(1925) 07 CAL CK 0013

Calcutta High Court

Case No: None

Gopal Chandra Das and Another		APPELLANT
	Vs	
Satya Bhanu Ghoshal and Others		RESPONDENT

Date of Decision: July 17, 1925

Citation: AIR 1926 Cal 634

Hon'ble Judges: Newbould, J

Bench: Division Bench

Judgement

Newbould, J.

This is an appeal against a decree in ejectment. The appeal is valued at Rs. 28-1-0. This valuation is made under the statutory provisions of the Suits Valuation Act and the Court Fees Act and in no way represents the real value of the property. I am told if the defendants succeeded in establishing their claim to a permanent right to the land in suit the value of the property would be no less than Rs. 20,000.

2. The appellants before me are Defendants Nos. 7 and 8 in the suit. The defendant No. 7 through his benamidar and son Defendant No. 8, has purchased the tenancy interest of a holding which originally comprised two plots of land. One of these is about 14 cottahs in area situated on the east of Bridge Road Chetla and that is the plot which is the subject of the present suit. The other plot is to the west of the same road and is about one cottah in area. The plaintiff served notices to quit on Defendants Nos. 1 to 7 treating the tenancy as a tenancy-at-will.

3. The appellants-defendants contested the suit and before me the same contentions were urged as had been urged in the lower Courts. The following were the four points urged: firstly, that there had been no division of the original holding and that this suit being one for ejectment from a portion of the holding would not lie, secondly, that from the facts found by the lower appellate Court the legal inference should be drawn that the defendants had a permanent tenancy; thirdly, that the defendants and their predecessors had acquired a right of permanent tenancy by prescription; and lastly, that the notice to quit was bad because it related

to portion of the holding and also because it had not been served on the Defendant No. 8.

4. As regards the first point it appears that there was a partition of the estate in 1902 by a decree of the civil Court. In that suit the 14 cottah plots which are the subject of the present suit fell to the share of the plaintiffs and the other one cottah of the holding fell to the share of the cosharers. Since then it is found that the plaintiffs and their cosharers were realizing rent separately from the plots allotted to their share. It is contended that this finding is not sufficient to create a division of the holding which would be effective as against the tenants. But the finding of the lower appellate Court is more than that. He has further found that the situation was accepted by the tenants of the landlords, and if this is correct and the tenants acquiesced in the division of the holding there can be no doubt that the lower appellate Court was right in deciding that the holding was effectively divided. In my opinion the facts stated are sufficient to support this decision. It is pointed out that when the plaintiffs realized rents from the defendants by certificate procedure, though an objection was taken on behalf of the defendants that there were two plots that objection was not pressed, and no objection was taken that there was no appointment made. It is found further that there is no question here that the Tewaries, that is to say, the appellant''s predecessors, were placed in any awkward position. On these facts I hold that the finding of acquiescence by the tenants is justified and there was such a division that the plot of land which formed the subject of the present suit became a separate holding.

5. As regards the second point the case-law on the subject has been fully dealt with in the recent judgment of Mr. Justice Chakravarti in Abdul Hakim Khan Chaudhuri Vs. Elahi Baksha Sha and Others, the elements which were found to have existed in cases where presumption of permanency was made are stated as follows: First, the origin of the tenancy for residential purposes must be unknown; secondly, the existence of permanent pucca buildings on the land built long before any controversy arises and that to the knowledge of the landlord; thirdly, uniform payment of rent; fourthly; recognition of successions and transfers by the landlord. On the findings in the present case it would appear that the second and fourth of these elements may be said to have been established. As regards the third though the payment of rent has not been uniform the increase has been light having regard to the market value of the land. But, in my opinion, this contention must fail on the ground that the appellants have failed to establish the first of the elements that the origin of the tenancy for residential purposes must be unknown. The plaintiffs have proved a kabuliyat of the year 1244 B.S. corresponding to 1837 A.D. The commencement of the kabuilyat which is the important portion is as follows:

The term of the rented land measuring about 12 cottahs standing in my name situate in mouzas Chetla Pargana Magura appertain to Kidderpore having expired I, Gopal Tewari again take the aforesaid land on the same rent for a period of one

year from Baisakh of the current year up till Chaitra for residential purposes. I shall pay rent at the rate of Rs. 3-8 sicca Rs. 3-11-9 per year according to the following monthly instalments. When the term of this kabuliyat expires and unless and until any second arrangement is made I will pay rent without any objection at the above rate.

6. For the appellants it is contended that this Kabuliyat is a confirmatory lease recognizing the existing tenancy. Although it would appear from the kabuliyat that the executant had held the land previous to its execution, it also appears that the tenancy by virtue of which he held the land previously had come to an end, since it is stated that the term had expired. A fresh lease executed after the expiration of the term of the previous lease creates a new tenancy and is not a confirmation of the previous tenancy. I would, therefore, hold that the tenancy of the appellants'' predecessors commenced with this lease as evidenced by the kabuliyat and was, therefore, known. I would further hold that even if this be not treated as the commencement of a new tenancy it is strong evidence in the plaintiffs'' favour to show that the terms on which the land was let to the plaintiffs were not the terms of a permanent lease. Further if I were to hold that this is a case in which I have to consider whether permanent tenancy should have to be inferred from all the facts of the case it would be very hard for the appellants to explain the admission made by Defendant No. 8 that what he had purchased was only a monthly thica charatia tenancy-at-will. Holding as I do that the origin of the tenancy is known it follows on the law as laid down in the case as already cited that no presumption of permanency should be made in the appellants'' favour in the present case.

7. I now come to the contention that the appellants'' predecessors obtained a mokarrari mourashi right by adverse possession. What is found is that in 1868 they asserted that right and the landlords took no steps to contest that assertion. In my opinion the mere assertion of such right by an admitted tenant would not create any right superior to that of his tenancy even though followed by possession for over 12 years. On behalf of the appellants my attention has been drawn to a decision of the Madras High Court in Rajah of Venkatagiri v. Mukku Narasaya [1914] 37 Mad. 1 it is stated:

So far as this Presidency is concerned, it would seem to be well settled that a person who has lawfully come into possession as tenant from year to year or a term of years cannot by setting up, however notoriously, during the continuance of such relation, any title adverse to that of the landlord inconsistent with the legal relation between them, acquire, by limitation, title as owner or any other title inconsistent with that under which he was let into possession.

8. The judgment further points out that this doctrine is consistent with the law in England. It then goes on to say:

We do not find the doctrine has been formulated in the other High (Courts in India. In fact in Calcutta and Bombay, the view would seem to be that the assertion of the adverse right coupled with possession for the statutory period is enough.

9. In support of this statement two Calcutta cases are cited, but neither of them contain a denial of the principle there stated. The case of Drobomoyi Gupta v. Davis [1887] 14 Cal. 323 has been summarized and distinguished in the earlier decision of the Madras High Court, Seshamma Shettati v. Chickaya Hegade [1902] 25 Mad. 507. There the tenants who were held entitled to plead the right by prescription became trespassers from the date of the death of the widow and continued to hold the land for statutory period professing to hold the same as permanent tenants under the lease granted by the widow. There is no doubt that a trespasser, whether he is a former tenant whose tenancy has come to an end or whether he is a tenant encroaching upon other lands of the landlord, can by prescription acquire a tenancy right. But no case of this Court has been shown to me in which it has been held that a tenant from year to year can by setting up a title adverse to that of his landlord acquire a title giving him a better right than that which he has under his contract of tenancy: whereas the principle stated as established by the Madras High Court has been followed in Birendra Kishore Manikya v. Fuljan Bibi [1917] 25 Cri.L.J. 467. It was there held that while the contract of tenancy is in force either party cannot practically obtain a variation thereof by persisting for a long period in his assertion that the term is otherwise than what it really is. I, therefore, hold that since the defendants'' predecessors were in possession as tenants on the terms of the kabuliyat which has been proved in this case the mere assertion by them in 1868 that they had mokarrari mourashi tenancy would not give them any greater right than they held under the lease.

10. The last point was not seriously pressed. As regards the deficiency of notice in consequence of its relating to a portion only of the holding the argument stood or fell on the success or failure of the argument on the first contention. It was conceded that on the findings that the Defendant No. 8 was the benamidar of his father Defendant No. 7 it could not be urged that any notice on him was necessary. For the above reasons I hold that the appeal fails and is accordingly dismissed with costs.