

APPELLATE CIVIL.

Before Mr. Justice Curgenvven and Mr. Justice
Bhashyam Ayyangar.

1930,
October 22.

CHINNAN AND TWO OTHERS (DEFENDANTS), APPELLANTS,

v.

RANJITHAMMAL (PLAINTIFF), RESPONDENT.*

Indian Easements Act (V of 1882), ss. 59 and 62—License in respect of a property—Whether annexed to it or transferable or heritable—Determination of—Continuance of licensee or representative after transfer.

A license enjoyed in respect of a property is not annexed to it and is not a transferable or a heritable right. The license is determined on the transfer of the property affected by it.

Obiter.—If the licensee or his representative continues after the transfer to exercise the privilege, he would be a mere trespasser.

APPEAL against the decree of the Court of the City Civil Judge, Madras, in Original Suit No. 79 of 1927.

T. R. Venkatesa Ayyar and T. V. Gopalaswami Ayyar for appellants.

G. Devasahayam for respondent.

The JUDGMENT of the Court was delivered by

CURGENVEN
J.

CURGENVEN J.—In the suit out of which this appeal arises the plaintiff, as owner of land—a claim not now disputed—sued to eject the defendants from a portion of it. Her case was that one Punjolai had served her predecessor-in-title as watchman, and had been permitted to put up a hut and live on a small portion of the land. The defendants are relatives of Punjolai, and have succeeded him in occupation of the suit site, and have moreover, according to the plaintiff, encroached

* City Civil Court Appeal No. 55 of 1927.

upon a further area. There are thus two questions arising for decision :—

(1) Can the plaintiff eject the defendants from the site which Punjolai was allowed to occupy ?

(2) Can she eject them from the area encroached upon ?

(1) It is agreed that Punjolai was allowed to occupy the site as a licensee. Since the license was granted the property has changed hands, the plaintiff's mother purchasing it from the Administrator-General in 1902 and settling it upon her daughter, the plaintiff, in 1922. It is not very easy to decide what is the effect upon a license in India of a transfer of ownership. Under section 59 of the Easements Act,

“ When the grantor of the license transfers the property affected thereby, the transferee is not as such bound by the license.”

and under section 62 a license is deemed to be revoked,

“ (a) when, from a cause preceding the grant of it, the grantor ceases to have any interest in the property affected by the license : ”.

These provisions do not in terms lay down that a license is revoked by a conveyance of the property. On the other hand, the English Law, which undoubtedly forms the basis of the Indian Statute, seems clear that the license terminates

“ If a man gives a licence and then parts with the property over which the privilege is to be exercised,”

says POLLOCK C. B. in *Coleman v. Foster*(1),

“ the license is gone. A license is a thing so evanescent that it cannot be transferred.”

The same view is to be found expressed in *Wallis v. Harrison*(2). There can be no doubt that the transferee is not bound by the license. But does the licensee,

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(1) (1856) 1 H. & N. 37; 156 E.R. 1108.

(2) (1888) 4 M. & W. 588; 150 E.R. 1543.

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from the moment the transfer takes place, become a mere trespasser, or should he be considered, until the contrary appears, to hold under an implied license? We do not think that it will become necessary in this case to decide that point, because, if the information given to us is correct (no evidence was taken), Punjolai died in or about 1904, and there seems no doubt that the license expired with his death. The learned City Civil Judge seems to be in error in holding that the defendants came in as licensees, if by that he means that, after Punjolai died, the license was renewed in their favour. Nor do we think, that the license granted to Punjolai became vested in them as his successors. A license is not annexed to the property in respect of which it is enjoyed, nor is it a transferable or heritable right, but is a right purely personal between grantor and licensee. Unless a different intention appears, it cannot even be exercised by the licensee's servants or agents (section 56). Accordingly, in their occupation of the plot, and especially so since the death of Punjolai, the defendants have been mere trespassers. We have been invited to hold, on the analogy afforded by a Bombay decision, *Krishnaji Ramchandra v. Antaji Pandurang*(1), that the occupation was permissive and not adverse. That case related to the successors to a life-tenant deceased, and it was held that the occupation was of that character unless and until an adverse title was expressly set up. But in two later Bombay cases, *Kantheppa v. Sheshappa*(2) and *Chandri v. Daji Bhanu*(3), it has been held that the possession of a tenant holding over is wrongful, and time begins to run against the landlord under article 139 of the Limitation Act as soon as the term of the lease expires,—a view which is not

(1) (1899) I.L.R. 18 Bom. 256.

(2) (1897) I.L.R. 22 Bom. 893.

(3) (1900) I.L.R. 24 Bom. 504.

easily reconcilable with the position that the occupation of a tenant's successors is to be deemed permissive. We need not however look further for authority than to *Vadapalli Narasimham v. Dronamraju Seetharamamurthy*(1) for the proposition that the representatives of a tenant on sufferance are mere trespassers, since they cannot be regarded as succeeding to any interest in the tenancy; and what is true of a tenant on sufferance would seem to be true also of a licensee. We think therefore that at least from the date of Punjulai's death the possession of the defendants became adverse to the owner of the property. It will now be for the lower Court to decide upon evidence whether the claim to that portion of the site is barred.

(2) With regard to the area said to have been encroached upon, a matter not dealt with at all by the Court below—it will be for decision whether the plaintiff's suit is within time.

For the trial of these questions, allowing the appeal and setting aside the decree, we remand the suit to the lower Court. Costs to abide the event.

B.C.S.

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(1) (1907) I.L.R. 31 Mad. 163.
