
(1871) 03 CAL CK 0011

Calcutta High Court

Case No: Special Appeal No. 1978 of 1870

Brindaban Sookul

APPELLANT

Vs

Durgaprasad Misser
and Another

RESPONDENT

Date of Decision: March 16, 1871

Final Decision: Dismissed

Judgement

Ainslie, J.

In execution of a decree against one Sitaram Dobay, certain land with the mud houses built thereon was sold and purchased by the defendant in the present suit. It was then described as the ancestral lakhiraj land of the judgment-debtor. The plaintiff has brought this suit to establish his title to the land. It has been found by the Courts below that the land was not the lakhiraj of Sitaram Dobay, but formed a portion of the property belonging to the plaintiff. The claim includes two plots of land, but we have now to deal only with the first plot.

2. The Munsiff held that as Sitaram Dobay had been in occupation of this land by living thereon for a period of something like forty years, the plaintiff was not entitled to eject the purchaser, but could only take rent from him. The Subordinate Judge reversed that finding of the Munsiff, and held that the plaintiff was entitled to take possession of the land itself.

3. The question which we have to consider is, whether the judgment of the Munsiff or the judgment of the Subordinate Judge on this point is the correct one. It appears to us that this question turns upon the consideration whether Sitaram Dobay himself was liable to be dispossessed at the will of the plaintiff; and if not, whether his right to occupy the land with the buildings was not a right which had become transferable. The case of Beni Madhab Banerjee v. Jai Krishna Mookerjee Ante, p. 152 has been cited by the appellant, in which the late Chief Justice, Sir Barnes Peacock, has expressed an opinion which seems to us to bear directly upon this case. He says:--

Independently of this, speaking for myself, I should say that if one man grants a tenure to another for the purpose of living upon the land, that tenure, in the absence of any evidence to the contrary, would be assignable. I know of no law which prohibits a man who gets land for the purpose of building from assigning his interest in it to another.

4. It is said by the respondent that this is not a case in which the plaintiff created a tenure in favor of Sitaram, in order that he might live upon the land, but that he merely gave him permission to occupy a certain space within the bashabari,--i.e., within the compound of his own house. No doubt it is found by the Munsiff that the house erected by Sitaram immediately adjoins the house of the plaintiff. But it does not follow that the land upon which it stands is a part of what may be called the compound of the plaintiff's house. Although the land in suit may be adjoining that occupied by the plaintiff, the occupation of it by Sitaram or any one else need not necessarily interfere with the occupation by the plaintiff of his own house and of the land attached to it. There is nothing to show that it does so.

5. It is said that the plaintiff allowed other persons to build in the same way in which he allowed Sitaram to do so, and that when they vacated their houses he again took possession of the land. Some evidence to this fact has been read. But there is no evidence put forward to show that in any one instance the holder of any such land has attempted to assign his right to others and has been interfered with by the plaintiff, and failed in carrying out such assignment; nor do we know under what circumstances the houses were vacated. The Subordinate Judge has not found, and apparently there is nothing to show that the permission granted by the plaintiff to Sitaram was given with any reservation of right to oust him at will, or was limited to him individually; and therefore we think that it must be taken to have been a permission to build and occupy in the ordinary way, and that this occupation having continued for a very long period of time, it is impossible to suppose that the plaintiff had any power to turn Sitaram out at a moment's notice, or that Sitaram had not power to transfer his right to any other party. The appeal accordingly is decreed, the decision of the Subordinate Judge is reversed, and that of the Munsiff is restored and affirmed.

6. The appellant will have his costs in this Court and in the lower Appellate Court.

Jackson, J.

7. I quite agree with Mr. Justice Ainslie. No doubt it is very difficult to define the rights of parties in cases of this sort, where there is no written document, but a mere permission to occupy, and where occupation has been unaccompanied by any payment of rent. Everything must depend upon the circumstances of the case. No doubt allowing a servant to occupy a portion of the dwelling-house by erecting a temporary building thereon, would confer upon him no tenant rights whatever, probably even allowing a relation to build any temporary building within a portion of the premises would confer upon him no tenant right whatever. But the present case appears to me quite distinct from all such cases. It is not

the case, as I understand it, of a person being merely allowed to occupy a piece of land in the defendant's compound; it was not given to him for any temporary purpose; he has been in possession about forty years; he has built upon it, he has planted trees upon it, and in fact he has exercised all the usual rights of an occupier upon the land. It seems to me, therefore, that his holding is not a temporary holding. I think it was rightly put in this case that if the plaintiff could not have turned out Sitaram Dobay, he cannot turn out the present defendant. But I am by no means satisfied that under the circumstances the plaintiff could have ejected Sitaram Dobay. I think the first Court was quite right in saying that the plaintiff's proper course was to sue for rent. I would therefore set aside the Appellate Court's decision, and restore that of the first Court. The respondent will pay the costs of this and the lower Appellate Court.