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July 4.

Before Sir George Knox, Acting Chief Justice, and Mr. Justice Dillon.

BUDH SINGH AND OTHERS (DEFENDANTS) v. PARBATI (PLAINTIFF).*

Act No. V of 1882 (Indian Easements Act), section 60—Land-holder and tenant — Occupation of building site in abadi—Erection of permanent building—Suit for ejectment.

The defendants were found on the evidence to be tenants at will of the plaintiff of land in the abadi, the land having been allotted to their ancestors on condition of their rendering service as patwaris. The defendants had ceased to perform the duties of patwaris, but still occupied the land, and had built houses thereon of a permanent character. *Held* on suit by the zamindar to eject the defendants, who had denied the zamindar's title, that the principles laid down in *Beni Ram* v. *Kundan Lal* (1) applied, and that there was no such conduct on the part of the zamindar as would justify the inference that she had contracted that the right of tenancy under which the defendants originally obtained possession of the land should be changed into a permanent right of occupation; neither could the defendants pray in aid section 60 of the Indian Easements Act, 1882. *Held* also that the acquisition pending the suit by one of the defendants of a share in the village in which the land in suit was situate did not give the defendants any title to retain possession of the site in the abadi from which the plaintiff was suing to eject them.

THIS was a suit for recovery of possession of certain plots of land by demolition of a house and removal of the materials. The plaintiff came into Court alleging that she was, in consequence of a partition, proprietor of a separate share in a village called Lohari, that the defendants were her tenants; that the ancestor of the defendants had been allowed to settle in the village and to occupy plot No. 3 in the khasra of the settlement of 1862 as a dwelling house, and to hold possession of plot No. 99 in the same khasra for the purposes of a shop and the tying up of their cattle as tenants; that about 10 or 11 years ago the plaintiff appointed defendant No. 1 as his karinda and put him in charge of Lohari circle, and that in his capacity of karinda the defendant had full control over the plaintiff's share in the inhabited part of the village as well as in the waste lands; that about 8 or 9 years ago the defendants encroached on plots 71 and 72, which are at the back of plot No. 99, by extending their dwelling-house in that direction. The plaintiff did not object to their doing this so long as defendant No. 1 was her karinda, but he ceased to be so, and

* First Appeal No. 127 of 1905, from a decree of Babu Madho Das, Subordinate Judge of Saharanpur, dated the 14th of September 1904.

(1) (1899) I. L. R., 21 All., 496.

the defendants denied her title to the land in question. Hence the present suit.

The defence was that the defendants and their ancestors had been in possession for over fifty years, and were not ordinary tenants at will, that the ancestors of the defendants were patwaris in this village, and with the consent of the former owners and zamindars, who were Muhammadans, and from whom the plaintiff was a transferee, they permanently took up their residence in the village; that all the plots in dispute have been in their possession as patwaris; that the plaintiff and her predecessors in title admitted the permanent nature of their possession; that the defendants and their predecessor, relying on this admission and with the knowledge and acquiescence of the plaintiff and her predecessors, built houses at a cost of Rs. 10,000, and that they were, therefore, not liable to be ejected.

The first Court (Subordinate Judge of Saharanpur) gave the plaintiffs a decree for ejectment of the defendants. The defendants appealed to the High Court.

Babu *Jogindro Nath Chaudhri*, Pandit *Moti Lal Nehru*, Maulvi *Ghulam Mujtaba* and Pandit *Mohan Lal Nehru*, for the appellants.

Mr. *Karamat Husain* and the Hon'ble Pandit *Sundar Lal*, for the respondents.

KNOX, ACTING C.J., and DILLON, J.—The suit out of which this appeal has arisen was brought by the plaintiff respondent for possession of certain plots of land by demolition of a house and removal of the materials. The plaintiff came into Court alleging that she is, in consequence of a partition, proprietor of a separate share in Lohari, and that the defendants are her tenants; that the ancestor of the defendants had been allowed to settle in the village and to occupy plot No. 3 in the khasra in the settlement of 1862 as a dwelling house and to hold possession of plot No. 99 in the same khasra for the purposes of a shop and the tying up of their cattle as tenants; that about 10 or 11 years ago the plaintiff appointed defendant No. 1 as her karinda and put him in charge of Lohari circle, and that in his capacity of karinda the defendant had full control over plaintiff's share in the in habited part of the village as well as in the waste lands; that about 8 or 9 years ago

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the defendants encroached on plots Nos. 71 and 72, which are at the back of plot No. 99, by extending their dwelling house in that direction. The plaintiff did not object to their doing this, while defendant No. 1 was her karinda, but now that he is no longer so and also because the defendants had denied her title to the land in question, she brings this suit for ejectment and possession. The defence was that the defendants and their ancestors have been living in this village for over fifty years; that they are not and never have been ordinary tenants at will; that the ancestors of the defendants were patwaris in this village, and with the consent of the former owners and zamindars, who were Muhammadans, and from whom the plaintiff is a transferee, they permanently took up their residence in the village; that all the plots in dispute have been in their possession in their capacity of patwaris; that the plaintiff and her predecessors admitted the permanent nature of their possession; that the defendants and their predecessor relying on this admission and with the knowledge and acquiescence of the plaintiff and her predecessors built houses at the cost of Rs. 10,000, and that they are not, therefore, liable to be ejected. It is of great importance to bear in mind the position that was taken up in the Court below, because at the hearing of the appeal before us it was argued by the learned advocate for the appellant that the defendants were licensees, and that it having been found by the Court below that the defendants had erected buildings at a cost of four thousand rupees, plaintiff could not, under the provisions of section 60 of the Easements Act, sue for ejectment. It was further argued that the defendant, Budh Singh, was now by our judgment in First Appeal No. 222 of 1904 (*Supra* p. 640) himself a co-sharer in the village, and that as such he was as much entitled to build on any part of the common land as plaintiff herself. It was further urged that even if we held that defendants were tenants, plaintiff had no cause of action because the defendants had not denied her title as owner. In reply it was urged for the plaintiff respondent that the position that the defendants were only licensees had been taken for the first time at the hearing of this appeal, and that it was inconsistent with the case that had been set up by the defendants in the Court below, where it had been alleged by them that they had a

permanent tenancy or grant in perpetuity; that even if defendants had originally got possession of the land as licensees from the plaintiff's predecessors, the plaintiff as transferee from them was not, under section 59 of the Easements Act, bound by such license, and finally that the evidence relied on by the plaintiff as constituting a denial of her title, did expressly and specifically challenge her rights as owner of the land in dispute. It will be seen from what we have stated above that the principal points for determination in this appeal are—(1) What was the status of the defendants' ancestor when he first settled in the village? (2) If the status be only that of an ordinary tenant, does the fact that defendant No. 1 recently (after the filing of the suit) became a co-sharer entitle him to resist the plaintiff's claim for possession? (3) Has there been such a denial of the plaintiff's title as to give her a cause of action?

To deal with these pleas in the above order. The first plea is really the important one, and the whole case turns on our finding on this plea. The plaintiff has throughout alleged, and still alleges, that the defendants are mere tenants at will. The account which she gives of their entry into the village is a probable one and is to a great extent confirmed by what the defendants say. They were invited into the village as patwaris and given a spot on which to live, on condition of their performing this duty, *i.e.* the duty of the patwari of the village. The present patwari, Bakhtawar Singh, who has been patwari for the last sixteen or seventeen years, would be manifestly in a position to know something about their status: to acquire such knowledge is part of his work as patwari and lies within the range of his ordinary duties. The defendants in cross-examination put questions to him and elicited from him that he had heard that the grandfather of Budh Singh was the patwari of the village. The defendant, Budh Singh, makes some very important statements in his evidence which will be found on page 8 of the appellant's book. When asked about his origin he replies:—"My ancestors have been living in this village for four generations. They have been living there not only from the time of Baldeo Sahai but also from the time of the Saiyids. I am a tenant of Musammat Parbati. I am a tenant of hers as regards

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the houses situate on her land, and a tenant of Sundar as regards the houses situate on her land. I do not render any service as a tenant of Parbati. I am a karinda of Musammat Parbati. I was in charge of the management of the mauza Lohari for one year."

The learned advocate for the appellants tried to explain away this evidence by arguing that the word "ryot," which occurs therein, and which has been translated "tenant" does not necessarily mean a tenant as understood in the Land Revenue and Tenancy Acts. The obvious answer to this argument is that the word as ordinarily used and ordinarily understood in these Provinces does mean an agricultural tenant: it is in our experience the word invariably used to connote the relation of tenant to a land-holder. No other word was suggested as being the word generally used for this purpose. It might be urged that there is nothing to show that Budh Singh's ancestors ever paid money rent to the zamindars, but the payment of money rent is not the only sign of a tenant. Tenants who render service to the land-holder are tenants through the service they thus render (compare section 4, clause 3, of Act No. II of 1901). Further, there is the statement made by the pleader for the defendants to be found at page 11 of the respondent's book in which he stated "that at the time of construction of the houses sought to be demolished, the defendants were not the zamindars, but that they were his (zamindar's) permanent ryots; that till the time they (defendants) purchased the zamindari they remained the ryots of the zamindar for the time being; that they were the ryots of the plaintiffs also, and that their status as a ryot was such as has been mentioned in the written statement." Considering all this evidence and all that has been urged on behalf of the defendants, we find that the defendants are tenants at will of the land in dispute. We find that the land was allotted to them on the condition of their rendering service as patwaris, and that though they and their predecessors in interest have ceased to occupy that office, they still are tenants at will. They have set up the position that they are permanent tenants, and, as such, not liable to be disturbed. It is so far as our experience goes, and the contrary has not been shown, a very unusual thing to find a person who has no other

holding in the village than a plot in the abadi a permanent tenant. Such a holding implies a grant of some kind, and it was for the appellants to have established such a grant. This they have failed to do. At the time when the suit was brought, upon our finding recorded above, the plaintiffs were, unless the defendants could show acquiescence or some similar plea, entitled to call upon the defendants to quit their holding on the ground that the purposes for which the holding was required no longer existed.

The suit out of which this appeal arises was instituted on the 7th of March 1903. On the 3rd of June Budh Singh, the principal defendant, purchased a certain specified share in Lohari.

Was the plaintiff's position in any way altered by this belated purchase on the part of the defendants? We think not. We find that she was still entitled to interfere and obtain restoration of the land to its former condition. See the ruling in *Doulut Ram* v. *Tara* (1).

But it is urged by the learned advocate for the appellants that the plaintiff or her predecessors in interest must by their conduct be held to have acquiesced in the erection of these buildings and are, therefore, equitably estopped from enforcing their removal. It has been very clearly laid down by their Lordships of the Privy Council in *Beni Ram* v. *Kundan Lal* (2) that a lessor is not restrained by any rule of equity from bringing a suit to evict a tenant, the terms of whose lease have expired, merely by reason of that tenant's having erected permanent structures on the land leased, such building having been within the knowledge of the lessor and there not having been any interference on his part to prevent it. As their Lordships point out:—"In order to raise the equitable estoppel which was enforced against the appellants by both the appellate Courts below, it was incumbent upon the respondents to show that the conduct of the owner, whether consisting in abstinence from interfering, or in active intervention, was sufficient to justify the legal inference that they had, by plain implication, contracted that the right of tenancy under which the lessees originally obtained possession of the land should be changed into a perpetual right of occupation." It is true that

(1) N.-W. P., H. C. Rep., 1866, 12. (2) (1899) I. L. R., 21 All., 496.

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this was a case in which a tenant held under a lease which had expired by the time the suit was brought, but the principles laid down appear to us to apply with equal force to the case before us. There is no doubt that the learned advocate for the appellants has felt all these difficulties which surround his position, and that they have led him to adopt the argument that the appellants were not tenants, but licensees holding under a license from the predecessors in interest of the respondent. This view of the case was never raised in the Court below. The deposition of Budh Singh himself to which we have already referred is opposed to such a view, and it is a view which up to the present has not found favour in this Court (Cf. *Punna* v. *Nazir Husain*, Weekly Notes, 1902, p. 60).

The view which we have taken, *i.e.* that the plaintiff is land-holder and the defendants are tenants at will whom she seeks to eject on the ground that they are no longer required to, and do not, perform the services for which they obtained their holding, renders it almost unnecessary to consider the third plea, but after considering the evidence we do find that on more than one instance the defendants have challenged plaintiff's title, thus giving her a cause of action and a right to call upon the Civil Courts to eject the defendants.

We accordingly dismiss the appeal, but under the special circumstances direct that each party bear his own costs throughout. This order of ours is without prejudice to the rights, whatever they may be, acquired by the appellants under their purchase in June 1903, should they hereafter proceed to partition.

Appeal dismissed.