MANU/BH/0087/1963

Equivalent Citation: AIR1963Pat308

IN THE HIGH COURT OF PATNA
FULL BENCH

Civil Revn. No. 118 of 1960

Decided On: 06.04.1963

Appellants: **Jagdish Chandra Ghose and Ors.**
Vs.
Respondent: **Basant Kumar Bose and Ors.**

Hon'ble Judges/Coram:
Vaidynathier Ramaswami , C.J., Kamla Sahai and Kanhaiya Singh , JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: Sudhir Chandra Ghose, Adv.

For Respondents/Defendant: S.N. Dutta and Ram Nandan Prasad, Advs. No. 1 and Harilal Agarwal, Adv.

JUDGMENT

Kamla Sahai, J.

1. The principal question which arises for consideration in this case is what would be the basis of valuation of a suit for ejectment of a licensee when he continues to live in the licensed premises in spite of termination of his licence.

2. The necessary facts of the case may be shortly stated. The plaintiff has instituted the suit, out of which this application for revision arises, on the allegations, inter alia, that he purchased the house described at the foot of the plaint from the original owners, who had allowed the defendants to live in a portion of the house as licensees that the plaintiff asked the defendants on the 21st March, 1952, to vacate the premises and the defendants promised to vacate them in six months, that the defendants, though licensees, did not leave the house on the 21st September, 1952, and continued to stay there, and that they have made themselves liable to be evicted and further to pay mesne profits at the rate of Rs. 15/-per month. The relevant relief claimed by him is:

> "(a) That the defendant and his family and dependents be evicted from the house described below and the plaintiff be put in possession over the same."

3. The learned Munsif, before whom the suit is pending, has pecuniary jurisdiction up to the value of Rs. 2,000/- only. The defendants objected before him that the suit was beyond his pecuniary jurisdiction as the value of the property in question was more than Rs. 30,000/-. After hearing both parties, the learned Munsif came to the conclusion that the market value of the property in suit was more than Rs. 2,000/-, and that the estimate of the building portion only was at about Rs. 11,000/-. He has, however, held that the value of the subject-matter of a suit in a case of this kind is "the right to eject the defendant and the value of that right is the value at which the defendant's right to remain in the house under the licence of the plaintiff may be

valued".

In support of this conclusion, he has relied upon Mt. Barkatunnisa Begum v. Mt. Kaniza Fatma MANU/BH/0087/1926 : AIR 1927 Pat 140 and Satyendra Kumar v. District Board of 24 Parganas MANU/WB/0145/1959 : AIR 1959 Cal 536. On this basis, he has held that the valuation given by the plaintiff, which was a sum of Rs. 84/-, was adequate, and hence the suit was within his pecuniary jurisdiction. He has also held that the Court-fee paid is sufficient. Defendant No. 1 has filed the present application for revision, and the case has been referred to this Bench because it was felt that the correctness of the decision in Mt. Barkatunnisa Begum's case MANU/BH/0087/1926 : AIR 1927 Pat 140 was open to doubt.

4. In my judgment, the question raised for our decision does not present much difficulty. The case of recovery of a property from a tenant, even a tenant who is holding over, is dealt with specifically under Section 7(xi)(cc) of the Court-fees Act. No provision has been made specifically with regard to recovery of property from a person whose licence in respect of that property has ended.

5. The difference between a tenant and a licensee is substantial. 'Lease' has been defined in Section 105 or the Transfer of Property Act, and 'licence' has been defined in Section 52 of the Indian Easements Act (V of 1882). Whereas a tenant or lessee has a definite interest in the property which is put in his possession, a licensee has no such interest. There must be consideration for creation of a lease; but there may or may not be any consideration for grant of a licence. While a tenant may hold over, in certain circumstances, after determination of his tenancy, a licensee cannot continue to be in possession or any property for more than a reasonable time after his licence is terminated. There is, therefore, no escape from the conclusion that, if a licensee continues to be in possession of certain premises after "expiry of a reasonable time from the date" his licence is revoked, he does so only as a trespasser. If, therefore, a suit is instituted for his eviction, it is clearly a suit for recovery of possession from a trespasser. The entire value of the property in question must be held to be the value of the subject-matter of the suit.

6. Paragraph (v) of Section 7 of the Court-fees Act provides for Court-fee in suits for the possession of land, houses and gardens, and lays down that the value of such a suit would be according to value of the subject-matter. It proceeds further, and provides for what should be deemed to be the value of the subject-matter. The basis of valuation of the subject-matter, when the suit is for recovery of certain classes of lands, have been laid down in Clauses (a), (b), (c) and (d). Clause (e) provides that the value to the subject-matter, when it is a house or garden, will be the market value of the house or garden. In the present case, the plaintiff seeks recovery of possession to some shares with a portion of a house standing thereon. The subject-matter of the suit, therefore, fails within Section 7(v)(e), and its value must be the market value.

6a. In some reported cases, it has been pointed out that it is anomalous that, when a landlord sues a tenant, who has a definite interest in the property, he has to put a lower valuation upon the suit in accordance with Section 7(xi)(cc); but, when an owner sues a licensee, who has a highly precarious interest, after determination of his licence, he has to value his suit on the basis or the value of the entire property, and has to pay a higher Court-fee.

I am unable to attach any importance to this reasoning because, if it is pushed

further, a greater anomaly will become obvious. A trespasser, who enters upon a property without having any vestige of an interest, precarious or otherwise, is certainly in a worse position than an ex-licensee. It can hardly be argued that, in a suit for ejectment of a trespasser who has entered upon the property without any pretence of a claim the value of the subject-matter will be the value of the right of the trespasser. He has no right at all. The value of the suit in such a case will be the value of the entire property which is sought to be recovered. A person, who has entered upon a property in dispute as a licensee and has continued to remain there as a trespasser, must necessarily be treated as a trespasser. In a suit for recovery of the property from him, the value of the suit will be the value of the subject-matter, i.e., the property in dispute.

7 . In MANU/BH/0087/1926 : AIR 1927 Pat 140, the plaintiff was the mother, defendant No. 1 was her daughter, and defendant No. 2 was the daughter's husband. The plaintiff's case was that the house in question belonged to her, that her daughter and son-in-law lived in a portion of the house as licensees, that her daughter, defendant No. 1, had set up an adverse title to the house under an oral gilt, and that the plaintiff was no longer willing to allow her daughter and son-in-law to remain in her house. On these facts, the plaintiff prayed for eviction of the defendants.

Kulwant Sahay, J., with whom Bose, J. agreed, observed that the suit as framed was a suit for ejectment, and that paragraph (v) of Section 7 of the Court-fees Act being applicable, Court-fee was payable on the market value to the subject-matter of the suit. His Lordship further observed "The subject-matter of the suit is the right to eject the defendants and the value of that right is the value at which the defendants' right to remain in the House under the licence of the plaintiff may be valued: see Ramraj Tewari v. Girnandan Bhagat 15 All 63."

With great respect, | find it difficult to accept this view. The defendants' right as licensees had already come to an end. The subject-matter of the suit was not, therefore, any right of the defendants as licensees; but the subject-matter was the entire property which was sought to be recovered. Besides, their Lordships have not indicated the Clause of paragraph (v) of Section 7 under which, according to them, the case fell. The Bombay, Madras and Nagpur High Courts have dissented from the view expressed in this decision.

Reference may be made in this connection to Ratlal v. Chandulal MANU/MH/0129/1946 : AIR 1947 Bom 482, Mutyalamma v. NarayanaswamyAIR 1949 Mad 719, Gajanan Nanaji v. Rajeshwar Krishnaji AIR 1950 Nag 237 and N. Rudramanj v. Srisailam MANU/TN/0167/1954 : AIR 1954 Mad 200. There was a serious difference of opinion on the point in the Calcutta High Court; but a Special Bench has set the matter at rest in Sisir Kumar Dutta v. Susil Kumar Dutta MANU/WB/0054/1961 : AIR 1961 Cal 229. In that case, Banerjee, J., who has delivered the leading judgment, has analysed most of the decisions of the Calcutta High Court and the other High Courts on this point. He has then observed that there are five different lines of opinion expressed in the different cases. He has given a resume of all those five lines of opinion, and has accepted the third one. Referring to a suit for recovery of property from a licensee whose licence has been revoked or terminated, he has put that line of opinion as follows:

> "In such a suit Court-fee must be paid on the value of the property, which is taken to be the subject-matter."

He has held:

> "When a suit is brought for possession against & licensee, either on revocation or on termination of the licence, the suit is, in that case, a suit for eviction of trespasser."

He has further held:

> "Valuation of a suit for ejectment of a licensee, upon revocation or termination, of his licence, either for purpose of court-fees or for the purpose of jurisdiction, shall be made under the provisions of Section 7(v) of the Court-fees Act."

This decision fully supports the view which I have expressed.

8. Mr. Dutta, who has appeared on behalf of the plaintiff-respondent, has, however, advanced several arguments. His first argument is that, although the plaint in this suit has been inartistically drawn up, the proper construction to put upon it is that the suit is one for grant of mandatory injunction, directing the defendants to vacate the premises.

In support of this argument, he has relied upon Minister of Health v. Bellotti 1944 KB 298. That was a suit for recovery of damages for trespass and for grant of an injunction against licensees, who were living in certain premises, in spite of the fact that notice was given to them on behalf of the Minister to vacate. The question whether recovery of possession should have been prayed for was not raised in that case, Hence the decision is of no help on this point.

Mr. Dutta has also relied upon the decision of a single Judge in. Prabirendra Math v. Narendra Nath AIR 1958 Cal 179. The question which arose for determination in that case was "whether the owner of an immovable property can, on the termination of a licence, maintain a suit against his licensee for a mandatory injunction directing him to vacate the property". I may mention before ! discuss the decision any further that Chapter X of the Specific Relief Act deals with the grant of a perpetual injunction. Sections 55 and 56 tall in that Chapter. Section 55 reads:

> "When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts."

I may also read Section 56(i):

> "56. An injunction cannot be granted-
>
> (1) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust,"

9. Reverting to the decision, I may give the facts very shortly. One Bhabani Nath Nandi was living in a house as a tenant. Bhabani's nephew, Narendra Nath, was held by the Courts to have been living in a part of the house as a licensee. After Shabani's death, his widow, Shimati Mokshada Nandi, and two grandsons of Bhabani filed a suit, claiming to have terminated the alleged licence, and prayed for an injunction, which was necessarily a mandatory injunction, directing the defendant, Narendra Nath, to vacate the portion of the house which he occupied. The trial Court decreed

the suit but the appellate Court set aside 'the trial Court's decree, and dismissed the suit. The grounds on which the appellate Court acted were (1) that the plaintiffs were not in possession of the disputed property, and (2) that Section 56(i) of the Specific Relief Act barred the suit as the plaintiffs could get an equally efficacious relief by bringing a regular suit for declaration of title and for ejectment of the defendant.

10. The learned Judge, Ranupada Mukerjee, J., came to the conclusion that the trial Court acted under Section 55 of the Specific Relief Act, and granted a mandatory injunction in decreeing the suit and directing the defendant to vacate the premises. He differed from the appellate Court on both the grounds given by it. He held that the moment the licence in favour of the defendant was terminated, the property came back into the possession of the plaintiffs, I.e., the heirs of the person who had granted the licence. With great respect, this amounts to the introduction of a legal fiction instead of taking the actual fact into consideration. It is true that a licenser is entitled to resume possession of licensed premises on termination or revocation of the licence; but it is equally true that the licensee may continue to remain in possession, and, in that case, he can only be treated as a trespasser. When, in fact, the licensee continues to be in possession of the licensed premises, it cannot be assumed that the property has come back into the possession of the licenser. That would, as I have already said, be introducing a legal fiction for which there is no basis.

11. Mukherjee, J., has further observed that the provisions of Section 56(i) will only apply if a suit is framed according to the usual mode, for instance, for declaration, of title and recovery of possession, and it would not apply when the suit is framed as a suit for grant of mandatory injunction under Section 55 of the Specific Relief Act. He has also observed that the provisions of Section 55 would be completely stultified if Section 56(i) were to control that section, even when the suit was framed as a suit for grant to mandatory injunction. With great respect, I feel that his Lordship's views are incorrect. When the actual fact is that an ex-licensee is in possession, the licenser can only seek recovery of possession from him. Historically, that is the legal remedy; whereas the remedy of injunction is an equitable remedy. If he can seek recovery of possession from the trespasser who is an ex-licensee, he cannot be permitted to seek the remedy of injunction. The frame to a suit is not important. The substance of the plaint has to be considered. If a person is allowed to institute a suit by framing it as a suit for injunction, though, in substance, he wants recovery of possession, the provisions of Section 56(i) will themselves be stultified. There may be cases in which it is not necessary for a licenser to institute a suit for recovery of possession; but it would be enough it he seeks the remedy of grant of mandatory injunction; for instance, it would be so when a licensee is not given the licence to reside in any house or property but is given the licence to visit it occasionally to do something, e.g., to cut branches of trees, to keep birds, bees, etc. It would not be necessary after determination of his licence to seek recovery of possession of the property; it would be enough if the plaintiff prays for grant of an injunction, prohibiting the licensee from visiting the premises. That, however, is quite different from a licence to reside in premises because, in that case, the licensee, by staying on the premises after termination of the licence, becomes a trespasser, and recovery of possession has to be sought from him. In my judgment, therefore, the plaintiff has, in the instant case, rightly framed the suit as a suit for eviction of the defendants, and it cannot be construed to be a suit for grant of a mandatory injunction,

12. Another argument which Mr. Dutta has put forward is that, on the facts of this case, the defendants must be held to have been tenants at will and not licensees. I

have already mentioned some of the distinctions between a lease and a licence. In Halsbury's Laws of England, Third Edition, Volume 23, at page 429, paragraph 1025 the attributes of a licence have been given as follows:

> "A licence is normally created where a person is granted the right to use premises without becoming entitled to exclusive possession thereof, or the circumstances and conduct of the parties show that all that was intended was that the grantee should be granted a personal privilege with no interest in the land."

13. A distinction between 'lease' and 'licence' has been shortly given in Muiia's Transfer of Property Act, Fourth Edition, at page 614, which may be quoted;

> "Whether an instrument operates as a lease or as a licence is a matter not of words but of substance. If according to the contract the land is to be used in a certain way and on certain terms, while its possession and control remain with the owner himself, the right conferred will be a mere license and nothing more. But if the nature of the acts to be done by the grantee requires that he should be in exclusive possession or if the agreement provides that he shall be in exclusive possession, the proper inference is that it is a lease. If the effect of the instruments is not to give exclusive possession, it will take effect as a license though called a lease or letting."

In Jai Narain v. Syed Ali Murtaza AIR 1951 Pat 190, Das, J. has succinctly put the legal position as under:

> "I would myself prefer the test 'whether any interest in the property has been given or not, rather than the test 'possession'; because a licensee may also possess the property for exercising the right given to him by the grantor. But an exclusive right to possess, as distinguished from mere permissive possession would, I think, turn the scale in favour of a lease, that is, a transfer of interest in the property itself."

13a. Ramaswami C. j. has stated in a Division Bench decision in Tata Iron and Steel Co., Ltd., Jamshedpur v. Muhammad Nasiruddin (I960 BUR 142:

> "..... .in order to create a lease or sub-lease, the right to exclusive possession and enjoyment of property should be conferred or assigned upon another."

14. It is manifest from what I have said above that the mere fact that a person is in possession of, or is living in a house is not sufficient to enable the Court to hold that he is a lessee or a tenant at will as distinguished from a licensee. If, indeed, it is shown that he is in exclusive possession so as to exclude even the grantor of the licence from the premises occupied by him, the Court will lean in favour of holding that he is a tenant and not a licensee. In the present case, the plaintiff has described the defendants in the plaint as licensees. He has not given any facts which can lead the Court to hold that the defendants were in exclusive possession of the disputed portion of the house. That being so, it is impossible to accept Mr. Dutta's argument that the defendants ought to be held to be tenants at will.

15. The last point which Mr. Dutta has urged is that the valuation for purposes of jurisdiction and that for purposes of Court-fee may be different in this case. He has referred to Section 8 of the Suits Valuation Act (VII of 1887) in support of his

argument. That Section lays down, among other things, that, in suits other than those referred to in paragraph (v) of Section 7 of the Court-Fees Act, the value for the computation of court-fee and the value for purposes of jurisdiction shall be the same. Mr. Dutta has contended, on this basis, that, in a suit which falls under paragraph (v) of Section 7 of the Court-fees Act, the valuation for court-tee and for jurisdiction must be different. I am unable to accept this argument. All that can be said is that, in a case falling under paragraph (v) of Section 7, the valuation for court-fee may be different from the valuation for jurisdiction. That is quite clear from a perusal of the provisions of paragraph (v) themselves. The value of land, when the suit falls under Clause (a), has to be artificially computed for the purpose of court-fee at fen times the revenue payable; when it falls under Clause (b), at five times the revenue payable; and, when it falls under Clause (c), at fifteen times the net profits. In all these cases, the valuation for the purposes of jurisdiction will be the market value of the property in suit. Therefore, the valuation for court-fee will be different from the valuation for jurisdiction. When, however, the valuation for court-fee is the market value of the property in question as in a case falling under paragraph (v) (e) of Section 7, the valuation for Court-fee must be the same as the valuation for jurisdiction. It is manifest from what I have already observed that, in the present case, the valuation for Court-fee will be the same as the valuation for jurisdiction, and that that valuation would be the market value of that portion of the house, the possession of which the plaintiff seeks to recover from the defendants.

1 6 . In the result, the decision in Ml. Barkatunnisa Begum's case MANU/BH/0087/1926 : AIR 1927 Pat 140 is overruled. The application is allowed with costs, hearing fee Rs. 32/-. The order of the learned Munsif, so far as it has been held therein that the valuation given by the plaintiff is adequate and proper and the court-fee paid thereon is sufficient is set aside. As he has held that the market value of the suit property is much more than Rs. 2,000/-, which is the limit of the pecuniary jurisdiction of his Court, he must return the plaint for being presented in proper Court.

Vaidynathier Ramaswami, C.J.

17. I agree.

Kanhaiya Singh, J.

18. I agree.