Privy Council Appeal No. 4 of 1934.

Rai Sahib Pandit Chandrika Prasada - - - - *Appellant*

v.

The Bombay, Baroda and Central India Railway Company - *Respondents*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER, AJMER-MERWARA, AJMER.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 18TH JANUARY, 1935.

Present at the Hearing:

LORD TOMLIN.
LORD RUSSELL OF KILLOWEN.
SIR LANCELOT SANDERSON.

[*Delivered by* LORD. TOMLIN.]

This is an appeal from a decree of the Judicial Commissioner of Ajmer-Merwara in a suit in which the respondents, the railway company, sought to recover certain land and buildings thereon in the possession of the appellant. Before the Subordinate Judge the railway company obtained an order for possession on certain terms which involved the payment to the appellant of a sum of 2,446 rupees 8 annas. On appeal, that order was reversed and the suit was dismissed by the District Judge. A further appeal was taken to the Judicial Commissioner when, in its turn, the judgment of the District Judge was reversed and an order for possession was made on terms which involved payment to the appellant of a sum of 5,000 rupees.

The circumstances of the case are unusual and are shortly these. In 1891 the railway company, who occupy certain Government land for the purposes of their railways, formulated and put into operation a scheme for housing certain of their employees on part of such land. The idea seems to have been to form a village community consisting of the workmen in the

company's employment on the land in question. The land was to be leased at ground rents by the railway company to the workmen, who were to build their own houses with money lent them by the company and recoverable by monthly instalments with interest. There was to be a committee, with the carriage and wagon superintendent of the railway company as chairman, and through that committee the affairs of the community were to be managed. It seems to have been part of the scheme, at any rate as it was put in practice, that, when a workman ceased to be employed by the railway company, by reason of death or otherwise, possession of his holding had to be given up but he or his representatives received a payment in respect of the building which he had put upon it.

In January of 1899 the appellant, who was in the employ of the railway company, but in a grade somewhat superior to those of the other occupants of these holdings, acquired certain plots and paid, in respect of the buildings which had been erected thereon by the previous occupiers, a sum of 1,363 rupees 11 annas. He went into possession and remained in possession for a number of years upon terms which are to be found in certain annual leases from the railway company executed by him, although in fact, they do not seem ever to have been executed by the railway company. It is not, however, disputed that he was in possession upon the terms of those documents. There are four of them in the record. They are each expressed to be a lease for a year. The earliest is dated the 1st January, 1902, and the others are dated the 1st January, 1906, the 1st January, 1907, and the 1st January, 1911, the lease of the 1st January, 1911, seems to have been the last. He undoubtedly remained in possession after the 31st December, 1911, upon the same terms. He, in fact, remained in possession till 1923 ; but between the 1st of January, 1912, and 1923, certain events happened which led up to this action.

Before these events are described attention should be called to such of the terms of the leases as seem to be material. The lease taken for reference is that of the 1st January, 1911. There seems to be no difference between the leases so far as the material parts are concerned. It is expressed to be between the superintendent of the carriage and wagon department of the railway company on behalf of the railway company of the one part and the appellant of the other part. Under clause 1 the company agrees to let and the tenant agrees to take the land in question from the 1st January, 1911, at the monthly rent of 12 annas during the term. Under clause 2, the tenant is prohibited from assigning, underletting, or parting with the lease without the written consent of the superintendent. In clause 3, which is the critical clause, there is this provision :—

> " In case the said tenant shall die or leave the service of the said company from any cause whatever during the continuance of the term

hereby granted the said term shall immediately cease and determine and the said company shall take and pay for to the said tenant his heirs executors or administrators the value of the said messuage or dwelling house and buildings on the said land at a price to be fixed by the said superintendent, whose decision as to the price or value of the same shall be final."

The first observation to be made is that, assuming the term comes to an end by reason of the death or departure from the service of the company of the tenant, there seems to be, on the language of clause 3, nothing to justify the retention of the land by the tenant after the expiration of the term, on the ground that he has not actually been paid the value of the messuage. There is no doubt an obligation on the railway company to pay the value of the messuage in accordance with the terms of that clause, but it does not seem to be a condition of his giving up possession of the land that he should be first paid.

It ought to be said that the payments which he made under his tenancy in regard to rent were always made in fact to the village committee, of which the superintendent was chairman, both before and after the expiration of the last of the leases.

In fact, he remained in possession until 1923; but in 1916 he ceased to be employed by the railway company, and, upon that, notice was given to him to surrender his holding under the terms of the clause, and the superintendent of the carriage and wagon department proceeded to make a valuation for the purposes of the clause. That valuation came out at the figure which is mentioned in the judgment of the Subordinate Judge, upon payment of which he was ordered to surrender the land, namely, 2,446 rupees 8 annas.

The appellant objected to the amount of the valuation as being insufficient and he offered by way of compromise to accept 5,000 rupees. That was not acceptable to the railway company, and there followed for some years a series of negotiations, in the course of which various proposals for settlement of the dispute were suggested, most of them being impossible to carry out for various reasons; but during the whole of that time the appellant was allowed to remain in possession till 1923 on the terms of continuing payment of the ground rent.

In 1924 the suit was launched by the railway company to recover possession. As already indicated, the Subordinate Judge gave judgment in favour of the railway company for possession upon payment of the sum which had been fixed as the value by the superintendent.

It should be mentioned that before 1915, between the date of his original occupation of the premises and 1915, the appellant had made additions to the buildings on the premises, and again, between 1920 and the date when the action was commenced, he had made certain further additions.

When the case came before the District Judge the District Judge reversed the judgment of the Subordinate Judge and dismissed the suit as barred by the statute of limitations, taking the view that, on the 1st January, 1912, after the expiration of the last of the leases, the appellant had been in adverse possession, and that article 139 of the statute of limitations began to run against the railway company from that date, and that, accordingly, on the 12th April, 1924, when the suit was commenced, the full period of twelve years had run and the suit was barred.

The Judicial Commissioner has taken a different view. He thought that, because the appellant was clearly in occupation after the 1st January, 1912, as tenant upon the terms of the lease, the statute did not run. He also took the view that the railway company were entitled to possession, but that the sum which they ought to pay to the appellant for the value of the buildings was the sum of 5,000 rupees, and he made an order for delivery of possession on payment of that sum, also giving to the appellant an opportunity of removing additional buildings which he had erected on the premises after 1920 and before the suit was commenced. With regard to the buildings which he had added after his original entry and before 1915, the Judicial Commissioner regarded these as proper to be included in the valuation and to be covered by the 5,000 rupees.

He arrived at the 5,000 rupees in this way. The superintendent of the carriage and wagon department, in making his valuation, had made it on the basis of taking the first cost of the buildings and allowing a moderate sum for depreciation, but he had excluded from his valuation certain additions made by the appellant before 1915 which he regarded as unnecessary additions, out of keeping with the rest of the property, and he held that the appellant ought not to be allowed the cost of those.

The Judicial Commissioner took the view that the superintendent had adopted the proper principle of valuation, but that he was wrong in omitting the particular items which he had omitted. Two of those items had been mentioned and accordingly the Judicial Commissioner added those to the superintendent's total. That brought the total up to 3,343 rupees, 8 annas. He then said that there was not any evidence with regard to other items, and that it was obvious that the proper sum must lie somewhere between 3,343 rupees, 8 annas and the 5,000 rupees which the appellant had offered to take at the time when he rejected the figure of the valuation.

Their Lordships think that the Judicial Commissioner was not correct in treating the letter in which the appellant offered to take 5,000 rupees as an admission that 5,000 rupees was the proper figure, because it is plain on the language of the letter that he was offering to accept that sum as a matter of compromise ; but that misreading of the letter does not appear to affect the questions which their Lordships have to determine.

The points which have been made by the appellant before their Lordships' Board are these. First of all, it is said that the suit is misconceived; that the only persons who could grant a lease were the village committee, and that, if there was anybody who could recover possession of the land, it must be the village committee. That point seems to their Lordships to be a hopeless one. In fact, the leases under the terms of which admittedly the appellant went into and continued in possession are in form leases by the company acting through their agent, the superintendent. The position of the appellant must be that he cannot dispute his lessors' title so long as he remains in possession under an agreement which he has made with them; and not only that, but in their Lordships' view, it is quite obvious that so far as the scheme was concerned, if that is to be looked at at all, the railway company, who did not own the land but were only occupants of Government land for the purposes of their undertaking, never made over the land to the village committee. The village committee had no title to it; the village committee was merely acting as the agent of the railway company in managing this settlement which the railway company had created. Therefore, that point fails.

The next point is the one accepted by the District Judge, namely, that the appellant was in adverse possession as from the 1st January, 1912, and therefore the statute has run. In their Lordships' view, that is an impossible contention. It is quite plain that, long after the 1st January, 1912, this appellant continued in possession as tenant on the terms which are found expressed in the leases, and there is no period of time from which it can be said that the statute ran so as to debar the respondents from their remedy for the recovery of the property.

That leaves only the question of amount. So far as that is concerned, as their Lordships understand the argument it is put in this way: The superintendent ought really to have ascertained the replacement value, and the replacement value would have worked out at something like 9,000 rupees, or 11,000 rupees, those being the figures which were respectively suggested as the replacement value by the representative of the appellant in 1917 and by the representative of the railway company in 1922. In their Lordships' judgment, replacement value is an impossible basis for the valuation, and they are of opinion that the Judicial Commissioner was right in approving the principle upon which the superintendent acted in his valuation, *i.e.*, first cost, less depreciation, and in including the particular items which the superintendent had omitted.

That being so, the question is whether the Judicial Commissioner's decision in regard to the 5,000 rupees can be impeached. It was never suggested in the Courts below, or, indeed, before their Lordships' Board, that the Judicial Commissioner was not justified, when he found an error in the superintendent's valuation, in correcting it. It was not suggested that he ought to have sent

the matter back for a fresh valuation, and he was not invited to send it back for a fresh valuation; and in the appellant's case before this Board the fact that he did not do so is not raised as a matter of objection at all. Therefore the only question is: Can it be said that the Judicial Commissioner has not awarded enough to the appellant when he fixed the figure of 5,000 rupees? In their Lordships' view there is nothing to support the view that that amount is insufficient. Counsel has not pointed to any evidence or any circumstance which, when once the principle of replacement value has been displaced, would justify any finding to the effect that 5,000 rupees was insufficient.

In those circumstances, it seems to their Lordships that the appellant has failed to make out that the Judicial Commissioner erred in the conclusion at which he arrived; that the appeal must fail, and must be dismissed with costs.

Their Lordships think that the appellant should be allowed three months from the date of the Order in Council in which to remove that portion of the buildings which was erected after 1920.

Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

RAI SAHIB PANDIT CHANDRIKA PRASADA

v.

THE BOMBAY, BARODA AND CENTRAL INDIA RAILWAY COMPANY.

DELIVERED BY LORD TOMLIN.

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