(1968) 01 SC CK 0026

Supreme Court of India

Case No: Appeal (civil) 619 of 1965

Birendra Pratap Singh and Another		APPELLANT
	Vs	
Gulwant Singh and Others		RESPONDENT

Date of Decision: Jan. 31, 1968

Acts Referred:

- United Provinces Tenancy Act, 1939 - Section 18(1)(d), 18(2), 26, 44(2), 45, 47, 47(1), 47(4), 55(1), 171, 295A
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 19(vii)

Citation: AIR 1968 SC 1068 : (1968) RD 274 : (1968) 2 SCR 870

Hon'ble Judges: Vishishtha Bhargava, J; V. Ramaswami, J; J. C. Shah, J

Bench: Full Bench

Final Decision: Dismissed

Judgement

Bhargava, J.

The disputed land was the ex-proprietary tenancy of one Parmeshwar Singh who, on the 5th June, 1947, executed a sub-lease in favour of the appellants on an annual rent of Rs. 74. The sub-lease was registered on 22nd June, 1947. It laid down that the tenancy was to commence from the beginning of the year 1355 Fasli, i.e., with effect from 1st July, 1947. In pursuance of this sub-lease, the appellants, entered into possession. On 15th January, 1951, Parmeshwar Singh, the ex-proprietary tenant, surrendered his tenancy rights to the landlord and on the same date the landlord executed a lease in respect of this land in favour of the respondents. The appellants, however, continued to remain in possession. Thereafter, on 1st July, 1952, the U. P. Zamindari Abolition and Land Reforms Act, 1950 (No. I of 1951) (hereinafter referred to as "the Act") came into force. Disputes arose between the appellants and the respondents who both claimed to have become Sirdars of this land and, consequently, on 1st August, 1952, the appellants instituted a suit for a declaration that they were the Sirdars of the disputed land. They also

prayed for an injunction restraining the respondents from interfering with the possession of the appellants. In the alternative, a prayer was also made for a decree for possession, in case it was found that the appellants had been dispossessed. The Munsif, who tried the suit, held that the appellants had become Sirdars u/s 19(vii) of the Act and, consequently, decreed the suit. The decree was affirmed by the first appellate Court as well as by a single Judge of the Allahabad High Court in second appeal. A special appeal to a Division Bench was taken up by the respondents with the leave of the single Judge. In this special appeal, the High Court held that the appellants did not become Sirdars of this land when the Act came into force and, consequently, allowed the appeal and dismissed the suit of the appellants. The appellants have now come up to this Court against this decree of the High Court under special leave granted by this Court.

2. The appellants claimed to have become Sirdars of this land under s. 19(vii) of the Act which is as follows :-

"19. All land held or deemed to have been held on the date immediately preceding the date of vesting by any person as -

. . . .
. . . .

(vii) a sub-tenant referred to in sub-section (4) of section 47 of the United Provinces Tenancy Act, 1939,

. . . .
. . . .

shall, save in cases provided for in clause (d) of sub-section (1) of section 18, be deemed to be settled by the State Government with such person, who shall subject to the provisions of this Act be entitled, except as provided in sub-section (2) of section 18, to take or retain possession as a sirdar thereof."

3. In order to substantiate this claim, the appellants thus had to prove that this land was held or must be deemed to have been held by them on the 30th June, 1952 as sub-tenants referred to in sub-section (4) of s. 47 of the United Provinces Tenancy Act, 1939 (hereinafter referred to as "the Tenancy Act"). The question arose, because the appellants were holding as sub-tenants from Parmeshwar Singh who surrendered his rights as chief tenant on the 15th January, 1951, before the relevant date mentioned in s. 19(vii) of the Act. Section 47(1) of the Tenancy Act lays down that, except as otherwise provided in sub-section (3) and sub-section (4), the extinction of the interest of a tenant, other than a permanent tenure-holder or a fixed rate tenant, shall operate to extinguish the interest of any tenant holding under him. This sub-section when applied to the case of the appellants, ignoring the exceptions laid down in it, necessarily leads to the conclusion that, when Parmeshwar Singh on 15th January, 1951 surrendered his rights as ex-proprietary tenant, the interest of the appellants, who were holding as sub-tenants

under him, came to be extinguished. On behalf of the appellants, however, it was urged that there are two grounds for holding that their interest was not extinguished and we proceed to examine these contentions.

4. The first ground, on which the continuance of subtenancy, even after the surrender by Parmeshwar Singh, is claimed by the appellants, is based on the provisions of section 295A of the Tenancy Act which was introduced in that Act by section 26 of the United Provinces Tenancy (Amendment) Act X of 1947 and which reads as follows :-

"295-A. Notwithstanding any contract to the contrary or anything contained in this Act or any other law for the time being in force every person who on the date of the commencement of the United Provinces Tenancy (Amendment) Act, 1947, is a sub-tenant shall, subject to the provisions of the proviso to sub-section (3) of section 27 of the United Provinces Tenancy (Amendment) Act, 1947, be entitled to retain possession of his holding for a period of five years from that date, and for this period nothing in sub-section (2) of section 44 or section 171 shall render the landholder of such sub-tenant liable to ejectment under the provisions of section 171 :

Provided....."

5. The United Provinces Tenancy (Amendment) Act X of 1947 came into force on the 14th June, 1947, and it is urged that s. 295A of the Tenancy Act becomes applicable to the appellants, because the sub-lease in their favour was executed on 5th June, 1947, prior to the enforcement of that Amendment Act. It is urged that, on the date of the commencement of the Amendment Act, the appellants were sub-tenants of this land. This plea fails, because we are unable to accept the submission that the appellants were sub-tenants of this land on 14th June, 1947. The sub-lease in plain terms lays down that the sub-tenancy is to commence from the beginning of 1355 Fasli, i.e., with effect from 1st July, 1947, which is a date subsequent to 14th June, 1947. The mere fact that the sub-lease was executed on 5th June, 1947 by Parmeshwar Singh cannot make the appellants sub-lessees with effect from that date when the sub-lease itself laid down that it was to commence from the beginning of 1355 Fasli. Learned counsel appearing on behalf of the appellants, however, relied on sub-section (1) of s. 55 of the Tenancy Act which is as follows :-

"On admission to a holding the tenant is entitled to receive from his landholder a written lease consistent with the provisions of this Act and the landholder upon delivering or tendering to a tenant such a lease is entitled to receive from him a counterpart thereof."

6. In this case, there is no doubt that a written lease consistent with the provisions of the Tenancy Act was executed together with a counterpart thereof on the 5th June, 1947; and learned counsel''s argument was that this lease and the counterpart having been delivered in accordance with this provision on 5th June, 1947, it should be deemed that the appellants became tenants with effect from that very date. The arguments fails for two

reasons. One is that the mere delivery of the lease and the counterpart by one party to the other does not make the lessee under the lease a lessee from the date of delivery or the written documents, nor is any such principle laid down is sec. 55(1). The rights under the lease can only arise in accordance with the terms of the lease. In the present case, the terms of the sub-lease themselves laid down that the appellants were to be sub-lessees from 1st July, 1947, and consequently, the mere delivery of the documents could not bring into existence the relationship of lessor and lessee from an earlier date. The second reason is that, even on facts, there is nothing to show that the written lease and its counterpart were actually delivered by one party to the other on the 5th June, 1947. On the other hand, there is material on the record which makes it clear that there could not possibly have been such delivery of the written documents prior to 14th June, 1947. The sub-lease itself shows that it was registered on 22nd June, 1947. The sub-lease was not valid and effective until it was registered. This registration was required under s. 56 of the Tenancy Act which lays down that a lease for a period exceeding one year or from year to year shall be made by a registered instrument only. The appellants themselves came forward with the case that this was not a lease for a period not exceeding one year, so that the lease to be valid had to be registered in accordance with s. 56 of the Tenancy Act. The registration took place on 22nd June, 1947 and it is, therefore, clear that the written lease properly executed and effective could not have been delivered by Parmeshwar Singh to the appellants before 22nd June, 1947. Consequently, even if for the sake of argument it may be accepted, though we consider that it is entirely wrong, that on delivery of the written lease under s. 55 the rights as a lessee commence, such rights as sub-lessees in favour of the appellants could not arise before 22nd June, 1947, as there could not possibly be delivery of the written lease to the appellants by Parmeshwar Singh prior to that date. In these circumstances, the conclusion is irresistible that the appellants were not sub-tenants on 14th June, 1947, which was the date of commencement of the United Provinces Tenancy (Amendment) Act, 1947 and, therefore, section 295-A of the Tenancy Act never became applicable to the case of the appellants.

7. The applicability of s. 19(vii) of the Act was claimed, in the alternative, on the ground that the appellants were holding this land as sub-tenants referred to in s. 47(4) of the Tenancy Act. The case put forward on behalf of the appellants was that the sub-lease in their favour by Parmeshwar Singh was not for any fixed term mentioned in the sub-lease itself, but from the surrounding facts and circumstances it should be held that it was a sub-lease for a period of five years. The appellate Bench of the High Court, in deciding the case against the appellants, has held that the sub-lease was a lease from year to year and not for a period of five years as contended on behalf of the appellants. The term of five years as the period of sub-lease was claimed on the basis that, under the Tenancy Act, an ex-proprietary tenant could sublet his holding for a period not exceeding five years and any sub-lease for a period exceeding five years would be invalid. The argument was that when Parmeshwar Singh sublet his ex-proprietary holding to the appellants without mentioning any period, it must be inferred that he intended it to be a sub-lease for the full period of five years for which he was entitled to sublet his holding. We do not think that

this argument can be accepted. If Parmeshwar Singh had intended to sublet the land for a period of five years only, or for a period less than five years, there was no difficulty in his making a mention of that period in the sub-lease itself. Parmeshwar Singh chose not to mention any period at all and, consequently, this sub-lease cannot be held to be a lease for any fixed period. The sub-lease reserves an annual rent, and the period of the lease has to be determined on the basis of this reservation of rent. We are unable to find any reasons is support of the plea put forward on behalf of the appellants that the term of the sub-lease should be held to five years simply because no period at all was mentioned in the sub-lease itself. No principle of law could be cited on behalf of the appellants in support of this plea.

8. Reliance was placed on a decision of a learned single Judge of the Allahabad High Court in Mohd. Sher Khan and Another v. Special Manager. Court of Wards, Mahewa Estate and Others 1950 A.W.R. 447 . In that case, dealing with an agricultural lease in which no period was specified and there was only a mention of the date from which the lease was to begin, it was held that the lease required registration as it could not be treated as a lease for a period of one year only. This proposition may be correct; but it does not assist the appellants in urging that the period must be held to be five years. It is true that, where the terms of a lease are not free from ambiguity, it is permissible to take into consideration the conduct of the parties for the purpose of determining its true nature, as held by the Calcutta High Court in Surendra Kumar Sen Chaudhury and Others v. Chandratara Nath and Others. But, in the present case, nothing in the conduct of the parties has been brought on record to show that the sub-lease was intended to remain effective for a period of five years only. The sub-lease, as we have mentioned earlier, did not specify any term, but reserved an annual rent. Such a lease can only be held to be either a permanent lease or a lease from year to year. This proposition was clearly laid down by the Privy Council in Janaki Nath Roy and Others v. Dina Nath Kundu and Others AIR 1931 207 (Privy Council) In that case, their Lordships were concerned with a lease which was described as "beymeyadi". Upon a careful consideration of the document of lease, their Lordships held :-

"Either the lease is a permanent lease, determinable only in the special cases therein provided, or it is a lease from year to year, which the landlord could at his will determine by a six months" notice. No intermediate position is open."

9. The principle laid down, thus, categorically excludes an interpretation being put on such a lease by which the lease may be held to be for a fixed period. The only interpretation possible is that either it is a permanent lease, or a lease from year to year. The contention on behalf of the appellants that this Court should hold the present sub-lease in favour of the appellants to be for a fixed term of five years must, therefore, be rejected. Since the appellant themselves do not contend that this sub-lease should be held to be a permanent one because, in that case, it would become invalid, the conclusion necessarily follows that the sub-lease must be held to be from year to year, and it is on this basis that the rights of the appellants should be determined.

10. Counsel appearing on behalf of the appellants argues that, even if it be held that the sub-lease is not for a fixed term of five years but is one from year to year, the appellants can still justifiably claim that they were holding the land on 30th June, 1952 as sub-tenants referred to in s. 47(4) of the Tenancy Act. In order to test this argument, we have first to consider the status of the appellants on 15th January, 1951, the date when their chief tenant Parmeshwar Singh surrendered his rights, and the effect of that surrender on the rights of the appellants. It is true, as urged by learned counsel, that there is a distinction between a lease from year to year and a lease for a fixed period of one year only. The sub-lease in favour of the appellants was not for a fixed period of one year. Being a sub-lease from year to year, the right of the appellants acquired under it was to hold the land as sub-lessees year after year as those years commenced. The true nature of such a lease was explained by the Bombay High Court in Utility Articles Manufacturing Co. v. Raja Bahadur Motilal Bombay Mills Ltd., though with reference to a monthly lease. In order to explain the incidence of such a lease, that Court relied on the judgment of Salter, J. in Queen"s Club Gardens Estate, Ltd. v. Bignell [1924] 1.K.B.D. 117, who was dealing with a case where the parties, by agreement between them, had expressed the intention that the tenancy shall be a periodic tenancy, viz., a tenancy from week to week and beyond this, no further or other intention could be gathered either from the words or the conduct of the parties. Salter, J. held that "in the case of all periodic tenancies, whether from year to year, or from quarter to quarter, or from month to month, or for any other period, the law, as I find it stated in the authorities, appears to be that the tenancy is from period to period, from one fixed date to another. It is a tenancy for so many years, or quarters, or months, or weeks, as the parties may think fit. If a new period be allowed to begin, the tenancy must, in the absence of course of any other arrangement between the parties, continue until the period ends, and neither party can, against the will of the other, put an end to the tenancy during the currency of the period." In that case, the principle was further explained by approving the following dictum :-

"It seems clear that the true nature of such a tenancy is that it is a lease for two years certain, and that every year after it is a springing interest arising upon the first contract and parcel of it, so that if the lessee occupies for a number of years, these years by computation from the time past, make an entire lease for so many years, and that after the commencement of each new year it becomes an entire lease certain for the years past and also for the year so entered on, and that it is not a relating at the commencement of the third and subsequent years."

11. In our opinion, this is the correct principle to be applied in giving effect to a lease from year to year. In the present case, the appellants had obtained this sub-lease with effect from 1st July, 1947 and, as we have held earlier, it was a sub-lease from year to year. On 1st July, 1947, therefore, the appellants were entitled to hold the land for one year which would expire on the 30th June, 1948; but, if they were allowed to continue by their landholder on 1st July, 1948, they became entitled to hold the land for another year expiring on 30th June, 1949. During that year, therefore, the sub-lease would be held to

be a sub-lease for two years. Similarly, since the appellants were allowed to continue by Parmeshwar Singh in possession until 15th January, 1951, it must be held that under that same sub-lease, the appellants were sub-lessees for the subsequent years 1949-50 and 1950-51 also. On 15th January, 1951, consequently, the appellants were sub-tenants of Parmeshwar Singh under this sub-lease and their term was to continue up to 30th June, 1951. On 15th January, 1951, Parmeshwar Singh lost his right as chief-tenant and the effect of s. 47(1) of the Tenancy Act was that, with effect from that date, the rights of the appellants as sub-tenants of Parmeshwar Singh became extinguished. The sub-lease in favour of the appellants terminated on that date. The appellants continued to remain in possession even after 15th January, 1951, but that possession could no longer be held to be in the capacity of sub-tenants of Parmeshwar Singh. The subsequent possession was, however, under a legal right and that right accrued to the appellants under sub-s. (4) of section 47 which is as follows :-

"Where, at the time of the extinction by surrender or abandonment, or by death without any heir entitled to inherit such interest, of the interest in a holding of a tenant other than a permanent tenure-holder or fixed-rate tenant, there is in existence a valid sub-lease of the whole or of a portion of the holding, executed on or after the first day of January, 1902, all covenants, binding and enforceable as between the tenant and the sub-tenant shall, subject to the provisions of sub-s. (5), be binding and enforceable as between the tenant''s landholder and the sub-tenant for the remainder of the term of the sub-lease or for five years, whichever period may be shorter."

12. This sub-section does not lay down that the original sub-lease executed by the chief tenant, who surrenders his rights, is to continue in force. What this provision does is to create a new right in the sub-tenant and that is the limited right to continue in possession for the reminder of the term of the sub-lease or for five years whichever period may be shorter. During this period when the sub-tenant of the chief tenant, who has surrendered his rights, is entitled to remain in possession, he is allowed the benefit of all covenants between him and the chief tenant and to treat them as binding and enforceable between him and his chief tenant''s landholder, subject to the slight modification in special cases governed by sub-section (5) of s. 47 when he is required to pay to the land-holder the rent which was payable by the chief tenant in case it happens to be more than the rent which was payable by him as sub-tenant to his chief tenant. This special right granted by s. 47(4) is exercisable for the limited term mentioned therein. Where the remaining term of a sub-lease is more than five years, this right would be exercisable for five years; but, where the remaining period of a sub-lease is less than five years, the right would be exercisable only for the remainder of the term of the sub-lease. In the present case, we have already held above that, on 15th January, 1951, the appellants were holding the land under a sub-lease under which they were entitled to continue as sub-tenants up to 30th June, 1951. Consequently, the right granted by s. 47(4) to the appellants could be exercised by them only up to 30th June, 1951. No such right could remain vested in them subsequent to that date.

13. We are unable to accept the submission made on behalf of the appellants that it should be held that this right granted by s. 47(4) would again accrue to the appellants on 1st July, 1951 in accordance with the terms of the sub-lease, because the sub-lease in their favour was from year to year. We have already mentioned earlier that the effect of s. 47(1) of the Tenancy Act was that that sub-lease was extinguished and no accrual of a fresh right with reference to that sub-lease could be claimed thereafter. The right that accrued under s. 47(4) was no longer in the same terms as the right under the sub-lease and was only limited to the period during which that sub-lease was to remain effective on the date when s. 47(1) and s. 47(4) became applicable. On that date, the remaining term of the sub-lease was up to 30th June, 1951, so that the right that accrued under s. 47(4) was limited up to 30th June, 1951 only and it could not arise afresh on 1st July, 1951 as it was not a recurring right like that of a sub-tenant holding under a sub-lease from year to year.

14. Learned counsel for the appellants, relying on a decision of the Full Bench of the Allahabad High Court in Ram Dular Singh and Another v. Babu Sukhu Ram & Others urged that in any case, we should hold that, when the appellants continued in possession of the disputed land after 30th June, 1951, they did so in exercise of the same right which they possessed on 30th June, 1951, as that right was not extinguished by their eviction from the land. The principle laid down by the Allahabad High Court in that case does not apply, because the decision in that case depended on the circumstance that, under the Tenancy Act, the rights of a tenant continuing in possession after the expiry of the period of lease did not extinguished under sections 45 or 47 of the Tenancy Act which were the only sections which deal with the extinction of the rights of tenants. So far as the right granted by s. 47(4) is concerned, it is granted by the statute itself for a limited period and, once that period expires, it cannot be held that the right continues thereafter. There is no requirement in law that after the expiry of that period, there must be eviction from the land in order to extinguish the right granted by s. 47(4). The possession subsequent to 30th June, 1951 cannot, therefore, be held to be in pursuance of a right conferred on a sub-tenant referred to in s. 47(4) of the Tenancy Act and, consequently, the land was not held by the appellants thereafter in the capacity mentioned in s. 19(vii) of the Act. The High Court, in these circumstances, was right in rejecting the claim of the appellants.

15. The appeal fails. As agreed by counsel for parties, parties will bear their own costs of this appeal.

16. Appeal dismissed.