

This also states a correct principle of law but again I repeat a necessary condition before the 12 years can run is that there must be the right to re-entry. Without this right of re-entry existing, the statute does not run.

Paragraph 292 of *Halsbury's Laws of England*, also cited by defendant's counsel, is not so far as I can see in any way relevant to the issue before me. The applicant's registered title is indefeasible unless the defendant can succeed in upsetting it by any of the three ways of challenge permitted by s. 14 of the Land (Transfer and Registration) Ordinance 1933. Whether or not the applicant knew ever since 1914 all the circumstances of Pickering's possession is immaterial and will not help the defendant. (See s. 29 of the Land Transfer Ordinance 1933). There are three ways of challenging the registered title given by s. 14 of the Land Transfer Ordinance 1933 and only three. The words "adverse possession in another for the prescriptive period" are there in the Ordinance and have to be defined, and they are the only grounds open to the defendant or on which the defendant can succeed. The definition of these words clearly to my mind is not applicable to the facts as they are disclosed in the defendant's own affidavit. It may be added also that the intention of the legislature was that parties should protect whatever rights they have by lodging the prescribed caveat; if they choose to omit so to do, they cannot afterwards complain of the consequences of their own negligence. The Land (Transfer and Registration) Ordinance No. 14 of 1935 has provided by s. 123 the means whereby any person claiming to be interested under any instrument of transfer or transmission or under any unregistered instrument or otherwise howsoever in any land may lodge a caveat to protect his interest. The defendant has not seen fit to take advantage of this power and he has only himself to blame for the results of his negligence.

The respondent has not therefore shown cause why he should not give up possession of the land and there must be an order for possession to be given up to the plaintiff.

FILIMONE VATUSERE v. JAIMAL AND ORS.

[Civil Jurisdiction (Corrie, C.J.) November 20, 1936.]

Dwelling erected by lessee under Crown Lease—term of lease that building erected by lessee shall be the property of the lessee and removable by the lessee (on certain conditions) before or within a reasonable time after the expiry of the lease—whether dwelling house is a chattel which may be lawfully seized and sold under writ of seizure and sale.

Filimone was lessee under a lease from the Commissioner of Lands of land at Toga in the Rewa province. The lease provided *inter alia* :—

- "(a) And it is expressly declared that this lease is a protected lease under the provisions of the "Crown Lands Ordinance of 1888", that is to say:
 "Such lease except with the written consent of the lessor cannot be lawfully transferred
 "or sold or mortgaged or hypothecated or pledged nor except at the suit or with the
 "written consent of the lessor can any such lease or sublease be dealt with by any
 "Court of Law or under the process of any Court of Law.

- “(b) Only such buildings may be erected on the land as may be required for the purpose of residence of the lessee and dwelling for *bona fide* supervisors and employees and accommodation for horses or other stock or any buildings directly connected with the purposes of this lease.
- “(c) Any building (other than a hut made of grass and unsawn timber) erected by the lessee upon the land hereby leased which is not erected in pursuance of some obligation in that behalf shall be the property of and be removable by the lessee before or within reasonable time after the determination of this lease: Provided that—
- “(a) Before the removal of any building the lessee shall pay all rent owing by him and shall perform or satisfy all his other obligations to the lessor in respect of the land hereby leased;
- “(b) In the removal of any building the lessee shall not do any avoidable damage to any other building or other part of the land hereby leased;
- “(c) Immediately after the removal of any building the lessee shall make good all damage occasioned to any other building or other part of the land hereby leased by the removal;
- “(d) The lessee shall not remove any building without giving one month's previous notice in writing to the lessor of his intention to remove it;
- “(e) At any time before the expiration of the notice of removal the lessor, by notice in writing given by him to the lessee, may elect to purchase any building comprised in the notice of removal, and any building thus elected to be purchased shall be left by the lessee and shall become the property of the lessor who shall pay to the lessee the fair value thereof to an incoming lessee of the land; and any difference as to the value shall be settled by the Governor in Council, whose decision shall be final and binding on all parties;
- “(f) If the lessee applies for a renewal of the lease the provisions of this clause shall be deemed to cease to apply as from the date of the application of the lessee for a renewal of the lease and thereafter the whole matter shall be dealt with under the provisions of the Native Lands Ordinance 1905.”

A number of judgments for moneys owing in respect of promissory notes payable to Jaimal and Thakur Singh were obtained against Filimone during the first two quarters of 1936. On June 16, 1936 Filimone gave a sublease of the land to one Ram Singh; the sublease was duly registered but Filimone continued to occupy the dwelling-house. On July 4, 1936 Jaimal issued a writ of seizure and sale under one of his judgments and on July 7, 1936 Thakur Singh did likewise. Pursuant to these writs G. G. Kermode (the third defendant) as bailiff for Jaimal and Thakur Singh took possession of the dwelling-house and intimated that he would proceed to sell the same for removal. On July 9, Kermode gave the required notice to the lessor who did not exercise his right to purchase.

HELD.—A dwelling-house erected by a lessee on land held under a lease providing that building so erected shall be the property of the lessee and removable by him does not in law become annexed to the soil (during the lessee's term).

[**EDITORIAL NOTE.**—The judgment does not refer to the sublease granted by the plaintiff after judgment but prior to issue of the warrant of execution. It was pleaded by the defendants that the sublease was in any case void for lack of registration under the Native Dealings Ordinance, 1904.]

Cases referred to :—

- (1) *in re De Falbe, Ward v. Taylor* [1901] 1 Ch. 523.
- (2) *Wake & Or. v. Hall & Ors.* [1883] 8 A.C. 195; 52 L.J.Q.B. 494; 48 L.T. 834; 47 J.P. 548; 31 Dig. 206.
- (3) *Dudley v. Warde* [1751] 27 E.R. 73; 31 Dig. 193.
- (4) *Penton v. Robart* [1801] 102 E.R. 302; 31 Dig. 194.
- (5) *Spyer v. Phillipson* [1931] 2 Ch. D. 183; 100 L. J. Ch. 245.
- (6) *in re Sir Edward Hulse, Beattie v. Hulse* [1905] 1 Ch. 496 and L.J.Ch. 246; 92 L.T. 232; 31 Dig. 200.
- (7) *ex parte Gould, in re Walker* [1884] 13 Q.B. 591; 52 L.J.Q.B. 494; 48 L.T. 834; 47 J.P. 548; 31 Dig. 206.
- (8) *Hallen v. Runder* [1834] 1 Cr. M & R. 271; 149 E.R. 1080; 31 Dig. 181.

(9) *Hellawell v. Eastwood* [1851] 6 Ex. 295 ; 20 L.J. Ex. 154 ; 15 J.P. 724 ; 155 E.R. 554 ; 31 Dig. 187.

(10) *Holland v. Hodgson* [1872] L.R. 7 C. P. 328 ; 41 L.J.C.P. 146 ; 26 L.T. 709 ; 31 Dig. 188.

(11) *Pole Carew v. Western Counties and General Manure Co.* [1920] 2 Ch. 97 ; 89 L.J.Ch. 559 ; 123 L.T. 12 ; 36 T.L.R. 322 ; 31 Dig. 196.

(12) *Farrant v. Thompson* [1822] 5 B. & Ald. 826 ; 106 E.R. 1392 ; 21 Dig. 484.

(13) *Richardson v. Ardley* [1869] 38 L.J. Ch. 508.

(14) *Gordon v. Harper* [1796] 21 Dig. 485 ; 101 E.R. 828 ; 21 Dig. 501.

(15) *Winn v. Ingilby* [1822] 106 E.R. 1319 ; 21 Dig. 484.

ACTION claiming an injunction to restrain the defendants from selling a dwelling-house under writ of seizure and sale.

G. F. Grahame for the plaintiff.

R. L. Munro for the defendants, Jaimal and Thakur Singh.

The Attorney-General, *R. S. Thacker*, for the defendant, *C. C. Kermode*.

G. F. Grahame for the plaintiff quoted *Hallen v. Runder*; *Hellawell v. Eastwood* ; *Holland v. Hodgson* ; *Pole Carew v. Western Counties and General Manure Co.*; *Spyer v. Phillipson* ; *Farrant v. Thompson* ; *Richardson v. Ardley* ; *Gordon v. Harper* ; *Winn v. Ingilby*.

R. L. Munro for the defendants, Jaimal and Thakur Singh, quoted *in re De Falbe*, *Ward v. Taylor* ; *Wake & Or. v. Hall & Ors.*; *Dudley v. Ward* ; *Penton v. Robart* ; *Spyer v. Phillipson*.

CORRIE, C.J.—It is clear that under clause (13) of the lease to the plaintiff, the building now in question remained the property of the lessee and did not become in law annexed to the soil.

It follows that the sheriff executing judgments in favour of the other defendants against the lessee was entitled to sell the building : the only restriction upon his right to sell being that in accordance with paragraphs (d) and (e) of clause (13) of the lease he was bound to give notice to the lessor, who was entitled within 1 month thereafter to elect to purchase the building. The sheriff took possession on the 6th July, 1936, and on the 9th July, the required notice was given to the lessor, who has not exercised his right to purchase the building.

It follows that there is no reason why the building should not be offered for sale to the public.

The action is dismissed with costs.

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