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It is obvious, therefore, that the defendant's contention cannot be sustained, and the plaintiff succeeds to the fourteen annas as the heir of Amina. The appeal is dismissed with costs.

Appeal dismissed.

J. G. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Heaton.

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RAMCHANDRA RAGHUNATH SHIRGAONKAR (ORIGINAL PLAINTIFF), APPELLANT *v.* VISHNU BABAJI HINDALEKAR AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Landlord and tenant—Agricultural lease—Annual tenancy—Tenant building on a portion of the land to the knowledge of landlord—Suit in ejectment—Tenant bound to vacate—Landlord bound to compensate in equity for tenant's building.

The defendant was for a number of years in occupation of plaintiff's land as an annual tenant. On a portion of the land, the defendant in 1882 erected a building to the knowledge of the plaintiff. The plaintiff after giving notice sued to eject the defendant in 1914 and prayed that the land be restored to him by removing the defendant's building. The trial court ordered the plaintiff to get possession on paying Rs. 2,000 to the defendant. The appellate Court reversed the decree on the ground that the defendant being allowed without objection to build on a portion of the land, the agricultural lease for a year had become a building lease. On appeal to the High Court,

Held, restoring the decree of the trial Court, that the plaintiff was entitled to get vacant possession at the expiration of the defendants' term of tenancy, but on the facts of the case he was in equity bound to compensate the defendant for retaining his building.

SECOND appeal against the decision of T. R. Kotwal, Assistant Judge at Ratnagiri, reversing the decree passed by Abraham Issac, Joint Subordinate Judge at Malwan.

Action in ejectment.

* Second Appeal No. 160 of 1918.

The land in suit belonged to the plaintiff. It was let to defendants Nos. 1 to 3's father Babaji in 1853 for a term of ten years for agricultural purposes; and after the expiration of that tenancy it was held by the defendants on a yearly tenancy.

In about 1882, the defendants erected a storied building on a portion of the land.

The plaintiff served the defendants with a notice to vacate and deliver possession of the land. The defendants having failed to vacate, the plaintiff sued in 1914 that (*a*) possession of the plaint property be restored to the plaintiff by removing defendant's building therein; (*b*) if the building be not removed within the time stipulated by the Court, it should be ordered that the plaintiff do recover possession of the property with the the building therein; (*c*) plaintiff be awarded mesne profits.

The defendants contended, *inter alia*, that they held the lands as permanent tenants; that they had been long alleging their permanent tenancy and that it was evident from plaintiff's conduct that they admitted it; that the defendants had erected buildings in the land at a large cost and reared trees, which were never objected to by the plaintiff; that therefore they could not be ejected and if the Court held otherwise compensation must be paid to them.

The Subordinate Judge held that the defendants were yearly tenants and were liable to eviction. He, therefore, decreed that the plaintiff do recover possession of the plaint property with buildings, trees, &c., from the defendants on payment of Rs. 2,000.

On appeal the Assistant Judge reversed the decree on the ground that the documents and conduct of the parties for a long time shows that there was subsequent recognition by the plaintiff of the fact of a permanent

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lease of the house; that the agricultural lease was turned into a building lease; and therefore the plaintiff was estopped from evicting the defendants from the house.

The plaintiff appealed to the High Court.

Bakhale for *N. M. Samarth*, for the appellant.

A. G. Desai, for respondent No. 1.

MACLEOD, C. J.:—The plaintiff sued for possession of the plaint property and that it might be restored to him by removing the defendant's building. The trial Court ordered the plaintiff to get possession on paying Rs. 2,000 to the defendant. The appellate Judge reversed the decree of the lower Court and directed that the defendant should retain possession of the land covered by the building. The tenant has been in possession of the land for a considerable number of years, but it is admitted that he is not a permanent tenant under the documents which exist, nor can he claim to be a permanent tenant under section 83 of the Land Revenue Code. But the learned appellate Judge considers that because he has been allowed without objection to build on a portion of the land, therefore what were agricultural leases for a year had become building leases. I am afraid I cannot follow that argument. The ordinary rule is that a tenant must give up vacant possession at the end of his term. If he builds he builds at his own risk, and at the end of the term he can take away his building. If he leaves it there, it becomes the landlord's property.

Then it seems that the learned appellate Judge has come to the conclusion that there was a sort of an estoppel which created a permanent tenancy as regards the portion of the land built upon. But that would be to ignore the real nature of an estoppel which prevents a party telling the truth, but it could not possibly

create a permanent tenancy. All that we can say is that there is certainly an equity in this particular case on its own facts in favour of the plaintiff being bound to compensate the defendant if he gives notice. The defendant has been in possession. He also paid rent for this land for a very large number of years and has built to the knowledge of the plaintiff, as is admitted, one of the finest houses in Malvan, and we must say this that very probably the defendant thought he would not be disturbed. But now the land has gone up in value, and the plaintiff evidently is not content with receiving the very small rent received by him on the terms on which he let it to the defendant, with the result that he has given notice. He gets a fine house under the decree of the trial Court which probably is worth much more than Rs. 2,000 having regard to the increased prices. If we order the defendant to remove the house it would probably be worth nothing as the materials would not fetch much when broken up. I think we ought to rely upon the discretion of the trial Court and hold that this was a case in which in equity the plaintiff ought to compensate the defendant for retaining his building. We allow the appeal and restore the decree of the trial Court. The plaintiff will get his costs throughout from the 1st defendant. The cross-objections are dismissed with costs.

HEATON, J.:—I agree to the decision proposed. The mistake made by the lower appellate Court, I think, was that it inferred something precise when it was logically impossible to infer anything but what was vague. No doubt it is quite logical to say that there must have been some sort of understanding between the land-lord and the tenant, for the latter never would have put up such a costly building as he did, if he held only the position of an annual tenant. But when we come to the question what was it that was understood between

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the land-lord and tenant we find everything is vague. There is nothing in writing about it. No one deposes to it. It is all left to be inferred from general circumstances. It seems to me that you cannot, in a case like this, from general circumstances infer that which requires to be proved by definite evidence, such as for instance that there was a building lease, or that there was a specific understanding the terms of which can be stated. I think, therefore that all that we can do is to say that although there is no specific agreement proved of the nature inferred by the lower appellate Court, yet the circumstances do show that it would be very unjust to evict the defendant without awarding him compensation. Therefore I think the order proposed by my Lord the Chief Justice is the correct order to make in this case.

Decree reversed.

J. G. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Heaton.

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ATMARAM BHASKAR DAMLE (ORIGINAL PLAINTIFF), APPELLANT *v.* PARASHRAM BALLAL KELKAR AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS*.

Mesne profits—Partition suit—Relief for future mesne profits claimed in suit—Decree not referring to future profits—Relief must be deemed to have been refused—Separate suit for future profits—Civil Procedure Code (Act V of 1908), section 11, Explanation V.

In a suit for partition, a claim was made for possession, past mesne profits and future profits. The decree which granted partition made no reference to future profits although past profits were awarded. The plaintiff having filed a separate suit to recover future profits for three years,

* Second Appeal No. 878 of 1918.