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PREMO,
MUSAMMAT
v.
SHBO NATH,
PANDEIT

*Srivastava
and Smith,
J.J.*

to part of the trust property. Besides, she was mainly responsible for the mismanagement of the trust which necessitated the present suit. In view of all these circumstances we feel that if we appoint her as a trustee it would introduce a discordant element in the board and would only lead to friction in the management of the trust. We think therefore that the learned District Judge has exercised a wise discretion in excluding her from the board of trustees.

The result therefore is that the appeal fails and is dismissed with costs.

Appeal dismissed.

APPELLATE CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava and
Mr. Justice H. G. Smith*

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October, 18

SHYAM LAL AND OTHERS (PLAINTIFFS-APPELLANTS; v.
MUNNE AND OTHERS (DEFENDANTS-RESPONDENTS) *

Easements Act (V of 1882), section 60—Work of a permanent character, meaning of—Residential house having a tiled roof, if a work of a permanent character—Licence, if can be revoked by payment of compensation.

Held, that the expression "a work of a permanent character" as used in section 60 clause (b) of the Easements Act is intended to denote some work which is not merely of a temporary nature. A residential house constructed by the licensees in which they have been residing for a long number of years, must be held to be a work of a permanent character, in spite of its having a tiled roof which would presumably require to be renewed from time to time. *Nasir-ul-zaman Khan v. Azim Ullah* (1), relied on.

Held further, that section 60 of the Indian Easements Act contains a definite statutory provision that a licence cannot be revoked when the licensee acting upon the licence has executed a work of a permanent character and incurred expenses

* Second Civil Appeal No. 337 of 1931, against the decree of Er. Chaudhri Abdul Azim Siddiqi, Additional Subordinate Judge of Lucknow, dated the 30th of September, 1931, reversing the decree of M. Munir Uddin Ahmad Kirmani, Munsif, Lucknow District, dated the 31st of March, 1931.

(1) (1906) I. L. R., 28 All., 741.

in the execution. The Act does not contain any provision allowing revocation of licence in such a case on payment of compensation. *Bhukhan Singh v. Jagardeo Koeri* (1), relied on. *Surnomoyee Peshakar v. Chunder Kumar Das* (2), and *Moti Lal Rai v. Kalu Mondan* (3), referred to.

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 SOHAM LAL
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Messrs. *Ghulam Hasan* and *Iftikhar Husain* for the appellants.

Mr. *Nazir Uddin Siddiqi* for the respondents.

SRIVASTAVA and SMITH, JJ. :—This is a plaintiffs appeal against the judgment and decree dated the 30th of September, 1931 of the learned Additional Subordinate Judge of Lucknow reversing the judgment and decree of the Munsif, South, Lucknow, dated the 31st of March, 1931. It arises out of a suit for possession.

The case for the plaintiffs may be briefly summarised as follows :

Plaintiffs Nos. 3 to 6 owned a plot of land No. 497 in mohalla Nayagaon, Lucknow. The defendants are living on a portion of the said plot in a house constructed by them with a tiled roof. Plaintiffs Nos. 3 to 6 executed a sale deed in respect of No. 497 in favour of the father of plaintiffs Nos. 1 and 2. The plaintiffs asked the defendants to remove their materials and building from the said land and hand over possession thereof to the plaintiffs, but the defendants did not pay any heed to this. The plaintiffs therefore brought the present suit for recovery of possession over the land on which the tiled construction of the defendants lies. They also prayed that the defendants be ordered to remove the tiles and materials from the said land. In the course of oral pleadings, it was stated on behalf of the plaintiffs that the defendants were in possession of the land in suit as licensees. The defendants claimed to be the owners of the land and of the house standing thereon. They denied the alleged licence and pleaded that the plaintiffs had never been in possession of the land in suit within limitation. On these pleadings

(1) (1926) 98 I. C., 814.

(2) (1910) 12 C. L. J., 443.

(3) (1913) 19 C. L. J., 321.

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the parties went to trial, but curiously enough the plaintiffs appear in the course of trial to have led evidence to show that the defendants held possession of the land in suit as tenants on payment of certain annual rent.

The learned Munsif relying on this evidence, held that the defendants were tenants of the plaintiffs who had been constructively in possession of the land in suit. Thus he was of opinion that the plaintiffs, though they had failed to prove their ownership, had succeeded in making out their possessory title. He accordingly decreed the plaintiffs' claim. On appeal, the learned Additional Subordinate Judge pointed out that before the institution of the present suit the plaintiffs had filed a suit for ejectment of the defendants, alleging them to be tenants under a *sarkhat* of January, 1912. This suit was dismissed some three months before the institution of the present suit. He held that apart from the question of *res judicata*, the learned Munsif ought not to have made out a case of tenancy in favour of the plaintiffs when the plaintiffs themselves had never set it up, either in their written or oral pleadings. He therefore held that the plaintiffs ought to be confined to the case of licence set up by them. He did not think it necessary to record any definite finding on the question of licence because he was of opinion that, even on the assumption that the defendants were licensees, the suit was barred by reason of the provisions of section 60, clause (b) of the Indian Easements Act, as the constructions made by the defendants on the land in suit were works of a permanent character and the defendants had incurred expenses in their execution. As a result of these findings, he allowed the appeal and dismissed the plaintiffs' suit.

It has been contended on behalf of the appellants that the constructions existing on the land are not works of a permanent character, and that in the absence of any evidence on behalf of the defendants to prove that the house constructed by the defendants was a work of a permanent character, the learned Additional Subordinate

Judge should not have disposed of the case in the way he did. The plaintiffs in paragraph 5 of their plaint have themselves alleged that the house existing on the land had been constructed by the defendants, and that it was a construction with a tiled roof. The plaintiffs have, therefore, no ground of complaint if the lower appellate court has based its conclusion on the plaintiffs' own admission. As regards the question whether such constructions can be regarded as a work of a permanent character within the meaning of section 60, clause (b), or not, the view adopted by the lower appellate court is fully supported by the decision of the Allahabad High Court in *Nasir-ul-zaman Khan v. Azim Ullah* (1). We agree with the opinion expressed in this case that the expression "a work of a permanent character" as used in section 60 clause (b) is intended to denote some work which is not merely of a temporary nature. Thus, the defendants having constructed a residential house in which they have been residing for a long number of years, it must be held to be a work of a permanent character, in spite of its having a tiled roof which would presumably require to be renewed from time to time.

Next it was argued that, even though the house may be regarded as a work of a permanent character, the plaintiffs should be given a decree for possession on payment of necessary compensation to the defendants. Reliance has been placed on the decisions of the Calcutta High Court in *Surnomoyee Peshakar v. Chunder Kumar Das* (2) and *Moti Lal Rai v. Kalu Mondan* (3) in support of this contention. These decisions cannot help the plaintiffs because the Indian Easements Act is not in force in Bengal, and questions relating to licence arising in that Province have to be decided with reference to the English law. Section 60 of the Indian Easements Act contains a definite statutory provision that a licence cannot be revoked when the licensee acting upon the licence has

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executed a work of a permanent character and incurred expenses in the execution. The Act does not contain any provision allowing revocation of a licence in such a case on payment of compensation. The same view was taken by a learned Judge of the Allahabad High Court in *Bhukhan Singh v. Jagardeo Koeri* (1). If we may respectfully say so, we are in entire agreement with the view expressed in this case as follows :

“The provisions of clause (b) of section 60 are clear and specific and in the face of such provisions, the courts in this Province cannot allow a licensor to revoke the licence, on condition of his making compensation to the licensee for loss incurred by the revocation of the licence.”

Lastly, it is contended that the plaintiffs should be allowed to substantiate their claim on the ground of the alleged tenancy. The learned Additional Subordinate Judge refused to entertain this case because the parties never went to trial on that question. We can see no reason to disagree with the opinion of the learned Additional Subordinate Judge, and find ourselves unable to allow this case to be set up in second appeal.

The result, therefore, is that the appeal fails and is dismissed with costs.

Appeal dismissed.

(1) (1926) 98 I. C., 814.