Privy Council Appeal No. 46 of 1946

Allahabad Appeal No. 3 of 1942

Ratti Ram and Sons (a firm) - - - - - *Appellants*

v.

Moti Lal and others - - - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 2ND MARCH, 1948

Present at the Hearing:

LORD NORMAND
LORD MACDERMOTT
SIR JOHN BEAUMONT

[*Delivered by* LORD NORMAND]

This is an appeal from a judgment of the High Court at Allahabad reversing the judgment of the Subordinate Judge at Farrukhabad. The High Court granted decree to the respondents Moti Lal, Ram Kunwar and Kashi Prasad, against the appellants for Rs.10,994-11-9 in name of damages with interest thereon, and made a declaration that these respondents were entitled to remain in possession as lessees of factory premises owned by the Indian Glass Factory Limited, who are the fifth respondents, until such time as they should be ejected by process of law. The original plaintiffs in the suit were Dwarka Prasad and the respondent Kashi Prasad. Dwarka Prasad died during the dependency of the suit and the respondents Moti Lal and Ram Kunwar were substituted in his place. It is not necessary for the purposes of the appeal to distinguish between the original and the present plaintiffs, and for the sake of brevity they will be called hereinafter the respondents; the fifth respondents will be referred to as the Factory Company. The suit was in its earlier stages complicated by the circumstance that besides the appellants, a firm styled J. H. Gokul Das Dasji was also a defendant. But that firm is in no way concerned in this appeal and no further reference will be made to it.

The appellants, in order to satisfy a decree for debt which they had obtained against the Factory Company, attached the company's factory on 17th December 1931 and removed and sold part of the roofing and certain glassware lying in the premises at the date of the attachment. The respondents were the holders of a mortgage over the factory and its fixtures, fittings and tools, granted on 14th October 1931 by the company in security for Rs.7000 being part of a larger debt then due by the mortgagors. They were also tenants of the factory premises under a lease of the same date. The questions at issue are:—(1) whether the appellants by removing the roofing committed an actionable wrong against the respondents, either as mortgagees or as lessees and, if so, what damages are recoverable; (2) whether any of the glassware removed and sold by the appellants was the property of the respondents; (3) whether the appellants attached and removed a sum of Rs.48 in cash which belonged to the appellants.

The circumstances out of which the suit arose have been sufficiently explained in the judgments of the Courts in India and such limited reference to them as is now necessary will be made in considering the several questions now to be decided.

The respondents' rights as mortgagees and lessees were, in the opinion of their Lordships, infringed by the removal and sale of the roofing. That was an action which resulted in a diminution of the value of the mortgaged premises in derogation of the mortgagees' right to retain unimpaired the security for which they had stipulated. It was also a wrongful interference with the respondents' right to possession as lessees. The learned Subordinate Judge held that since the appellants had a valid and effective decree pronounced by a court of competent jurisdiction they were entitled to execute it and therefore committed no wrong. But this fails to take into account that the respondents as mortgagees had an interest in the factory which was antecedent and ranked in priority to the appellants' interest as attaching creditors. It also treats the lease as giving the appellants no right to possession against the lessors' creditors. The judgment of the High Court properly distinguishes the lessees' right from the proprietary right of the lessor and holds that the respondents were entitled to possession against the appellants. The damages to which the respondents are entitled as mortgagees are in the opinion of their Lordships to be measured by the loss of value of the mortgaged premises caused by the wrongful actings of the appellants. The evidence on this, as on much else in the case, is far from satisfactory. The High Court has awarded a sum of Rs. 5,500, based partly on the cost of restoring the roof and partly on an estimate of the damage done by weather while the building remained roofless. The appellants submitted that the weather damage spoken to by witnesses had been suffered in September 1931, three months before the date of the attachment, and that a sum of Rs.4,000 to restore the roof was sufficient to compensate the respondents. Their Lordships have examined the evidence and are satisfied that the appellants' submission is based on a misunderstanding, and that though flood damage was suffered in September 1931, the respondents' claim is not for that damage, but for damage caused by rain in September 1932. This clearly appears from the report dated 24th October 1932 of the commissioner appointed by the Subordinate Judge to report on the condition of the building. The appellants have not put forward in evidence any alternative figures and they have failed to displace the sum awarded by the High Court; that award must accordingly stand. The sum which the respondents receive under the decree, if it is not expended in restoring the damaged premises, may fall to be treated as part payment of their mortgage debt and to be credited to the Factory Company in a mortgage account between it and them. That, however, is a question with which this appeal is not concerned, and it will depend on circumstances not yet ascertained.

The respondents in their Plaint alleged that the factory had not been in use since the attachment and that they had thereby suffered loss to the amount of Rs.710. The High Court have allowed this claim. There is however no evidence in support of it, and on the other hand there is evidence that the factory was left by the Amin in such a condition as to be capable of being worked after the attachment. Moreover it is proved that heavy loss was incurred during the respondents' lease, and there can be no presumption that some of this loss was occasioned by the actings of the appellants.

No other loss is alleged to have resulted from the damage done to the structure of the factory, and their Lordships accordingly pass to the consideration of the claim for damages caused by the alleged attachment and sale of glassware belonging to the respondents. There is some parole evidence that the Factory Company sold a quantity of glassware for about Rs.4,000 to the respondents at the time when the lease was entered into, viz.:—in Octobr 1931; and counsel for the respondents referred to entries in his clients' account books for the 14th and 15th November

1931 showing that sums amounting together to Rs.4,012 were credited to the Factory Company and debited to the lease account. These entries, however, do not on the face of them seem to be appropriate records of a transaction of sale. It is remarkable also that in earlier proceedings the respondents had consistently alleged that the glassware in the factory had been transferred to them under an agreement of 27th October 1930 by which they were appointed sole agent of the Factory Company. Article 18 of that agreement provided that goods worth Rs.4,000 should stand pledged and hypothecated to the respondents in lieu of a debt due to them, and Article 19 provided that the sole agent should be considered to be the owner of the entire pucca and kutcha goods in stock so long as money due to him remained unpaid. The effect of these two articles is perhaps obscure but it is not contended that under either of them the property in any goods was transferred from the Factory Company to the respondents. This agreement was terminated in October 1931 and replaced by the lease and mortgage above mentioned. It appears to their Lordships that the evidence for a sale made at the time when the lease was granted or at a date about a month later cannot be accepted, and that it probably originates in some confusion of mind about the effect in the events which have happened of Articles 18 and 19 of the Sole Agency agreement. This claim therefore must be disallowed.

Lastly, there is no evidence to support the claim for Rs.48 alleged to have been attached and appropriated by the appellants.

Their Lordships will accordingly humbly advise His Majesty that the judgment of the High Court should be varied by substituting a sum of Rs.5,500 for the sum of Rs.10,994-11-9 and, as regards costs, that one half of all the court dues in India should be borne by the appellants and the other half by the respondents Moti Lal, Ram Kunwar and Kashi Prasad, and that the parties should otherwise each bear their own costs of the proceedings in India. The parties will each bear their own costs of this appeal.

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In the Privy Council

RATTI RAM AND SONS (A FIRM)

v.

MOTI LAL AND OTHERS

DELIVERED BY LORD NORMAND

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