

It is clear, therefore, that the suit is entirely misconceived and is not maintainable in the form in which it has been brought.

At the close of the arguments we enquired from Mr. Shamair Chand if he wanted to amend the plaint; but, after consultation with his client, he stated that he did not. In these circumstances, the only order which we can pass is to dismiss the suit.

I would, therefore, accept the appeal, set aside the judgments and decrees of the Courts below and dismiss the suit with costs throughout.

AGHA HAIDAR J.—I agree.

N. F. E.

AGHA HAIDAR J.

Appeal accepted.

APPELLATE CIVIL.

Before Tek Chand and Coldstream JJ.

MUNICIPAL COMMITTEE, LAHORE,

(PLAINTIFF) Appellant

versus

MIRAN BAKHSH (DEFENDANT) Respondent

Civil Appeal No. 2724 of 1926.

Punjab Municipal Act, III of 1911, section 47—Lease of Municipal Land—void for want of formal document in writing—liability of defendant-occupier to compensate Municipality for benefit received—Indian Contract Act, IX of 1872, section 70—Measure of compensation.

A suit by a Municipal Committee for rent on the basis of an alleged lease of property belonging to the Municipality was dismissed owing to the absence of any formal document in writing as required by section 47 of the Punjab Municipal Act. This plea had been taken in the defendant's written statement, and in reply the plaintiff had pleaded in his replication that even if the contract could not be legally enforced, the defendant, having entered into possession on the basis of

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the said contract and having derived benefit therefrom, was liable 'in justice' to compensate the plaintiff.

Held, on appeal, that although the plaintiff was not entitled to enforce the contract, it could, under section 70 of the Contract Act, claim compensation for the loss which had been caused to it by the use and occupation of the premises by the defendant for the period in question.

Municipal Committee, Gujranwala v. Fazal Din (1), *Secretary of State v. G. T. Sarin & Company* (2), *Bhandari Bros. v. Municipal Committee* (3), and Lahore High Court Civil Appeal No. 2360 of 1928 (unpublished), relied upon.

Held also, that, having regard to the fact that the defendant continued in possession of the premises for the entire period in question, and that there was no evidence on the record that there was a fall in the market rate during that period, the proper measure of compensation was the amount for which the defendant had taken the property on lease, but that a deduction should be made in respect of diminution in the rental value of such portions of the property as had been brought about by the plaintiff's own action.

First appeal from the decree of Agha Khan Ahmad Khan, Subordinate Judge, 1st class, Lahore, dated the 31st July, 1926, dismissing the plaintiff's suit.

MOOL CHAND and MOHAMMAD LATIF, for Appellant.

MEHR CHAND MAHAJAN and BASANT KRISHAN, for Respondent.

TEK CHAND J.

TEK CHAND J.—On the 7th of February 1922 the Municipal Committee of Lahore held a public auction for the lease of certain properties, situate outside Shahalmi Gate, for a period of three years, commencing the 1st of April 1922 and ending the 31st of March, 1925. The highest bid was by Miran Bakhsh,

(1) (1930) I. L. R. 11 Lah. 121. (2) (1930) I. L. R. 11 Lah. 375, 387.
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defendant, for Rs. 9,900 *per annum*. He, however, failed to deposit forthwith 1/4th of one year's rent, as required by the conditions of the auction. The "lease" had, therefore, to be re-auctioned and was knocked down in favour of Umar Din at Rs. 9,800 *per annum*. Some time later, Miran Bakhsh applied to the Municipal Committee for permission to take over the lease from Umar Din on the terms on which it had been granted to him. The Municipal Committee agreed to this on the 31st of March 1922, and on the 1st of April Miran Bakhsh got possession of the properties in question. No document was, however, executed, as it should have been under section 47 of the Punjab Municipal Act. The defendant continued to make part payments towards the rent. Eventually disputes arose between the Committee and him, and on the 18th of August 1924 the Committee instituted a suit for recovery of Rs. 7,699 on account of the unpaid portion of the rent from the 1st of April 1922 up to the 30th of September 1924. In the plaint a claim for future interest at 6 *per cent. per annum* from the date of institution of the suit till realization was also made.

The suit was resisted on various grounds, it being pleaded, *inter alia*, that as no formal writing had been executed as required by section 47 of the Punjab Municipal Act, there was no valid contract between the parties, which could be enforced in a Court of law. It was further pleaded that the defendant had not been put in possession of the entire property, which was alleged to have been leased out to him, and that owing to various acts on the part of the Municipal Committee and its employees the defendant was not able to realize the full rent of the premises from

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his sub-tenants and that for this reason a reduction ought to be made in the amount due by him to the Committee.

The Municipal Committee filed a replication in which it was averred that the Committee had sent several notices to the defendant to execute the document but that he had contumaciously refused to do so. It was also pleaded that in case the Court found that the suit for rent was not maintainable on the alleged lease, the plaintiff was still entitled 'in justice' to the amount claimed, as the defendant had had the use and occupation of the properties in question for the entire period and had derived benefit therefrom. The plaintiff traversed the plea that possession of the entire property had not been given to the defendant and denied that the rental value of the property had been diminished by the acts of the Committee or its employees.

On these pleadings the trial Court framed various issues and after recording voluminous evidence decided all the issues against the defendant, except the one relating to the validity of the contract under section 47 of the Municipal Act. On that point it held that the contract between the parties should have been reduced to writing and signed by the President or the Vice-President of the Committee and one other member and the Secretary, and that as this had not been done the contract was invalid. It accordingly dismissed the suit, without recording any clear finding on the alternative claim on equitable grounds, which had been put forward in the replication. The Municipal Committee has preferred a first appeal to this Court and we have heard elaborate arguments by counsel for both sides.

Mr. Mool Chand for the Committee has not disputed the correctness of the finding of the lower Court that under section 47 of the Municipal Act the contract between the parties should have been reduced to writing and signed by the officials of the Committee as prescribed therein. He has also conceded that, in view of the clear wording of the section and the various rulings of the High Courts, the suit for rent as such cannot be maintained. He has, however, contended that the defendant, having occupied the premises for the entire period for which the suit has been brought and having derived benefit therefrom is, under section 70 of the Indian Contract Act, bound to make compensation to the Committee in respect of the property concerned. In support of this contention the learned counsel has relied on four recent rulings of this Court, *Municipal Committee, Gujranwala, v. Fazal Din* (1), *Secretary of State v. G. T. Sarin & Company* (2), *Bhandari Bros. v. Municipal Committee* (3), and C. A. No. 2360 of 1928.

Mr. Mehr Chand for the respondent has not questioned the correctness of these rulings, but he has argued that the claim as laid in the plaint was one for rent based on contract and that the plaintiff should not be allowed in appeal to change the entire character of the suit by claiming the amount on equitable considerations. After examining the pleadings, I am of opinion that this contention has no force. It is no doubt true that the alternative claim for compensation was not mentioned in the plaint, but the replication filed by the plaintiff on the 15th of December, 1924, clearly stated that, even if the contract could not be legally enforced, the defendant having

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entered into possession on the basis of the said contract and having derived benefit therefrom was liable "in justice" to compensate the plaintiff. It is also clear from the judgment that arguments on the alternative claim were addressed to the Lower Court. I would, therefore, hold that, while the plaintiff is not entitled to enforce the contract, it can claim compensation for the loss which has been caused to it by the continuance of the defendant in possession of the premises for the period in question.

Mr. Mehr Chand re-agitated before us the question covered by issue No. 6, which had been found by the lower Court against him, namely, whether possession of the entire property in question was delivered to the defendant. He contended that in addition to the 20 quarters and one *thara*, possession of which was admittedly given to the defendant, certain *patris* and another *thara* near the temple were also included in the properties, the lease of which was auctioned on the 7th February 1922. After examining the oral and documentary evidence on the record, I am of opinion that this contention is without force and that the finding of the lower Court is amply borne out by the record, that the *patris* and the second *thara*, now alleged by the defendant as having been included in the lease, were not so included.

The next point for determination is the amount of compensation to which the plaintiff is entitled under section 70 of the Indian Contract Act. Having regard to the fact that the defendant continued in possession of the premises for the entire period in question and that there is no evidence on the record that there was a fall in the market rate during this period, I am of opinion, that the proper measure of compensation is the amount for which the defendant

had taken the property on lease. It is, however, apparent from the record that the rental value of four of the quarters, of which possession had been taken by the defendant, was considerably diminished by reason of the erection of certain electric poles by the Municipal Committee in front of these quarters sometime about the end of 1922 or in the beginning of January 1923. The fact that these poles were erected is admitted by the Municipal employees, who appeared as witnesses for the plaintiff. The evidence produced by the defendant clearly shows that the rent, which each of these four quarters fetched, was reduced approximately by Re. 1-0-0 a day for each quarter. Taking that this diminution was caused some time early in January and it continued till the end of September 1923, the amount payable to the plaintiff must be reduced by $(4 \times 30 \times 21 =)$ Rs. 2,520. The plaintiff is, therefore, entitled to a decree for Rs. 7,699 *minus* Rs. 2,520 or Rs. 5,179 as compensation for the use and occupation of the premises by the defendant during the period in question.

The claim for future interest from the date of the institution of the suit till realization, though made in the plaint, was not seriously pressed before us and is obviously unsustainable.

For the foregoing reasons, I would accept the appeal and pass a decree in favour of the plaintiff-appellant against the defendant-respondent for Rs. 5,179 leaving the parties to bear their own costs throughout.

The cross-objections necessarily fail and are dismissed.

COLDSTREAM J.—I agree.

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COLDSTREAM J.

Appeal accepted.

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