Pusa Mal Vs Makdum Bakhsh and Others

Court: Allahabad High Court

Date of Decision: May 25, 1909

Acts Referred: Limitation Act, 1963 â€" Article 139 (II)

Citation: (1909) ILR (All) 514 : 3 Ind. Cas. 566

Hon'ble Judges: Tudball, J; Banerji, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Tudball, J.
This appeal arises out of a suit to recover possession of a house and Rs. 47-4-0 arrears of rent thereof for the period

commencing from 17th October, 1904, and ending 17th January, 1907.

2. The facts are as follows: On April 17th, 1887, the plaintiff"s father Bhopal Dass leased this house to one Jhargarh, brother of defendants Nos. 1

and 2, and father of defendant No. 3 for a fixed period of one year at a monthly rental of Rs. 1-12. After the expiry of the term of this lease the

lessee continued to hold over without the express assent or dissent of the lessor. He paid no rent.

3. On the 18th February, 1895, the plaintiff brought a suit for rent against Jhargarh in the Small Cause Court for a period commencing from

September, 1892, up to the date of the suit.

4. Jhargarh contested the suit on the ground that he had held adverse possession of the house for over 30 years and denied having executed the

so-called kirayanama and having paid any rent.

5. The plaint was returned by the Small Cause Court for presentation to a proper Court on the ground that a question of proprietary title was

involved. The plaintiff, however, did not prosecute the suit for reasons it is unnecessary to detail. The proprietary title passed from him by auction

sale to others but was finally re-acquired by him.

6. The present suit was instituted on 15th February, 1907. The lower Court has held that Jhargarh executed the kirayanama of 17th April, 1887,

for a period of one year:

That after the expiry of that term Jhargarh (and after him the present defendants) paid no rent:

That there was no assent or dissent, express or implied, on the part of the lessor and that the lessees, therefore, became a tenant by sufferance:

That a period of more than 12 years having expired since the expiry of the lease, the suit was time-barred under article 139, Schedule II"", of the

Indian Limitation Act of 1877. The plaintiff comes here in second appeal and it is urged on his behalf that the lower Court has taken a wrong view

of the legal position of the parties:

7. That the possession of a tenant by sufferance is not that of trespasser nor, as such, wrongful in law.

8. That where a landlord remains silent when his tenant holds over on the expiry of his lease, his silence must be presumed to be tantamount to

consent and that a new tenancy commences and limitation does not begin to run until this new tenancy comes to an end either by the substitution

therefore of a fresh tenancy or by the tenant setting up an adverse title.

9. It is also urged that mere non-payment of rent does not constitute adverse possession and that it was not until after 18th February, 1895, that

Jhargarh set up an adverse title and the present suit is within 12 years of that date. The learned Vakil for the appellant, who has argued the case

most ably and fairly and has placed before us all the rulings of the various High Courts in India, relies on the ruling in Adimulam v. Pir Ravnthan 8

M. 424 wherein it was held that if a tenant for years holds over in British India, time does not begin to run against the landlord until the tenancy on

sufferance has been determined.

10. The principle adopted in the ruling above mentioned appears to be that directly the tenancy for the term expired a new tenancy arose, viz., a

tenancy on sufferance and that the limitation, set forth in article 139, Schedule II of the Limitation Act, would not begin to run until this second

tenancy came to an end.

11. We are unable to agree with the view that a tenancy on sufferance is such a tenancy as is contemplated by article 138. In the case of such a

tenancy there is no privity between the parties. The so-called tenant on sufferance is one who wrongfully continues in possession after the

expiration of a lawful title. He is not entitled to any notice. There is very little difference between him and a trespasser. The same ruling was

considered by the same High Court in Vadapalli Narasimhan v. Dronamraju Seetharama Murthy 31 M. 163 : 3 M.L.T. 256 : 18 M.L.J. 26 and it

was held that that decision could no longer be treated as good law following the view expressed in Seshamma Shettati v. Chickaya Hegade 25 M.

507 that in a suit by a landlord to recover possession from a tenant for a term of years, time begins to run under article 139 from the expiry of the

term which must be held to be the time when the tenancy is determined within the meaning of the article. The same point was considered by the

Bombay High Court in Chandri v. Daji Bhau 24 B. 504. Following a former ruling in Kantheppa Raddi v. Sheshappa 22 B. 893 it was therein held

that a tenant holding over after the expiration of the term mentioned in his rent-note is a tenant on sufferance and there is no such relationship

between, landlord and tenant as is contemplated by article 139, Schedule II, of Act XV of 1877. The opinion expressed by a Bench of the

Calcutta High Court in Madan Mohun Gossain v. Kumar Rameswar Malta 7 CLJ 615 is to the same effect, viz., that time begins to run against the

lessor under article 139 from the date of the expiry of the lease.

12. Coming to the decisions of our own Court the case of Prem Sukh Das v. Bhupia 2 A. 517 which has been cited, does not touch the point.

There was no lease for a term in that case.

13. In Lachlvman v. Gulzari Lal 1 A.L.J. 201 a Bench of this Court held, under circumstances similar to those of the present case, that the suit for

possession was barred by 12 years'' limitation, the relation of landlord and tenant having been determined at the end of the year 1839 since which

time no rent had been paid. Article 139 is not specifically mentioned and the Court appears to have held that the defendant-tenant''s possession

had been adverse on the ground that no rent had been paid and no assent proved on the part of landlord.

14. The point again arose in the case of Khunni Lal v. Madan Mohan 6 A.L.J. 239 : 31 A. 318 : 1 Ind. Cas. 208. The case of Prem Sukh Das v.

Bhupia 2 A. 517 was considered and distinguished. In that case (as in the present one) there was no payment of rent to the lessor and nothing to

suggest the lessor''s assent to the lessee holding over beyond the bare fact that the defendants remained in possession. The lease determined in

1884 and the suit was brought in 1904. Article 139 was applied and it was held that the suit for possession was barred by time. Prom what has

been noted above it is clear that the rulings are all against the appellant''s contention except that in Adimularn v. Pir Ravnthan 8 M. 424 from which

the Madras High Court has itself expressly dissented in a sab-sequent ruling. The weight of authority is against the appellant.

15. Limitation clearly began to run on the expiry of the term fixed by the rent note against the appellant''s predecessor-in-title on 17th April, 1888,

under article 139 and the suit is barred by time. In this view of the case we dismiss the appeal with costs including fees on the higher scale.

Banerji, J.

16. I entirely agree.