

new trustee appointed. We allow the appeal, set aside the decree of the court below and dismiss the plaintiff's suit with costs in both courts.

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NIYAMAT ALI
v.
ALI RAZA.

Appeal decreed.

Before Mr. Justice Chamier and Mr. Justice Piggott.

RAS BEHARI LAL (PLAINTIFF) v. AKHAI KUNWAR AND OTHERS
(DEFENDANTS.) *

1914

November 20.

Act No. V of 1882 (Indian Easements Act), sections 59 and 60—Licence—Revocation—Rights of transferee of property in respect of which a licence has been granted.

Held that the rule laid down by section 59 of the Indian Easements Act, 1882, is not independent of that laid down by section 60, and does not confer upon the transferee any higher rights than those possessed by the transferor.

THE facts of this case were as follows :—

In the year 1888 one Jhingur Singh, a zamindar, gave unconditionally six plots of land situate in his zamindari to the respondent No. 1 in consideration of medical services rendered to the grandson of Jhingur Singh. The grant was made by means of an unregistered document. The respondent No. 1 entered into possession of the land, constructed buildings and two pacca wells thereon and laid out a garden. He never paid any rent or dues for the land. Jhingur Singh sold his zamindari to the appellant in 1906. The appellant sued in the Revenue Court for assessment of rent on the land granted to respondent No. 1, but his claim was dismissed. Thereupon he brought the present suit in the Civil Court for possession and for damages by way of mesne profits for three years. Both the lower courts dismissed the suit. The plaintiff appealed.

The Hon'ble Dr. Tej Bahadur Sapru (with him Babu Purushottam Das Iandon), for the appellant :—

In the absence of any registered document there could be no transfer of property, and the respondent No. 1 is a mere licensee. The appellant who is a transferee from the grantor is not, under section 59 of the Easements Act, bound by the licence and can revoke it. Section 59 is not controlled by section 60. The latter is not a modification of or proviso to section 59. The Indian Easements Act makes a difference between the grantor of the licence

Second Appeal No. 1250 of 1913 from a decree of Sri Lal, District Judge of Ghazipur, dated the 20th of August, 1913, confirming a decree of Muhammad Husain, Subordinate Judge of Ghazipur, dated the 29th of January, 1913.

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himself and a transferee from him, and there is nothing to prevent a transferee from revoking the licence under section 59. The transferee is not bound to continue the licence granted by the former owner; *Sundrabai v. Jayawant* (1). A licence, unless it is coupled with the grant of an interest in land, is revocable at any time, although the licence may have been granted for a valuable consideration; *Wood v. Leadbitter* (2). In any case the defendant should pay damages for use and occupation.

Mr. B. E. O' Connor, for the respondents:—

The licence cannot be revoked. Section 60 (b) protects the respondents. The original grantor could not revoke the licence and eject the licensee, who at considerable expense has erected constructions of a permanent character. A transferee from him can have no higher rights. No one can convey any higher title than what he himself has. All that section 59 says is that a transferee "as such" will not be bound by a licence granted by the transferor. He will be bound by the licence, as the licensee has long before the transfer executed works of a permanent character at his own expense.

The Hon'ble Dr. Tej Bahadur Sapru, in reply:—

This is not a case of a defective title; there was no flaw in the grantor's title, so no question arises as to whether he could convey to his transferee a better title than what he had himself. "As such" in section 59 means "unless he has by some act of his debarred himself from revoking it"; e.g. by encouraging the licensee to execute works of a permanent character at his own expense.

CHAMIER and PIGGOTT, JJ.—The facts of the case are that in the year 1888 one Jhingur Singh made over to the first defendant, in consideration of medical services rendered by him, some plots of land in a village. The defendant entered into possession, planted a garden and built houses on the land, laying out a considerable sum of money thereon. In 1906 Jhingur Singh sold his rights in the village to the plaintiff appellant, who at once set to work to compel the first defendant to pay rent for the land. All his attempts in the Revenue Court failed and he then brought this suit praying for proprietary possession of the land and for mesne profits for three years immediately preceding the suit.

(1) (1898) I. L. R., 23 Bcm., 397 (400). (2) (1845) 13 M. and W., 598.

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The defence was that the plots in question were given by the zamindar to the defendant in recognition of his medical services, that the defendant had spent a large sum of money on the land and that the plaintiff had no right to dispossess him. The courts below have agreed in dismissing the plaintiff's claim. In second appeal it is contended on behalf of the plaintiff that in the absence of a registered document the defendant is no more than a licensee and that the plaintiff being a transferee of the property is entitled to revoke the licence. Reliance is placed on section 59 of Easements Act, which runs as follows :—

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

The defendant, on the other hand, relies on section 60 of the Act, which, so far as it applies to the present case, is as follows :—

“ A licence may be revoked by the grantor unless (b), the licensee, acting upon the licence, has executed a work of permanent character and incurred expenses in the execution. ”

The plaintiff admits that on the facts found the case is clearly covered by section 60 of the Act ; but he maintains that section 59 lays down an independent rule which entitles a transferee of property to revoke a licence, even if the licensee acting upon the licence has executed a work of a permanent character and incurred expenses in the execution, that is to say, even if the licence could not have been revoked by the original grantor. It seems to us that the words, “ as such ” in section 59 are extremely significant and would not have appeared in the section if the intention had been to lay down an independent rule that a transferee of property might revoke a licence which could not have been revoked by the transferor. The section was probably inserted in order to meet the possibility of a plea by the licensee of property that no one but the grantor of the licence is entitled to revoke it and that if the grantor does not revoke it his transferee cannot do so. In our opinion section 59 means that, when the grantor of a licence transfers the property, the transferee is no more bound by the licence than the transferor was, and we think it impossible to construe this section as meaning that the transferee has a better right than the transferor. For these reasons we are of

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opinion that section 59 of the Easements Act does not entitle the plaintiff to revoke the licence granted to the defendant, even if he is only a licensee. We need only add that the plaintiff's claim, against the defendant as a trespasser, is clearly not maintainable. The suit was rightly dismissed. We dismiss this appeal with costs.

Appeal dismissed.

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 November, 21.

*Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir
 Parmada Charan Bannerji.*

SURAJ MAL (PLAINTIFF) v. HIRA KUNWAR (DEFENDANT.) *

Act (Local) No. II of 1901 (Agra Tenancy Act), section 199—Suit for ejection—Plea that defendant was holding under an unexpired lease—Question of proprietary title.

In a suit for ejection in a Court of Revenue the defendant pleaded that he was entitled to remain in possession under a certain *zar-i-peshgi* lease the term of which had not expired. The Court of Revenue treated the question thus raised as falling under section 199 of the Agra Tenancy Act, 1901, and directed the defendant to file a suit in the Civil Court within three months to vindicate his right. *Held* that section 199 was not applicable and the defendant was not bound to file his suit in the Civil Court within three months from the date of the order of the Court of Revenue.

THE facts of this case were as follows:—

The defendant and Behari Lal, father of the plaintiff, were co-sharers in a village. Behari Lal, who managed the property, gave certain land on *zar-i-peshgi* lease to the plaintiff. After the lease the defendant applied for and obtained partition of the village and thereafter brought a suit in the Revenue Court for ejection of the plaintiff from the plots allotted to him on the ground that the lease was a fraudulent lease. The plaintiff set up his right under the lease. The Revenue Court acting under section 199 of the Agra Tenancy Act directed the plaintiff to file a suit in the Civil Court within three months for a declaration of his right. The plaintiff preferred an appeal to the Commissioner against the order of the Assistant Collector and a further appeal to the Board of Revenue against the order of the Commissioner. It was held that the order of the Assistant Collector was a final order and no appeal lay to those courts. During the

* Second Appeal No. 32 of 1914, from a decree of A. Sabonadiere, District Judge of Aligarh, dated the 2nd of October, 1913, confirming a decree of Lalte Prasad Johri, Munsif of Haveli, dated the 28th of July, 1913.