

(1879) 12 AHC CK 0005

Allahabad High Court

Case No: None

Prem Sukh Das and
Others

APPELLANT

Vs

Bhupia and Another

RESPONDENT

Date of Decision: Dec. 5, 1879

Citation: (1880) ILR (All) 517

Hon'ble Judges: Robert Stuart, C.J; Straight, J; Spankie, J; Pearson, J; Oldfield, J

Bench: Full Bench

Final Decision: Dismissed

Judgement

Robert Stuart, C.J., Pearson, Oldfield and Straight, JJ.

This is a suit to recover two years rent of a certain house from the defendants and to eject them from the premises. The plaintiffs' case is that under a deed of lease, dated 6th July 1828, their ancestors leased the house to defendants' ancestors on the following terms, that the latter should supply annually eight labourers to the lessor or should pay a sum of two annas in lieu of supplying each labourer, and on failure to comply with the terms should be liable to be evicted from the premises. The answer of the defendants is that the house was built by their ancestors and has always been held by them in proprietary right, and that the deed of 6th July 1828, on which plaintiffs rely, is a forgery. The Court of First Instance, after remarking that no doubt the defendants' ancestors were located by those of plaintiffs, finds that there has been no payment of rent within twelve years, and relying on this fact has concluded that their possession has been adverse and has dismissed the claim. The Judge has affirmed the decree : he remarks that " there is evidence to show that the defendant or his predecessors, in times not long ago, acknowledged that he was the plaintiff's ryot and had been originally located there by the plaintiff's ancestor, Sital, and whatever may be the dependency of a ryot on his lord, I think clearly exists between the plaintiff and defendant here: probably the land is still the plaintiff's and cannot be diverted to other purposes or sold by the defendant without the consent

of the plaintiff, and there probably the plaintiff's interest and power end, but that plaintiff has a right to eject or take rent is not proved, and the long tenure of defendant without rent is now equivalent to a good title to hold without payment of rent."

2. Neither of these judgments amounts to an adequate finding on the question of tenancy, or disposes of the real question at issue whether or not the defendants' ancestors became tenants of the plaintiffs' ancestors under the deed set up by the plaintiffs, dated 6th July 1828, and so became liable to the payment of rent and to eviction as averred. This question has not been touched on, nor has the genuineness or otherwise of the deed been even alluded to, and supposing that a tenancy did arise in the manner contended for, the Courts are in error in supposing the mere non-payment of rent for a period of twelve years will suffice to establish that it has been determined, and that defendants have obtained a title by adverse possession, so as to defeat the claim, for once the relation of landlord and tenant has been proved, it is for the latter to establish its cessation by affirmative proof, over and above the mere failure to pay rent. The Courts have in the present suit to decide whether the deed produced by plaintiffs is genuine, and established a tenancy on the part of defendants' ancestors, on the terms alleged, and, if so, whether defendants have shown that the tenancy has determined, and that they have held for twelve years since its determination. If these questions are decided in plaintiffs' favour they are entitled to succeed. We are of opinion that the appeal must prevail and that a decree should pass in the terms of Mr. Justice Pearson's proposed order.

Spankie, J.

3. It will be seen from the pleas in appeal from the Judge's decision to this Court that it is assumed that the relation of landlord and tenant exists under the lease: secondly, that the Judge had not determined whether defendants paid or did not pay rent to plaintiffs, nor had he considered the admission of defendants that they were tenants : thirdly, admitting defendants did not pay rent for some time, still the right to receive it cannot be destroyed. In second appeal we had to confine ourselves to these pleas and no others. It is erroneous to assume that the relation of landlord and tenant exists or was admitted as regards the houses. The lease itself refers to thatched and mud-built houses hired to the defendants. But the first Court found that the houses had been constructed entirely by the ancestors of defendants, though these ancestors had been located on the land by the ancestor of plaintiffs. The plaintiffs sued for rent under the lease, averring that it had been paid up to 1875. This the plaintiffs were bound to establish, and it was in issue whether they were entitled to recover possession of the houses in virtue of their proprietary right and the rent claimed by them, or whether, no rent having been paid to them within the twelve years prior to the institution of the suit, they had lost their proprietary right. The first Court found that the plaintiffs had never received the

rent within twelve years prior to the institution of the suit: the defendants had repudiated the proprietary title of plaintiffs in the house. The first Court also found that defendants had held adversely to plaintiff's for more than twelve years prior to the institution of the suit. The second Court appeared to me to accept the judgment of the first Court "that defendants had held over twelve years adverse possession and therefore had acquired a title against plaintiffs."

4. It seems to me that the rest of the judgment of the lower Appellate Court has been misunderstood. The Judge refers to the original location on the land of the persons who constructed the houses which formed the sarai, and in his view, only so far as the land is concerned is there any connection between the plaintiff and defendant as landlord and ryot. "Probably," observes the Judge, "the land is still the plaintiff's and cannot be diverted to other purposes or sold by the defendant without the consent of the plaintiff, and there probably the plaintiff's interest and power end." But the Judge holds the right to take rent or eject the defendants not proved, and that defendants have acquired a good title by long tenure to hold without payment of rent.

5. When, then, the first plea before us in second appeal referred to the lease of 1828, and the second to the payment of rent and the admission made by defendant that he was a tenant and paid rent, it appeared to me that the Judge had disposed practically of both these pleas in the finding at which he arrived, and that after such a finding no claim brought under the lease could be enforced. The plaintiff's allegation and averment that he had received rent under the lease up to 1875 had broken down, and the lease had never been in operation, certainly for twelve years prior to the institution of the suit. The Judge and Court below him also found that the defendants had acquired a title against plaintiffs by continuous occupation for a very long period without payment of rent, asserting their own proprietary possession as regards the house. Under these circumstances the lease, having never been enforced within twelve years prior to the institution of the suit, could not be enforced now, and I thought that the suit as brought failed and was therefore properly dismissed, and I think so now and would dismiss the appeal.