellant

is entitled to her costs both in the lower appellate Court and in this Court. The costs in this Court will include fees on the higher scale.