ORIGINAL CIVIL.

Before Mr. Justice Stephen.

EBRAHIM ISMAIL TIMOL

v.

PROVAS CHANDER MITTER.*

1908
Aug. 5

Jurisdiction—Suit for land—Suit by lessee for rents and profits during absence —Lessor in possession—Letters Patent, 1865, *cl. 12.*

A, a lessee of certain premises outside the jurisdiction of the Court, having vacated the premises on account of being sentenced to a term of imprisonment, on his release brought a suit against the lessor, who had *in the meantime* taken over possession, claiming the rents and profits arising therefrom pending the termination of the lease, and further claiming that the lessor during his absence became trustee for him.

At the hearing the lessor contended there was no cause of action as this was a suit for land.

Held, that, inasmuch as the lessee was seeking to obtain possession of the premises by claiming the rents and profits from the lessor, he sought to do something, which directly affected the property, and therefore this was a suit for land outside the jurisdiction of the Court and must be dismissed.

Delhi and London Bank v. *Wordie* (1), *Kellie* v. *Fraser*, (2) and *Hara Lal Bannerjee* v. *Nitambini Debi* (3) followed. *Rungo Lall Lohea* v. *John Wilson* (4) distinguished.

ORIGINAL SUIT.

THIS was a suit brought by the plaintiff, Ebrahim Ismail Timol, for an account to be taken by the High Court of certain sums of money due to him by the defendant, Provas Chandra Mitter, under a lease, and for damages resulting from the wrongful removal of certain stables; and further that the lease and the rights of the plaintiff as lessee be declared valid and subsisting, and that the plaintiff be entitled to receive the rents and profits of the premises pending the termination of the lease, or that in the alternative the defendant do pay

* Original Civil Suit No. 462 of 1908.

(1) (1876) I. L. R. 1 Calc. 249.
(2) (1877) I. L. R. 2 Calc. 445.
(3) (1901) I. L. R. 29 Calc. 315.
(4) (1898) I. L. R. 26 Calc. 204; 2 C. W. N. 718.

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to the plaintiff the sum of Rs. 1,500 with interest at 4 per cent. per annum.

The facts were shortly as follows :—

By an Indenture of lease, dated the 2nd November 1905, and made in Calcutta between the defendant as lessor and the plaintiff as lessee in consideration of a monthly rent of Rs. 220, the defendant demised and leased to the plaintiff a dwelling house and premises No. 38, Elgin Road, in the town of Calcutta for a term of 15 years from the 15th September 1905 until the 30th September 1920, subject to certain covenants contained in the lease, of which one provided, that the plaintiff should deposit with the defendant the sum of Rs. 1,500 to carry interest at 4 per cent. per annum as security for the due payment of the rent reserved. Thereafter the plaintiff paid to the defendant the sum of Rs. 1,500 by way of security and took possession of the premises about the 15th September 1905. He paid the defendant the rent reserved by the lease until the month of May 1906, having previous to that date erected upon the premises certain tiled stables at a cost of Rs. 3,500. The plaintiff in his plaint stated that on the 12th August 1906 he received from the defendant a letter demanding payment of the rent due for the said premises for the month of July 1906, and as he was himself unable to attend to business he immediately handed the letter to his uncle, D. L. Barmanic, and instructed him to look after the matter, but he found on entering the premises on the 16th August 1906, that the defendant had leased it to a third party at a rental of Rs. 400, and had removed the stables erected by the plaintiff and sold the materials used in erecting the stables.

The plaintiff also pleaded leave to institute his suit under clause 12 of the Charter.

The defendant in his written statement denied that the plaintiff paid rent up to May 1906, and alleged that he only paid rent up to March of that year long after it became due.

Thereafter, being unable to realize rent from the plaintiff, the defendant brought a suit in the Small Cause Court of Sealdah in July 1906 for the recovery of rent due for April,

May and June 1906, and obtained a decree on the first of August 1906. The plaintiff after institution of the Small Cause Court suit paid up Rs. 220 and the defendant has given him credit for that amount. The defendant then took out execution against the plaintiff and found the premises abandoned by the plaintiff and all furniture removed. At about this time the defendant heard that the plaintiff was convicted of criminal breach of trust and sentenced to a long term of imprisonment, and he also found that the water pipes had disappeared from the premises, and that the electric fittings had been damaged. After taking possession of the premises the defendant found that the plaintiff had erected tiled huts on the tennis Court without his consent, and contrary to the terms of the lease. The huts were of small value, and the defendant submitted that they became his property absolutely under the provisions of the Transfer of Property Act.

The defendant denied the statement that he relet the premises Rs. 400, but alleged that he gave a fresh lease of the premises to a Mr. Goodwin for a term of 3 years and 5 months at a monthly rent of Rs. 265. Subsequently the defendant removed the tiled huts and sold them for Rs. 70, the best available price at the time. The defendant submitted that, inasmuch as the plaintiff allowed the rent to fall in arrear over 21 days, the lease thereby terminated and was no longer subsisting. The defendant further submitted that on the alternative claim of Rs. 1,500 with interest, the following was a summary of what was due to him by the plaintiff. *a.* Amount due on decree in the Small Cause Court with interest at 6 per cent.—Rs. 516-5-9. *b.* Arrears of rent for the month of July, 1906, Rs. 220. *c.* The sum of Rs. 220 being damages sustained by the defendant for the premises remaining vacant during August 1906. *d.* The sum of Rs. 896-7-9, the sum which the defendant had to spend to repair the premises on account of the plaintiff's abandonment of the premises. *e.* The sum of Rs. 660, which the defendant had to pay for brokerage, when the premises were let out to the plaintiff.

The defendant stated that he was entitled to a set off of the items abovementioned amounting to Rs. 2,597-15 against the

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sum of Rs. 1,500 with interest at 4 per cent. and submitted that there should be a decree in his favour for the difference.

Mr. Pugh and *Mr. Stokes* for the plaintiff. This is not a suit for land, but for money only. *Runga Lall Lohea* v. *John Wilson* (1), *Kellie* v. *Fraser* (2), *Delhi and London Bank* v. *Wordie* (3), *Hara Lal Bannerjee* v. *Nitambini Debi* (4), referred to. I shall be satisfied with a personal order against the defendant The mere fact that the suit is about land is not the test, the real question being, is it a suit for dispossession of land ? *Land Mortgage Bank* v. *Sudurudeen Ahmed* (5). The defendant never received the money for rent at the house of the plaintiff, but always in Calcutta. The only case against me is *Hara Lal Bannerjee* v. *Nitambini Debi* (4), where Harington J. held that a suit for administration was a suit for land.

The Advocate-General (*Hon'ble Mr. S. P. Sinha*) (with him, *Mr. Chakravarty* and *Mr. S. R. Dass*) for the defendant. I admit that a suit for rent is not a suit for land, but this is not a suit for land. The prayer in the plaint shows that he is seeking to obtain such title as he can have to the land. The suit is not merely for a declaration, but is a suit to obtain control and possession of the house itself. The plaintiff under his plaint claims that, inasmuch as the defendant took over possession of the house, he is a trustee for the plaintiff, and that he is to receive the rents and profits for the plaintiff. He does not claim the surplus rents and profits, but claims to be entitled to the rents and profits. *Rungo Lall Lohea* v. *John Wilson* (1) distinguished. See Foa's Landlord and Tenant, page 397. This case is similar to *Delhi and London Bank* v. *Wordie* (3). The words in clause 12 of the Charter mean the same thing as section 16 (*a*) (*b*) (*c*) (*d*) (*e*) and (*f*) of the Code. *Nalum Lakshimikantham* v. *Krishnasawmy Mudaliar* (6) referred to, Section 16 of the Code shows what really is a suit for land. *Kellie* v.

(1) (1898) I. L. R. 26 Calc. 204; 2 C. W. N. 718.
(2) (1877) I. L. R. 2 Calc. 445.
(3) (1876) I. L. R. 1 Calc. 249.
(4) (1901) I. L. R. 29 Calc. 315.
(5) (1892) I. L. R. 19 Calc. 358, 360. 362.
(6) (1903) I. L. R. 27 Mad. 157.

Fraser (2). The nature of the suit is really to recover possession and comes clearly within clause 12 of the Charter.

STEPHEN J. In this case the plaintiff claims certain reliefs under the following circumstances :—

On the 2nd of November 1905 he took from the defendant a lease of a house and premises 38, Elgin Road, which are admittedly beyond the limits of the local Original Jurisdiction of this Court. The lease was for 15 years from the 15th of September 1905. It contained two provisions with which we are concerned ; the first was an ordinary covenant for re-entry by the landlord in case of non-payment of rent, the other provision gave him a right to enter on the premises on their being vacated by the tenant, and enabled him in that case to relet the premises, the tenant remaining liable on his covenants, and in particular being liable for any deficiency of the rent on re-letting by the landlord. What occurred was that the rent for the months of April, May and June fell into arrears, and the landlord obtained a decree in respect of these arrears in the Small Cause Court in August of that year. At about the same time the premises were vacated by the defendant on his being committed to jail in consequence of a conviction before the criminal sessions of this Court. The plaintiff's chief contention is that the defendant entered on the premises under the second of the covenants that I have mentioned, and that the lease has not been terminated, but the defendant is a trustee for his benefit in respect of the profits that he has received in respect of these premises and must account to him for any rent he has obtained from the premises exceeding the amount which the plaintiff has undertaken to pay. He also claims damages for stables, which he says the defendant has pulled down, and alternatively, if the lease is terminated, a return of Rs. 1,500, which he deposited with the defendant as security for rent.

On these facts the defendant has taken a preliminary objection that this is a suit for land or immoveable property outside the local limits of the jurisdiction of this Court, and can-

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not therefore be tried by this Court under the powers conferred by clause 12 of the Letters Patent. To decide this question I must in the first place look to the prayers of the plaint to see what exactly are the reliefs claimed. Of these I need consider only the first four. By the first and second the plaintiff asks for an account of money due to him under the lease, by the third for a declaration that the lease and the rights of the lessee are valid and subsisting, and by the fourth for a declaration that he is entitled to the rents and profits of the premises pending the termination of the lease.

The subject matter of the first and second of these is money in the hands of the defendant as trustee for the plaintiff and is based on events that have occurred. The subject matter of the third and fourth must apparently be the premises in question and the rents and profits arising therefrom. The granting of the third and fourth prayers will enable the plaintiff to recover rents from any tenant of the house, and will thus put the plaintiff into possession of the house by receipt of its rent. The law applicable to the case may be gathered from several decisions in this Court. In the first place a comparison may usefully be made between the two cases of the *Delhi and London Bank* v. *Wordie* (1) and *Keltie* v. *Fraser* (2). The first of these was a suit to have certain trusts carried into effect, and its express purpose is stated by Garth C. J. to be to compel the sale of certain land not within the local jurisdiction of the Court. It was held that the case depended on whether the suit was "brought substantially for land, that is for the purpose of acquiring title to, or control over, land" within the meaning of clause 12: and on the facts it was decided that it was and that the Court had no jurisdiction.

The second case, which is one of two chiefly relied on by the plaintiff, was an application to file an award, by which a dissolution of a partnership was awarded, and it was ordered that a tea garden at Darjeeling, the property of the partners, should be sold. It was held a suit to effect what was ordered by the award could not have been a suit for land, because

(1) (1876) I. L. R. 1 Calc. 249. (2) (1877) I. L. R. 2 Calc. 445.

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the object of the suit would have been to enforce a dissolution of the partnership on suitable terms and not to obtain possession of or acquire a title to the tea garden ; and that the application was therefore within the jurisdiction of the Court. The case of *Rungo Lall Lohea* v. *Wilson* (1) is also relied on by the plaintiff. There the suit was for rent of premises in Howrah. The defendant did not deny that they were tenants of the premises, and were liable to pay rent for them. What was disputed was the terms of the tenancy and the right of the plaintiffs in respect of it. No relief was asked for in respect of the land, and it was not sought to deal with it in any way. It was accordingly held that this was not a suit for land under clause 12. In *Hara Lall Bannerjee* v. *Nitambini Debi* (2) the plaintiff sued for construction of a Will, for administration of the property demised, and for the immediate possession of immoveable property at Hooghly. Following the decisions in *Delhi and London Bank* v. *Wordie* (3) and *Kellie* v. *Fraser* (4), it was held that the suit was for land. The facts of this case seem to me to show that as far at least as the third and fourth prayers are concerned the suit is one for land. This appears to me certainly so in view of the case of the *Delhi and London Bank* v. *Wordie* (3), and I see no reason at all for not following that ruling in consequence of anything that is found in the decision in *Kellie* v. *Fraser* (4). Indeed the difference between these two cases seems to me to show that this is certainly a suit for land. I was at first struck with the case of *Rungo Lall Lohea* v. *Wilson* (5), but on looking into the facts of that case I think that it is abundantly clear that it is entirely different from the present one. What the plaintiff is seeking to do is to do something, which will directly affect the property, namely, to obtain possession of it by receipt of rent. Under these circumstances I hold that this is a suit for land outside the jurisdiction of this Court and consequently that it cannot be brought as far as prayers 3 and 4 are concerned.

(1) (1898) I. L. R. 26 Calc. 204 ; 2 C. W. N. 718.

(2) (1901) I. L. R. 29 Calc. 315.

(3) (1876) I. L. R. 1 Calc. 249.

(4) (1877) I. L. R. 2 Calc. 445.

(5) (1898) I. L. R. 26 Calc. 204 ; 2 C. W. N. 718.

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It then remains to be considered whether I can entertain the prayer for an account by the defendant, and the prayer for damages in respect of the pulling down of the stables referred to by the plaintiff. It seems to me clear that I cannot entertain either of these two prayers. The plaintiff alleges that his lease is still in existence and neither of the questions that I have referred to can be determined till this point is decided.

The plaintiff alleges that the defendant is for some purposes his trustee. This again depends entirely upon what has taken place under the lease. The result is that this suit must be dismissed with costs. I have to add that the defendant at an early stage of the case made an offer that, if the plaintiff would admit that the lease was terminated, the question of the defendant's liability to account for Rs. 1,500, which he has received, should be decided.

This offer was not accepted by the plaintiff.

Attorney for the plaintiff : *Fox and Mandal.*

Attorney for the defendant : *Manuel and Agarwalla.*

R. G. M.