

1922

MAHARAJA
OF JAIPUR
v.
SURJAN
SINGH.

court but it does not find favour with us. It is perfectly clear that neither the Maharaja nor Amar Nath was a tenant of the house in question, nor did they claim through Ramji Sahai who was the tenant; and, further, there was then no tenancy. There can be no estoppel against them. The learned Subordinate Judge has found collusion between Ramji Sahai and Amar Nath. On the facts as he has found, there was no collusion at all. In any circumstances, the ordinary doctrine which was laid down in *Tadman v. Henman* (1), that third persons not claiming possession of land under the tenant are not estopped, has application. The Maharaja and Amar Nath, who are the sole appellants in this case, have every right to put Surjan Singh to proof of his title. They put him to proof of his title in the court below and there can be no doubt as to the fact that he has been unable to establish any title. The question of the estoppel of Ramji Sahai is of no importance in the decision of this appeal, for he has not appealed. We, therefore, decree this appeal and direct that Surjan Singh's suit against His Highness the Maharaja of Jaipur and Pandit Amar Nath stand dismissed and we direct that Surjan Singh pay his own costs in this appeal and the costs of the Maharaja of Jaipur and Pandit Amar Nath in all courts.

Appeal decreed.

Before Mr. Justice Stuart and Mr. Justice Kanhaiya Lal.

MUHAMMAD SULTAN (DEFENDANT) v. SAKINA BIBI (PLAINTIFF) AND
BAD-ULLAH (DEFENDANT).*

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May, 12.

Act No. IV of 1882 (Transfer of Property Act), section 41—Ostensible owner—
Manager left in charge of property the owner of which had gone on a
pilgrimage.

Plaintiff, who was the owner of a house in Cawnpore, went on a pilgrimage to Mecca, leaving the house in charge of an agent. When the plaintiff had been absent about three years, the agent got his own name entered on the Municipal register in place of the owner, and thereafter sold the house as his own. Plaintiff returned before the expiration of six years from her departure and sued for recovery of possession:

Held that the vendor could not be considered as an "ostensible owner" within the meaning of section 41 of the Transfer of Property Act, 1882 and the plaintiff was entitled to a decree. *Jamna Das v. Uma Shankar* (2) *Merwanji Muncherji Car a v. The Secretary of State for India in Council* (3) and *Partap Chand v. Saiyida Bibi* (4) referred to.

* Second Appeal No. 231 of 1921, from a decree of E. H. Ashworth, District Judge of Cawnpore, dated the 20th of December, 1920 reversing a decree of Kashi Prasad, Subordinate Judge of Cawnpore, dated the 13th of November, 1919.

(1) (1893) 2 Q. B., 168.

(2) (1914) I. L. R., 36 All., 308.

(3) (1915) 19 C. W. N., 1056.

(4) (1901) I. L. R., 23 All., 442.

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

Dr. S. M. Sulaiman and Dr. Kailas Nath Katju, for the appellants.

Mr. E. A. Howard and Mr. B. E. O'Connor, for the respondents.

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MUHAMMAD
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v.
SARINA BIBI.

STUART and KANHAIYA LAL, JJ. :—The dispute in this appeal relates to a house situate in Cawnpore city. The house belonged to Musammat Sakina, the plaintiff respondent. In the beginning of 1912 she went to Mecca, leaving the house in charge of a relation of hers named Bad-ullah. Before leaving for Mecca, she had executed a will by virtue of which she had bequeathed an interest in that house to Bad-ullah on her death. At Bombay she got herself re-married to a person named Nur Jamal and went with him to Mecca where she stayed for two years. On her return she went to Delhi where she stayed with her husband.

Meanwhile an application was made by Bad-ullah to the Municipal Board, Cawnpore, on the 31st of May, 1915 stating that he was not aware of the whereabouts of Musammat Sakina who had gone on pilgrimage, nor certain whether she was dead or alive, and praying that the house might be entered in his name, as he was her only heir. This application was granted and the name of Bad-ullah was entered in the Municipal house-tax register in the place of Musammat Sakina. On the 30th of September, 1917 he sold the house for Rs. 2,500 to the defendant appellant, and the question for consideration in this appeal is whether the plaintiff is bound by that sale. The court of first instance found that the defendant appellant had taken reasonable care to ascertain the title of Bad-ullah before taking a sale deed from him and that he had acted in good faith and purchased the house for valuable consideration. The lower appellate court, however, held that Bad-ullah was not the ostensible owner of the house with the express or implied consent of Musammat Sakina and the sale was not, therefore, binding on her. That finding is challenged here. On the question as to whether the defendant appellant had made reasonable inquiries before purchasing the property, the finding of the lower appellate court was that he had done so, and stress is laid on behalf of the defendant appellant on that finding as militating against the decree which the lower appellate court has passed in favour of the plaintiff.

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" "
SAKINA BIBI.

It appears from the statement of the defendant appellant himself that he was aware that Musammat Sakina was originally the owner of the disputed property. He had ascertained that fact when he examined the Municipal house-tax register. Had he made a further inquiry, he would have learnt that the name of Bad-ullah was substituted in her place by means of an application in which Bad-ullah had admitted that he was not aware whether Musammat Sakina was dead or alive. Musammat Sakina had been absent from Cawnpore for not more than six years. The defendant appellant states that he had made inquiries from certain neighbours and was led by them to believe that Bad-ullah was the owner of the house, but that inquiry could hardly be treated as sufficient in view of the fact that he knew that Musammat Sakina was the original owner of the house and no satisfactory information was available as to whether she had actually died. The presumption of death could not have been made before the lapse of seven years. Bad-ullah was only the manager of her property, and, as pointed out in the case of *Jamna Das v. Uma Shankar* (1), the possession of a manager cannot be treated as sufficient evidence of ostensible ownership with the consent, express or implied, of the real proprietor, within the meaning of section 41 of the Transfer of Property Act. The entry of the name of Bad-ullah in the house-tax register was only made for the purpose of assessment and collection of house-tax and was not intended for registering title, and as their Lordships of the Privy Council say in *Merwanji Muncherji Cama v. The Secretary of State for India in Council* (2), such an entry is not always enough to induce a person to think that the person whose name was entered was the proprietor and had a right to sell the property which was entered in his name. In *Partap Chand v. Saiyida Bibi* (3) a Government official owning zamindari property had caused that zamindari property to be recorded in the revenue papers in the names of his young sons and the latter subsequently sold portions of the property and mortgaged others. The vendee and the mortgagee had satisfied themselves that the property had been recorded for some years in the names of the sons but had made no further inquiries as to whether the property had really belonged to the sons or not. It was held by this Court that the transferee,

(1) (1914) I. L. R., 36 All., 308.

(2) (1915) 19 C. W. N., 1056.

(3) (1901) I. L. R., 23 All., 442.

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 ejection.

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.