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April 15

RUP CHAND GUPTA

v.

RAGHUVANSHI PRIVATE LIMITED & ANR.

[P. B. GAJENDRAGADKAR, C. J. AND K. C. DAS GUPTA, J.]

Decree—Collusion—Ingredients of collusion—A party who need not be impleaded was not impleaded—Does not constitute collusion—Two limited companies—All directors common—Suit by one—Other does not defend—Does not make the suit collusive.

Respondent No. 2 is the lessee of Respondent No. 1 and the appellant is the sub-lessee. Both the respondents Nos. 1 and 2 had the same directors. Respondent No. 1 brought a suit against respondent No. 2 for eviction in which the appellant was not impleaded as a party. By agreement between the present respondent Nos. 1 and 2 that suit was not defended and *ex-parte* decree was obtained in favour of respondent No. 1. By virtue of this decree the appellant as a sub-lessee of respondent No. 2 became a trespasser and had no right to remain on the land. To avoid this situation the appellant filed a suit to set aside the decree on the ground that it was obtained by collusion. The Trial Judge accepted his contention and gave a direction that the appellant still remained a tenant and directing the defendants in that suit from taking any steps in execution of the *ex-parte* decree. On appeal the trial Court's decree was set aside on the ground that the present appellant had failed to prove that the *ex-parte* decree was obtained collusively.

Before this Court the same contentions as in the courts below were raised.

Held: (i) The mere fact that the defendant agreed with the plaintiff that if a suit is brought he would not defend it would not necessarily prove collusion. It is only if this agreement is done improperly in the sense that a dishonest purpose was intended to be achieved that they can be said to have colluded.

Scott v. Scott, 1913 Law Reports (Probate Division) 52 and *Nagubai Ammal & Ors. v. B. Shamma Rao*, [1956] S.C.R. 451, referred to.

(ii) The law allows a landlord to institute a suit against a lessee for the possession of the land on the basis of a valid notification without impleading the sub-lessee and the decree in such suit would bind the sub-lessee and hence the suit instituted by respondent No. 1 in the present case cannot be said to have constituted an improper act.

(iii) The omission of the respondent No. 2 to defend the earlier suit was not also an improper act because even if it had a good defence it was not bound to take it.

(iv) Even if the appellant was a Thika tenant within the meaning of the Calcutta Thika Tenants Act, 1949, it would have protected him against eviction by respondent No. 2 but It would not have given protection against the eviction by respondent No. 1 because the Act was designed to protect the Thika Tenant from eviction by the landlord only and not against eviction from any other source.

Shamsuddin Ahmad v. Dinanath Mullick, Appeal from original decree No. 123 of 1957, decided on 13-8-59.

(v) The respondents Nos. 1 and 2 are two distinct legal entities and therefore simply because both had the same directors it cannot be said that the purpose of the suit was dishonest or sinister.

(vi) The appellate Bench of the High Court has correctly decided that the present appellant has failed to establish that the impugned decree was procured collusively.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 172 of 1964. Appeal from the judgment and decree dated July 6, 1962 of the Calcutta High Court in Appeal from Original Decree No. 213 of 1959.

S. T. Desai, B. Sen and B. P. Maheshwari, for the appellant.

H. N. Sanyal, Solicitor-General, Ajit Kumar Sen and S. N. Mukherjee, for the respondent No. 1.

April 15, 1964. The judgment of the Court was delivered by

DAS GUPTA, J.—The subject-matter of this litigation is a piece of land in the heart of the business centre of the city of Calcutta. This was part of a block of 52 cottahs of land taken on lease on January 21, 1950 from the Official Trustee, West Bengal, by a private limited company, Raghuvanshi Private Ltd. The lease was a building lease for a period of 75 years commencing from January 21, 1950. The lessee was required to complete the construction of a three or four storeyed building on the land within 10 years. In September 1960, Raghuvanshi Private Limited in its turn leased 10½ cottahs out of the 52 cottahs to a public limited company, Land and Bricks Ltd. This lease by Raghuvanshi Private Ltd., (hereinafter referred to as "Raghuvanshi") in favour of Land & Bricks Ltd., (hereinafter referred to as "Land & Bricks") created a monthly tenancy commencing from the 1st October 1950. Land and Bricks in its turn sub-let the entire 10½ cottahs to the present appellant, Rupchand Gupta in his business name of Hind Airways. The lease was on the terms as settled by two letters dated August 19, 1950 and September 5, 1950 between Hind Airways and Land and Bricks. By the terms of the sub-lease, the sub-lessee undertook not to sub-let the land to anybody, to vacate the land as soon as it was required by Land and Bricks for any purpose and not to construct anything on the land but only to use the open land for "garage purpose for motor vehicles". In spite of this undertaking however the appellant constructed a pacca structure on the land. Land and Bricks protested unsuccessfully and then started proceedings under the Calcutta

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Municipality Act for demolition of the structures. Those proceedings were also unsuccessful. Land and Bricks, it appears, also served on the appellant in February 1953 a notice to quit. This was not followed up by any suit in court. But a suit for arrears of rent was instituted by Land and Bricks against the appellant in September 1955 and another in 1957. Consent decrees were passed in both of these suits. It appears that in about May or June 1954, Raghuvanshi was desirous of getting possession of the land it has leased to Land and Bricks. The difficulty was that Land and Bricks having sublet to the appellant was not in a position to deliver possession to its lessor Raghuvanshi until and unless possession was obtained from the appellant. It was in these circumstances that Raghuvanshi determined its lease in favour of Land and Bricks by a notice to quit dated the 11th April 1955. Raghuvanshi then instituted a suit No. 3283 of 1955 in the High Court of Calcutta against Land and Bricks for possession of the land. The appellant was not impleaded in the suit and Land and Bricks did not contest it. An *ex parte* decree was made by the Court in favour of Raghuvanshi on the 11th May 1956.

The necessary legal consequences of that decree is that the plaintiff as the sub-lessee of Land and Bricks has no right to stay on the land and has become a trespasser. It is to avoid the consequence of that decree, that the present suit was brought by Rupchand Gupta. His case is that the decree had been obtained "by fraud and collusion between the defendants in order to injure the plaintiff and to evict the plaintiff from the said premises without any decree being passed against the plaintiff." Both Land and Bricks and Raghuvanshi have been impleaded in the suit—Land and Bricks as the first defendant, and Raghuvanshi as the second defendant. Both of them denied the allegations of fraud and collusion.

The case that the decree was obtained by fraud was given up at the hearing and only the allegation that it was a collusive suit was pressed.

The Trial Judge held that there was collusion between defendant No. 1 and defendant No. 2 in the matter of obtaining an *ex-parte* decree in suit No. 3283 of 1955 and that the plaintiff was not bound by that decree. He gave a declaration that the plaintiff was still a tenant under defendant No. 1 and was not liable to be ejected under the *ex-parte* decree. He also ordered the issue of an injunction restraining the defendants from taking any steps in execution of the *ex-parte* decree.

On appeal by the defendant No. 2, Raghuvanshi, the decree made by the Trial Judge was set aside. The learned Judges, who heard the appeal, came to the conclusion that

the plaintiff had failed to prove that the decree in suit No. 3283 of 1955 had been procured collusively. So, they held that the plaintiff was bound by the decree in that suit.

It is against this decree of the appellate Bench of the High Court that the present appeal has been filed by the plaintiff Rupchand Gupta.

The only question for decision in the appeal is whether the plaintiff had established his allegation that the *ex-parte* decree had been obtained as a result of collusion between Raghuvanshi and Land and Bricks. The main circumstances on which the plaintiff relied to prove collusion and which according to the learned Judge established his case were these: Raghuvanshi and Land and Bricks though distinct entities had the same persons as directors. The construction of building in terms of indenture of lease with Official Trustee was necessarily in the interests of shareholders of Raghuvanshi and so this was in the interest of Land and Bricks also as the main shareholders were the same. The Calcutta Thika Tenancy Act, 1949 was a serious impediment in the way of the plaintiff's eviction in any suit by Land and Bricks. So, Land and Bricks attempted to get possession of the land by obtaining an order of demolition of structures by proceedings under the Calcutta Municipality Act. When these failed and it was apprehended that a suit for ejection by Land and Bricks might not succeed against the plaintiff that this device of having a suit by Raghuvanshi against Land and Bricks was decided upon by agreement between Raghuvanshi and Land and Bricks. By arrangement between the two, Land and Bricks did not contest the suit and to avoid any risk of any defence being raised by the plaintiff he was not impleaded in the suit at all.

All the circumstances taken together justify, it was urged by the appellant, the conclusion that the defendant No. 2 colluded with defendant No. 1 to procure the *ex-parte* decree for the purpose of executing that decree against the plaintiff.

One of the simplest definitions of collusion was given by Mr. Justice Bucknill in *Scott v. Scott*(¹). "Collusion may be defined", said the learned Judge, "as an improper act done or an improper refraining from doing an act, for a dishonest purpose". Substantially the same idea is expressed in the definition given by Whatron's Law Lexicon, 14th Edition, p. 212, viz., "Collusion in judicial proceedings is a secret arrangement between two persons that the one should institute a suit against the other in order to obtain the decision

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(¹) [1913] Law Reports (Probate Division) 52.

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of a judicial tribunal for some sinister purpose". This definition of collusion was approved by the Court in *Nagubai Ammal & ors., v. B. Shamma Rao and ors.*(¹).

Thus the mere fact that the defendant agrees with the plaintiff that if a suit is brought he would not defend it, would not necessarily prove collusion. It is only if this agreement is done improperly in the sense that a dishonest purpose is intended to be achieved that they can be said to have colluded.

There is little doubt that in the present case Land and Bricks agreed with Raghuvanshi that the suit for ejection would not be contested. When the suit was instituted Land and Bricks did not contest and the *ex-parte* decree was passed. Raghuvanshi did not implead this appellant in that suit. Can any of these acts, viz., Land and Bricks agreeing with Raghuvanshi that it would not contest the suit, the actual refraining by Land and Bricks from contesting the suit or the act of Raghuvanshi in not impleading the appellant, be an improper act or improper refraining from an act? We do not see how any of these things can be said to be improper.

Taking the last action first, viz., Raghuvanshi's omission to implead the appellant, it is quite clear that the law does not require that the sub-lessee need be made a party. It has been rightly pointed out by the High Court that in all cases where the landlord institutes a suit against the lessee for possession of the land on the basis of a valid notice to quit served on the lessee and does not implead the sub-lessee as a party to the suit, the object of the landlord is to eject the sub-lessee from the land in execution of the decree and such an object is quite legitimate. The decree in such a suit would bind the sub-lessee. This may act harshly on the sub-lessee; but this is a position well understood by him when he took the sub-lease. The law allows this and so the omission cannot be said to be an improper act.

Nor is it possible, in our opinion, to say that the omission of Land and Bricks to contest the ejection suit was an improper act. It has not been suggested that Land and Bricks had a good defence against the claim for ejection but did not take it for the mere purpose of helping Raghuvanshi to get possession of the land. Even if it had a good defence, we do not think it was bound to take it. It may be that if Land and Bricks had a defence and the defence was such which if brought to the notice of the court would have stood in the way of any decree being passed in favour of Raghuvanshi there would be reason to say that the omission to implead the sub-lessee was actuated by a dishonest purpose and consequently was improper. It is not necessary for

(¹) [1956] S.C.R. 451.

us however to consider the matter further as neither in the courts below nor before us was any suggestion made on behalf of the appellant sub-lessee that Land and Bricks had even a plausible defence against Raghuvanshi's claim for ejectment.

We have already mentioned the fact that one of the circumstances which the plaintiff claimed showed collusion was that the Calcutta Thika Tenancy Act stood in the way of the plaintiff's eviction of Land and Bricks. It is unnecessary for us to decide whether or not the appellant was a Thika tenant within the meaning of the Calcutta Thika Tenancy Act, 1949. If he was, that Act would undoubtedly have protected him against eviction by Land and Bricks. That Act could however have no operation in a suit brought by Raghuvanshi against Land and Bricks. It has been held by the High Court of Calcutta that the Thika Tenancy Act was designed to protect the Thika tenant from eviction by his landlord only and not against eviction from any source. (*Shamsuddin Ahmed v. Dinanath Mullick & ors.*, Appeal from Original Decree No. 123 of 1957, decided on August 13, 1959). The correctness of this view has not been challenged before us. Nor is it the appellant's case that Land and Bricks was a Thika tenant of Raghuvanshi. Obviously, this could not be suggested, because Land and Bricks never erected any structure at all. (See the definition of a Thika tenant in s. 2, cl. 5 of the Calcutta Thika Tenancy Act, 1949). On the materials on the record we are satisfied that there was no defence that Land and Bricks could have raised for resisting Raghuvanshi's claim for ejectment.

The crux of the matter is: Was this attempt by Raghuvanshi to get possession of the land a dishonest or sinister purpose? We are asked by Mr. Desai to spell dishonesty out of the fact that the directors of Raghuvanshi and Land and Bricks were common and so the persons who were interested in Land and Bricks were also interested in seeing that Raghuvanshi had not to suffer for forfeiture of his lease for failure to comply with the covenant to construct a building by 1960. All this may be taken to be true. But, we are unable to see how this would make Raghuvanshi's attempt to get possession of the land dishonest or sinister. It is not as if Raghuvanshi did not actually want to get possession of the land but wanted to help Land and Bricks to get possession. It has also to be remembered that the identity of the directors and the identity of the main shareholders do not in any way affect the position that in law and in fact Raghuvanshi and Land and Bricks were distinct and separate entities. It is not even remotely suggested that Raghuvanshi and Land and Bricks were really one and the same person with two names.

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If that had been so, there might have been good reason for thinking that it was in an attempt to surmount the obstacle presented by the Calcutta Thika Tenancy Act, 1949, that this mode of Raghuvanshi suing Land and Bricks for ejection was resorted to. Indeed, if Raghuvanshi and Land and Bricks were one and the same person possession of Land and Bricks would be possession of Raghuvanshi and a suit by Raghuvanshi to eject Land and Bricks would be meaningless. But, that is not the appellant's case. It appears from the High Court's judgment that the plaintiff's counsel made it plain before the court that it was not his client's case that the plaintiff's real lessor was Raghuvanshi Private Ltd., and not Land and Bricks Ltd. In the present appeal before us also Mr. Desai argued on the basis that Land and Bricks and Raghuvanshi were distinct entities and that the lease of Land and Bricks under Raghuvanshi was a real subsisting lease at the time of Suit No. 3283 of 1955.

In our judgment, the appellate Bench of the High Court has rightly come to the conclusion that the plaintiff has failed to establish that the decree in Suit No. 3283 of 1955 was procured collusively. The suit was therefore rightly dismissed.

The appeal is accordingly dismissed with costs.

Appeal dismissed.