(1875) 01 CAL CK 0006

Calcutta High Court

Case No: Special Appeal No. 1891 of 1870

Parbutty Bewah		APPELLANT
	Vs	
Woomatara Dabee		RESPONDENT

Date of Decision: Jan. 4, 1875

Judgement

Macpherson, J.
I think that the question which it loft for the decision of the Court must be answered in the affirmative. The case states (para. 4) that it has been the practice in Calcutta for tenants to remove snob tiled huts as those of the plaintiff, erected upon the land let to such tenants, and such huts were, by such practice, treated as the property of the tenants, who by such practice were in the habit of disposing of them without the consent of their landlords. And it further (para. 6) states that before the plaintiff removed from the said piece of land, she endeavoured to pall down and remove the said tiled huts; but was prevented from so doing by the defendant, who claimed the said huts as her property, considering that this Court had decided in the suit of Kallypersaud Singh v. Hoolas Chund 10 B.L.R., 448 that tenants had no right to remove the tiled huts.

2. It thus appears that this litigation has arisen solely in consequence of the decision in Kallypersaud Singh"s case. But the defendant has wholly misunderstood that decision and its effect. The only point decided there was that tiled huts are not goods and chattles within the meaning of s. 58 of the Calcutta Small Cause Court Act (IX of 1850). The Court decided that tiled huts are not moveables, bat it did not decide, nor did it approach the question, whether they are removable. In the case of Raj Chunder Bose 8 B.L.R, 510, note, Sir Barnes Peacock held that tiled huts in the mofussil are not moveable property within the meaning of s. 19 of the Small Cause Court Act (XI of 1865), but he expressly called attention to the fact that, although not moveable property within the meaning of that Act, a hut may possibly be removable. He says "the word moveable in that section (19) is used in contradistinction to the word immoveable in s. 20. The word used is moveable, not removeable, and that word does not, in our opinion, comprehend everything which the judgment-debtor has a right to remove. It means property which is capable of being

moved in its existing state." And in the judgment of Chief Justice Sir Richard Coach in the case of Nattu Mian v. Nand Rani 8 B.L.R., 508, the distinction between moveable and removeable is recognized in the same manner.

3. None of the decided cases in fact affect the question, and the practice being such as is described in the case, the tenant clearly has a right to remove the huts. The origin of the practice or custom is doubtless to be found in the Hindu and Mahomedan laws, under both of which such huts would certainly have been removeable; see the judgment of Peacock, C.J., In re Thakoor Chunder Paramanick B.L.R., Sup. 595. It was argued for the defendant that there is no evidence or admission by the defendant of any custom such as the plaintiff relies upon. But the whole object of the parties in stating this case was to avoid going to further expense in taking evidence, and the like; and among the facts stated, there is no indication of any time at which the practice admitted did not exist. Besides this, it seems to me that there is an admission of a custom quite sufficient to support the plaintiff"s claim, especially as the practice admitted, and as to the existence of which there can be really no doubt, arises merely from the leaving undisturbed what may be called the old native law on the subject.

4. The case of Doyalchund Laha Cor., 117, to which Mr. Collis referred, is not in point; for the erections in question there are not said to hare been of the class known as tiled huts.

5. The facts stated, moreover, are such as, I think, would entitle the plaintiff to remove, these huts even if no such general right as is claimed for tenants existed. At the time she became tenant, the plaintiff, with the knowledge of the defendant, bought the huts on the land from the out-going tenant, and the instrument of sale which was then executed forms part of the case. That document shows on the face of it, that the out-going tenant treated the huts as his own property, and the defendant"s rights as landlord as being limited to the land only. The plaintiff having so purchased the huts with the defendant"s knowledge, relying upon the practice, &c, and with the know ledge of the defendant, partially pulled down and rebuilt the said huts, &c. (see para. 3), it seems to me that, apart from the question of there being a valid custom by which tenants are entitled to remove tiled huts, the plaintiff had a right to remove these particular huts as against the defendant, when the defend ant, being aware of the circumstance under which the plaintiff purchased originally from the out-going tenant, and knowing also that the plaintiff relied on the existence of the alleged practice, stood by and allowed her to erect the new huts, which are the subject of the present discussion. The question stated is decided in the affirmative and I declare that she plaintiff is entitled to remove the huts, or to be paid Rs. 475 by the defendant, and that she is also-entitled to be paid the casts of this suit on scale No. 2. As it is not desired that the huts should be actually removed now the decree will be for Re. 475, in lieu of removal.

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(5)Before Mr. Justice Norman, Officiating Chief Justice, and Mr. Justice Lock.

The 13th April 1871.

Gopaulmullick and others (Plaintiffs) V. Anundo Chunder Chatterjee (Defendant).*

Landlord and Tenant--Building, Right of Tenant to remove--Additions to emitting Building.

A tenant, making additions to an existing building, is not entitled to remove the building, but is only entitled to compensation for the present value of the expenses incurred by him in making such additions. Possibly, in some cases, he may remove the additions if be can do so without in any way injuring the original building.

This was a suit to recover khas possession of two plots of land, and to establish the plaintiffs'' right to possession of a third plot. The plaintiffs alleged that they had purchased the land in dispute in 1856 at a sale by the sheriff in execution of a decree against two persons, named Dya Chund Bose and Kalikishen Pal; that they subsequently by oral agreement let the land to one Nobin Chunder Chatterjee, it being stipulated that he should give up the land on receiving fifteen days'' notice; that Nobin refused to relinquish the land when sailed upon, and that a suit brought by them in the Revenue Court to evict him was, upon the intervention of the present defendant, dismissed. The plaintiffs thereupon took possession of the third plot, and then brought the present suit.

The defendant alleged that Nobin Chunder Chatterjee had obtained a maurasi lease of the three plots from Kalikishen Pallong before 1856, and that the defendant had purchased Nobin''s rights at an auction-sale.

Among other questions raised was one with respect to the right to certain buildings standing on the land. It appeared from the sheriff''s bill of sale to the plaintiffs, and from a deed subsequently executed between the plaintiffs and Kalikishen, that at the time of the plaintiffs'' purchase a lower-roomed godown was standing on the land. The plaintiffs alleged but failed to prove, that during the time of Nobin''s occupancy, they had made additions to this godown, and the Subordinate Judge accordingly held that it must be presumed that Nobin had made such additions. He was, however, of opinion that the maurasi potts set up by the defendant was forged, and that Nobin never had a right of occupancy in the land, and therefore had no right to remove the building; and he gave the plaintiffs a decree.

On appeal by the defendant, the Judge modified this decree so far as it determined that the buildings could not be removed. On this point, he observed:--''It has been found, and it has not been shown to me that the finding is incorrect, that the buildings on the land were erected by Nobin Chunder, and it appeal 8 therefore, that the defendant, who represents Nobin Chunder, is entitled to remove the buildings on the determination of the tenancy.''

From this decision the plaintiffs appealed to the High Court.

Mr. Rochfort and Baboo Srinath Banerjee for the appellants.

Baboo Kali Prosunne Dutt for the respondent.

The judgment of the Court was delivered by

Norman, C.J.--The Judge"s judgment proceeds on a mistake. He says:--"It has been found, and it has not been shown to me that the finding is incorrect, that the buildings on the land were erected by Nobin Chunder, and it appears, therefore, that the defendant who represents Nobin Chunder is entitled to remove the buildings on the determination of the tenancy."

Now on referring to the bill of sale, and the deed between Kalikishen and the plaintiffs executed subsequently, it appears that at the time of the plaintiffs" purchase there was a lower-roomed godown on the land. The Subordinate Judge finds that when Nobin entered into possession of the land, Nobin entered into possession of the land and godown which was there at the time when he entered into possession. It appears that Nobin gave no evidence that he bad made even the additions to the premises himself. The Subordinate Judge comes to the conclusion which may or may not be correct on the evidence that the additions were made by Nobin Chunder.

Be that as it may, the making of additions to an existing building will not entitle the person to remove the building; he will at most only be entitled to compensation for present value of, or the expenses incurred by him in making such additions; or, possibly in some cases, he may remove the additions if he can do so without in any way injuring the original building.

The case most go back to the Judge for trial.

*Special Appeal, No. 1891 of 1870, against a decree of the Judge of Zilla 24-Pergunnas, dated the 14th June 1870, modifying a decree of the Subordinate Judge of that district, dated the 13th December 1869.