1922

MUHAMMAD SULAIMAN v. SAKINA BIBI.

though acting in good faith, had not taken reasonable care to ascertain that the transferor had power to make the transfer.

On the facts found, it cannot, therefore, be said that the inquiry made by the defendant appellant was sufficient. In fact what he had already learnt was sufficient to put him on his guard and induce him to make further inquiries before taking a sale deed from a person who had practically got his name entered in the Municipal house-tax register either under some mistaken notion or by fraud. The plaintiff appellant explains in her statement that she was under the impression that the rent of the house was being utilized in the repairs of a certain mosque, and no adverse inference can be drawn from the fact of her having omitted to claim or realize rent from the person who was in charge of the house whilst she was away. We do not consider that section 41 of the Transfer of Property Act is applicable, and dismiss this appeal with costs.

Appeal dismissed.

Before Mr. Justice Lindsay and Mr. Justice Kanhaiya Lal.

BALJNATH AND ANOTHER (PLAINTIFFS) *v.* MUHAMMAD ISMAIL (DEFENDANT).*

1922
May, 16.

Act No. XX of 1863 (Religious Endowments Act), sections 3 and 7—Powers of committee of management of religious endowments—Lease—Renewal of lease in favour of another thekadar—Position of tenant of former thekadar refusing to vacate.

It is competent to a committee appointed under the provisions of sections 3 and 7 of the Religious Endowments Act, 1863, to grant leases of the immovable property of the trust which such a committee represents, for a period of five years.

Where one such lease for five years had expired and a fresh lease for a similar period had been granted to another thekadar, it was *held* that a person who was holding over on some kind of an arrangement with the former lessees was in the position of a mere trespasser, and it was not necessary for the new lessees to serve him with a formal notice of ejectment.

The facts of this case are fully set forth in the judgment of the Court.

Dr. *Surendra Nath Sen*, Dr. *S. M. Sulaiman* and Munshi *Baleshwari Prasad*, for the appellants.

Munshi *Narain Prasad Ashthana*, for the respondent.

LINDSAY and KANHAIYA LAL, JJ. :—We have heard counsel on both sides in this appeal and have come to the conclusion that the judgment of the lower appellate court is

* Second Appeal No. 1255 of 1920, from a decree of T. K. Johnston, District Judge of Agra, dated the 11th of September, 1920 reversing a decree of Kauleshar Nath Rai, Judge of the Court of Small Causes, exercising the powers of a Subordinate Judge of Agra, dated the 29th of June, 1920.

1922

BAIJNATH v. MUHAMMAD ISMAIL.

wrong and must be set aside and the decree of the court of first instance restored.

The suit was a suit in ejectment brought by two plaintiffs, Baijnath and Banke Lal.

It appears that there is in Agra a body known as the Islamia Committee which is entrusted with the duty of looking after the Jama Masjid.

It appears that attached to the Masjid there are certain shops and, for the purpose of providing funds for the upkeep of the mosque, it has been the practice of this Committee to make arrangements for the leasing out of these shops so as to secure a regular income.

In their plaint the plaintiffs stated that they were the lessees of these shops on behalf of the Islamia Committee under a lease executed in their favour for a period of five years with effect from the 1st of April, 1919. The allegation was that Muhammad Ismail was in possession at the time the lease was granted in favour of the plaintiffs. He was told to quit, but refused to give up possession: hence this suit for ejectment and also for damages in the way of rent for occupation.

The defendant took a number of pleas. He asserted, in the first place, that the plaintiffs had no title to bring a suit as they were not lawfully lessees on behalf of the Islamia Committee. It was pleaded that the Islamia Committee had no power to give these plaintiffs a lease for the shops for a period of five years. The defendant also denied that he was the tenant of the plaintiffs. Further, it was pleaded that, in any case, if he was deemed to be the plaintiffs' tenant, the suit was not maintainable inasmuch as no proper notice to vacate had been given to him. The court of first instance decreed the suit, but the lower appellate court has reversed the first court's decree, and the first question we have to consider is the legal position of the plaintiffs in the present case.

The view taken by the Judge was that according to Muhammadan law the *mutawalli* of a trust property has no authority to grant a lease of house property for a period exceeding one year. In the view of the learned Judge the Islamia Committee stood in the same position with regard to the property in question as a *mutawalli*. Consequently, the learned Judge was of opinion that the lease in favour of the

plaintiffs conveyed no valid title to them.

In our opinion this view of the learned Judge is erroneous.

We have to refer, in the first instance, to the Bengal Regulation XIX of 1810. That was a Regulation passed in order to secure the due appropriation of rents and produce of lands granted for the support of mosques, Hindu temples, colleges and other pious purposes, and from the preamble to the Regulation it is made to appear that this legislation was undertaken by reason of the fact that there was mismanagement or want of management on the part of persons responsible in connection with property which had been endowed for the upkeep of religious buildings such as those which we have mentioned. It was declared, therefore, by the Regulation (section 2) that the general superintendence of all lands granted for the support of mosques, Hindu temples, colleges and for other pious and beneficial purposes, was vested in the Board of Revenue and Board of Commissioners in the several districts subject to the control of these Boards, respectively.

The words of this section are as general as they can be, and it is to be noticed that the language of the section itself imports no restriction on the power of the Board of Revenue in the management of the lands referred to in the section. We may also in this connection refer to the terms of section 4 of the Regulation which lays down that in cases where buildings have fallen into decay and cannot be conveniently repaired, the Boards shall recommend that they be sold by public auction or otherwise disposed of as may appear most expedient.

This arrangement for the management of property dedicated to the support of religious institutions remained in force for many years but was ultimately put an end to by the provisions of the Religious Endowments Act XX of 1863. It was then declared that it was no longer expedient that the Board of Revenue should be entrusted with the powers of management assigned to it under the Bengal Regulation, and arrangements were made whereby the duties and powers of the Board of Revenue were to be assigned to Committees, or, in cases where there were properly appointed trustees of the property, for the transfer of the Board's powers to these trustees. The relevant section we have to consider in this connection is section 7, which lays down that " in all cases

1922

BALJNATH v. MUHAMMAD ISMAIL.

described in section 3 of the Act the Local Government shall once for all appoint one or more Committees in every division or district to take the place, and to exercise the powers, of the Board of Revenue and the local agents under the Regulations hereby repealed."

There can be no doubt that the Islamia Committee is a committee which was appointed under section 7 of Act XX of 1863, and, consequently, it must be taken that they were appointed to take the place of and to exercise the powers of the Board of Revenue.

The learned Judge, as we have said, was of opinion that when the Board of Revenue took over the duties of superintendence under Regulation XIX of 1810, it was necessarily governed by the rules of Muhammadan law relating to the powers of a *mutawalli* to lease trust property. We can find no warrant for this opinion in the language of the Regulation itself, and indeed, as we have pointed out, the language of section 4, which directed that the Board should in certain cases recommend the sale of religious buildings, is altogether inconsistent with the provisions of Muhammadan law. It seems to us that the proper view is that in taking over the duties of management of these trust properties the Board of Revenue was entrusted with all reasonable powers which might be exercised for the benefit of the trust.

We may mention, moreover, that the provisions of the Muhammadan law are not quite so rigid as the learned Judge seems to have understood. It is quite true that there was a rule laid down with regard to house property that a *mutawalli* should not in general be authorized to make a lease of such property for a period longer than one year, but there was this qualification attached to it, namely, that in all cases the Qazi might empower the *mutawalli* to grant leases for longer periods if he thought that such a grant was for the benefit of the trust estate.

If we were really called upon to decide whether the action of the Islamia Committee in leasing out this property for a period of five years to the plaintiffs was justifiable, we should have no difficulty in finding that this course is really in the best interests of the property. It could hardly be expected in modern times that any person would be willing to take a lease of a shop from which he would necessarily have to be removed at the expiry of one year. Further, it is not

to be doubted that this arrangement by which the Committee hands over the control of the property to a *thekadar* for a period of five years, is, from their point of view, a most convenient arrangement. It secures to the Committee a regular income which they can collect without any trouble. The Committee is saved the expense and trouble of maintaining a staff to collect the rents and otherwise look after the property, and, further, it seems to be quite clear that by this arrangement they are enabled to get as high a rent as they could possibly expect to obtain. The procedure seems to be that the Committee put up the *theka* for auction for a period of five years and hand over the *theka* to the highest bidder.

We are of opinion, therefore, that no question can possibly arise regarding the right of the present plaintiffs to maintain this suit in ejectment. We have read the document by which the *theka* was granted to the plaintiffs, and from that it is apparent that they have been vested with full control over the shops in dispute. They are under an obligation to pay monthly to the committee a sum of Rs. 700 and it is declared in the deed that the lessees are to be entitled to get any rents they can from the persons to whom they let out the shops. They are given full powers to eject tenants and to make all arrangements which are necessary for the renting out of the property.

The next question that arises is whether the defendant was entitled to raise a plea that he could not be ejected without notice. It is perfectly clear from the pleadings and also from other evidence in the case that the defendant has denied the right of the plaintiffs and he has been maintaining that he is a tenant not of the plaintiffs but of the Islamia Committee. As regards this latter contention, there is no evidence whatever, and it seems to us to be clear on all hands that he has never been, at any time regarding which we have any evidence, a tenant holding directly under the Committee.

It seems to be true that the defendant has been in occupation of some of these shops for a number of years. On the other hand, we have evidence to show that for the last 15 or 20 years at least the Islamia Committee has been in the habit of giving these five years' leases to *thekadars*, and the obvious inference is that the defendant must have been admitted to occupation of these shops under a grant made by the *thekadars*. We cannot for a moment allow the plea that the defendant is

1922

BAIJNATH v. MUHAMMAD ISMAIL.

a tenant holding directly from the Committee.

Then as regards the present plaintiffs whose lease, as we have said, dates from the 1st of April, 1919 it is clear on all hands that the defendant is nothing more than a trespasser. Some stress has been laid in the courts below upon a previous litigation between the defendant and previous *thekadars*. It seems that prior to the date of the lease in favour of the plaintiffs, attempt had been made by the previous *thekadars* to eject the defendant. The case was compromised under some arrangement by which the defendant vacated some of the shops in his possession and came to an understanding with the then *thekadars* that the rent for the remaining shops was not to be enhanced nor was he to be ejected from them before the 31st of March, 1919 that being the date upon which the lease of the previous *thekadars* expired.

The fact that this arrangement was made with the previous *thekadars* cannot help the defendant in the present case. The previous lessees were in control of the property only for the period of the lease which had been given to them by the Committee and they could not, either by agreement or otherwise, confer upon the defendant a right to occupy the shops beyond the period of their own *theka*, which, as we have said, came to an end on the 31st of March, 1919. The result, therefore, is that when the lease of the present plaintiffs came into existence, the defendant was in possession under some arrangement made with the earlier lessees—an arrangement which the present plaintiffs are in no way bound to recognize. The defendant cannot, therefore, be heard to say that any tenancy exists which under the law must be put an end to by the giving of a regular notice as required by the Transfer of Property Act. He has, besides, denied the title of the present plaintiffs. He is nothing more than a trespasser and he is in no way entitled to notice.

We hold, therefore, that the rights of the case are with the plaintiffs and we allow this appeal accordingly, set aside the decree of the learned District Judge, and restore the decree of the court of first instance.

Appeal decreed.