APPELLATE CIVIL.

Before U Thaung Sein, J.

NAZIR KHAN AND ONE (APPELLANTS)

v.

MA MA LAY (RESPONDENT).*

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Mar. 18.

Owner of land—Structure on the land—Onus of proof regarding ownership of—Difference between English Law and law in India and Burma—Burden of proof in ejectment suit—Stamp Act, s. 36—Unstamped documents admitted by trial Court—Effect.

The respondent was the owner of Holding No. 2. On the land was a building occupied by appellants. The respondent sued for possession of the house and land. The appellants asserted that the house belonged to them but that they were tenants of the land.

The Subordinate Judge held under s. 110 of the Evidence Act, as the appellants were in possession, the burden of proving title lay on the plaintiff. Trial Judge admitted in evidence, Exhibits 2 and 4, two unstamped documents referring to an agreement to pay rent and a receipt for rent On appeal the District Judge placed the burden of proving ownership of the house on the defendant and he rejected Exhibits 2 and 4 as inadmissible in evidence and held that the defendants had not discharged the burden which lay on them.

When the defendant in possession of a house on a land belonging to the plaintiff which the defendant claims he has taken on rent and built the house, the District Judge erred in placing the burden of proving the title of the house on the defendant In England no doubt the owner of the land would be the owner of whatever is affixed to the soil on the principle of "*Quicquid plantatur solo solo credit*" but in India and Burma this principle does not apply.

Thakoor Chunder Poramanick and others v. *Ramdhone Buttacharjee*, 6 W.R. 228 (F.B.), *Narayan Das Khettry* v. *Jatindra Nath Roy Chowdhury and others*, I.L.R. 54 Cal. 669 (P.C.) and *Vallabhdas Naranji* v. *Development Officer, Bandra*, 53 Bom. 589 (P.C.), followed.

Held further : That under s. 36 of Stamp Act if documents insufficiently stamped are admitted in evidence in trial Court such admission could not be challenged in appeal.

Pedda Venkatta Reddi and another v. *Vitta Hussain Setti*, I.L.R. 57 Mad. 779; *Venkatakrishna Reddi* v. *Batcha Reddi*, I.L.R. 57 Mad. 783, referred to.

A sale deed though unregistered was admissible in evidence to prove the nature of the possession of the house though it may confer no title.

P. K. Basu for the appellants.

U Tun Aung for the respondent.

* Civil 2nd Appeal No. 108 of 1947 against the decree of the District Court of Mandalay in Civil Appeal No. 30 of 1947, dated the 21st August 1947.

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U THAUNG SEIN, J.—The respondent Ma Ma Lay *alias* Mediyan Bi is the owner of a piece of land known as Holding No. 2, Block Nos. 322—24, Sein-Ban Quarter, Mandalay. On that land there is a building occupied by the appellants Nazir Khan and Josami *alias* Josephine. The respondent claims that this building belongs to her and that the appellants trespassed into it and she accordingly sued in the Court of the 1st Subordinate Judge, Mandalay, for the possession of the house and land and for the payment of Rs. 180 as compensation for the use and occupation of the building. The appellant-defendants contested the suit and asserted that the house in question belonged to them and not to the respondent-plaintiff. They went on to say that they were the tenants of the respondent-plaintiff in respect of the land only and that they had been paying ground-rent at Rs. 60 per month. Another plea put forward was that the land and house are worth more than Rs. 1,000 and hence the 1st Subordinate Judge had no jurisdiction to entertain the suit. The appellant-defendants then denied that the respondent-plaintiff had any right to oust them from the possession of the house.

The suit went to trial and the learned Subordinate Judge framed a preliminary issue as regards the value of the suit properties and held that this did not exceed one thousand rupees and hence he had jurisdiction to try the suit. I note that in the present second appeal one of the grounds raised is as to the jurisdiction of the learned Subordinate Judge, but this matter was not pressed during the argument. It may be taken, therefore, that the jurisdiction of the Subordinate Judge to entertain the suit is not questioned in this appeal.

The real issue between the parties was whether the respondent-plaintiff is the owner of the house in

question and whether the appellant-defendants are trespassers therein. The learned Subordinate Judge held that the respondent-plaintiff is the owner of the house and that the appellant-defendants are mere trespassers and accordingly decreed the suit as prayed for by respondent-plaintiff.

On appeal, the learned District Judge, Mandalay, confirmed the decree of the Subordinate Judge. The reasons advanced by the Subordinate Judge and the District Judge for holding that the plaintiff-respondent is the owner of the house are not quite the same and it has been urged in the present appeal that the learned District Judge erred in placing the burden of proving the ownership of the house on the appellant-defendants.

Now, the admitted facts in the case are that the land on which the disputed house stands is the property of the respondent-plaintiff. According to the respondent-plaintiff this house was built by one M. T. Ali with materials supplied by her and that she paid him Rs. 1,000 as building charges. After completion the house was rented out to M. T. Ali for a certain period and later to one Khalique. In support of this allegation the respondent-plaintiff filed the agreement, Exhibit A in the trial record and said to have been entered into between herself and M. T. Ali for the erection of the building. The appellant-defendants, on the other hand, stated that they bought the house from M. T. Ali and Khalique for a sum of Rs. 2,000 by means of an unregistered sale deed filed as Exhibit 3 in the trial record. They also filed a document, Exhibit 2, said to be an agreement between the respondent-plaintiff and M. T. Ali for the ground-rent of the land on which the house stands. Finally, in order to prove that they had been paying ground-rent to the respondent-plaintiff, the appellant-defendants filed Exhibit 4, a receipt for the sum of Rs. 60.

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In considering the issue as to the ownership of the house the learned Subordinate Judge pointed out that under section 110 of the Evidence Act, as the appellant-defendants were in possession the burden of proving the title to the property lay on the respondent-plaintiff. However, he went on to say, that since the appellant-defendants allege that they bought it from one M. T. Ali and Khalique they should also prove this assertion. After discussing the evidence led by both sides the learned Subordinate Judge held that the agreement, Exhibit A, between the respondent-plaintiff and M. T. Ali was of a "fraudulent nature" and refused to rely on it. As regards the appellant-defendants' story that they had bought the house from M. T. Ali and Khalique the learned Subordinate Judge has correctly pointed out that the unregistered sale deed, Exhibit 3, confers no title whatsoever on the buyer. But these were not the only documents relied upon by the parties. The appellant-defendants filed Exhibit 2 and Exhibit 4—the former an alleged agreement as regards ground-rent and the latter a receipt for such rent—to prove the nature of their possession of the house, *i.e.* that they were not the lessees of the respondent-plaintiff. Both these documents are liable to stamp duty but unfortunately neither of them bear any stamp. The learned Subordinate Judge did not place much reliance on these documents on the ground that the respondent-plaintiff did not admit her signature on them. On the whole, the learned Subordinate Judge held that the respondent-plaintiff was the owner of the suit house and that the appellant-defendants were not her tenants and accordingly decreed the suit as prayed for.

The appellant-defendants appealed to the District Court, Mandalay, against the decree of the trial Court. The learned District Judge did not discuss the evidence led in any great detail. According to him, the burden

of proving the ownership of the house lay on the appellant-defendants and not on the respondent-plaintiff as the land on which the building stands admittedly belongs to the respondent-plaintiff. Coming to the question of the alleged tenancy of the land by the appellant-defendants, the learned District Judge remarked that as Exhibit 2 and Exhibit 4 were unstamped documents they were clearly inadmissible in evidence. The lower appellate Court was satisfied that the appellant-defendants had not discharged the burden placed on them by law and accordingly confirmed the decree of the trial Court.

In the present second appeal the main ground urged by the learned counsel for the appellant-defendants are as follows. In the first place, it has been stressed that the learned District Judge erred in placing the burden of proving the ownership of the suit house on the appellant-defendants. It was also argued that the learned District Judge was apparently unaware of the provisions of section 36 of the Stamp Act which clearly lay down that once an unstamped document has been admitted in evidence its admissibility cannot be questioned again on the ground that it has not been duly stamped. The learned counsel for the appellant-defendants therefore contends that the documents, Exhibit 2 and Exhibit 4, were wrongly rejected by the lower appellate Court.

Now, in placing the burden of proof on the appellant-defendants as regards the ownership of the house, the learned District Judge was undoubtedly under the impression that houses standing on any land belong to the owner of that land. No doubt, in England the general principle of *Quicquid plantatur solo solo credit* is applied to lands and buildings and "whatever is affixed to the soil belongs to the soil." But in India and Burma this principle is not applied to

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the fullest extent as is obvious from the following passage in the case of *Thakoor Chunder Poramanick and others* v. *Ramdhone Buttacharjee* (1) :

" . . . Buildings and other such improvements made on land do not, by the mere accident of their attachment to the soil, become the property of the owner of the soil ; and we think it should be laid down as a general rule that, if he who makes the improvement is not a mere trespasser, but is in possession under any *bona fide* title or claim of title, he is entitled either to remove the materials, restoring the land to the state in which it was before the improvement was made, or to obtain compensation for the value of the building if it is allowed to remain for the benefit of the owner of the soil."

This case has been followed by the Calcutta and Bombay High Courts in the rulings of *Narayan Das Khettry* v. *Jatindra Nath Roy Chowdhury and others* (2) and *Vallabhdas Naranji* v. *Development Officer, Bandra* (3) and the same principles were laid down therein. In the former ruling the head-note reads,

" In India there is no absolute rule of law that whatever is affixed or built on the soil becomes part of it, and is subject to the same rights of property as the soil itself."

As far as I am aware there is no direct ruling on this point in Burma, but there can be little doubt that in this country also the same principle as are laid down in the above rulings are applicable.

In the present case the learned District Judge undoubtedly erred when he placed the burden of proving the ownership of the disputed house on the appellant-defendants. The learned Subordinate Judge, on the other hand, remarked that though the burden of proof is on the respondent-plaintiff yet the appellant-defendants must also prove their ownership in the property. In his judgment the learned Subordinate

(1) 6 W.R. 228 (F.B.). (2) 54 Cal. 669.
(3) 53 Bom. 589.

Judge pointed out that both parties had failed to prove the ownership of the house, but finally held that the respondent-plaintiff was the owner. For instance, the learned Subordinate Judge referred to the Exhibit *A* agreement and refused to accept it as genuine, and so also he rejected Exhibit 3 unregistered sale deed filed by the appellant-defendants. There can be little doubt that he was correct in his findings on those documents. It is indeed strange and noteworthy that neither the respondent-plaintiff nor the appellant-defendants cited M. T. Ali and Khalique who were alleged to have built the house and later transferred it to the appellant-defendants. The burden of proving the ownership of the disputed house lay on the respondent-plaintiff and if she failed to discharge that burden there was no need to consider the plea put forward by the appellant-defendants, as the respondent-plaintiff could not succeed in the suit unless she was able to prove her title to the property. On the evidence led and the documents filed in the case it was clear that the respondent-plaintiff was not the owner of the suit house.

The appellant-defendants had also sought to establish that they had been paying ground-rent to the respondent-plaintiff or in other words that they were her tenants in respect of the land. They filed an alleged agreement between the respondent-plaintiff and M. T. Ali as regards the ground-rent, which is filed as Exhibit 2 in the trial record. A receipt for rent paid was also filed as Exhibit 4. Both these documents are said to bear the signature of the respondent-plaintiff. The learned Subordinate Judge failed to realize that these documents ought to have been stamped and should not have been admitted in evidence. However, he did admit them in evidence, and the lower appellate Court was not competent to question the admissibility: *vide* section 36 of the Stamp Act and the rulings in

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Pedda Venkatta Reddi and another v. *Vitta Hussain Setti* (1) and *Venkatakrishna Reddi* v. *Batcha Reddi* (2). The respondent-plaintiff did not specifically deny that she had signed the document Exhibit 2, but she denied the signature on the document Exhibit 4. The respondent-plaintiff ought to have known her own signature and if she did not sign Exhibit 2 she should have said so. It is futile for her to say, "I do not know whether the signature made on Exhibit 2 document belongs to me." As regards Exhibit 4 there was no clear proof that the respondent-plaintiff did in fact sign the alleged receipt.

A reference to the Exhibit 3 unregistered sale deed and Exhibit 2 agreement clearly shows that the appellant-defendants were not trespassers on the land. Exhibit 3 sale deed though unregistered was admissible in evidence, *vide* section 49 of the Registration Act, to prove the nature of the possession of the house by the appellant-defendants. It should be remembered, of course, that this unregistered deed confers no title whatsoever on the appellant-defendants. The learned District Judge does not appear to have realized this point and held that the Exhibit 3 sale deed should have been summarily rejected.

On the whole, both the lower Courts erred in placing the burden of proving the ownership of the house on the appellant-defendants. It was for the respondent-plaintiff to have proved the ownership as explained by me above. The respondent-plaintiff failed to discharge the burden of proving the ownership of the house, and in addition, there is no reason to hold that the defendant-appellants were trespassers in the house in question. The respondent-plaintiff's suit should therefore have been dismissed and the lower Courts erred in passing a decree in her favour.

(1) 57 Mad. 779. (2) 57 Mad. 783.

The appeal is accordingly allowed, the judgment and decree of both the lower Courts are hereby set aside and the respondent-plaintiff's suit will stand dismissed with costs.

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