P. Veda Bhat Vs. Mahalaxmi Amma and ors.

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Court : Chennai

Decided On : Jan-24-1947

Reported in : AIR1947Mad441; (1947)1MLJ229

Appellant : P. Veda Bhat

Respondent : Mahalaxmi Amma and ors.

Judgement :

Chandrasekhara Aiyar, J.

1. In this second appeal preferred by the plaintiff, the primary question which arises for consideration is whether there has been a forfeiture of the mulgeni lease evidenced by Ex. P-1, by reason of alienations made by the mulgeni tenant, who is now the first defendant, of the tenancy. By Ex. P-7 she transferred her mulgeni rights in some of the properties, and by Ex. D-I she transferred her right in the remainder of the properties, with the result that the mulgeni right has now been wholly alienated. Both the lower Courts have held that as the alienation under each deed of transfer was only of a part, no forfeiture has been incurred. The clause against alienation and providing for re-entry is set out at length in paragraph 24 of the District Munsiff's judgment.

2. In Chatterton v. Terrell (1923) A.C. 578 which was on appeal from the decision of the Court of Appeal in Terrell v. Chatterton (1922) 2 Ch. 647 . (which in turn reversed the decision of Astbury, J.) one of the learned Law Lords expressed himself thus:

My Lords, but for the fact that Astbury, J., found a defence to this action, I should have thought the case unarguable. I do not know which has given me the greater surprise, the decision of the learned Judge or some of the propositions with reference to terms and derivative terms of years which have been advanced by Counsel at your Lordships' Bar.

Such surprise can be expressed of the decision by the lower Courts in this case. While it is perfectly true that covenants for forfeiture should be strictly construed against the landlord and that the alienations of a part of the holding have been uniformly held not to work a forfeiture it is very difficult to understand why, when by separate alienations the entire right in the tenancy has been transferred to third party strangers, the forfeiture clause should not take effect. If even then it is not to become operative, it really means that Courts are not to attach any value to such a clause under any circumstances. To hold that where the tenancy is alienated in parts by separate deeds, there is no forfeiture, notwithstanding the ultimate result that the tenancy has been completely parted with, is to enable the tenant to set at naught the forfeiture and re-entry clause by tricks and devices. This is pointed out by Younger,

L.J., in his judgment in Terrell v. Chatterton (192) 2 Ch. 647 . That case was a stronger one, if any, for the tenant; for, as regards a portion of the premises transferred, the tenant took the consent of the landlord for the sub-letting. It is. with reference to the remainder of the premises which was also sub-let a few days, later that the consent was not obtained. The decision governs the present case.

3. On the question whether items 6 and 7 are accretions to the mulgeni holding, both the Courts have found that they are not. They were not prepared to presume from the fact that they were obtained by darkhast by the mulgenidar that he obtained them in his capacity as mulgenidar and after the date of the mulgeni tenancy. The finding is one of fact and must be accepted.

4. The learned advocate for respondents 2 to 5, who are the earlier alienees under Ex. P-7 has raised two questions. One is that the later alienation evidenced by Ex. D-1 was a collusive affair brought about by the plaintiff for the purpose of enabling him to say that there has been a forfeiture. This point is dealt with by the District Munsiff under the fourth issue in paragraph 27 of his judgment and has been found against them. The District Judge does not deal with it in the course of his judgment. Apparently, it was not raised before him. These defendants preferred a memorandum of objections in answer to the appeal preferred by the plaintiff and the memorandum covered only two points other than the point now raised.

5. The other question relates to the value of the improvements which was fixed by the District Munsiff at Rs. 259-12-0. What was the proper compensation for the improvements was not considered by the District Judge; and it is urged that he should be called upon to decide it now. Here, again, I think the respondents are bound by what happened in the lower appellate Court. It was for them to have raised the question that they ought to have got more for the improvements said to have been effected by them. They could not assume that the appeal was going to be decided in their favour; in the alternative of its being decided against them, they should have asked the District Judge to go into the question of improvements. They do not seem to have done so. I do not propose to set this question at large now. The defendants-respondents will get only the sum of Rs. 259-12-0 found as compensation for improvements by the District Munsiff.

6. The result is that the decrees of the lower Courts are set aside; and the plaintiff will have a decree for possession of all the items except items 6 and 7, subject, however, to the payment to defendants of the sum of Rs. 259-12-0, as compensation for improvements. Mesne profits from the date of the notice, Ex. P-2, namely, 7th June, 1941, by which the plaintiff determined the lease till the date of delivery of possession will be determined by the first Court. There will also be a decree for arrears of rent as fixed by the first Court up to 7 the June, 1941.

7. The parties will pay and receive proportionate costs right through.