

Ramsing Harising Vs. Bai Dhanba

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Court : Mumbai

Decided On : Jan-29-1925

Reported in : AIR1925Bom512; (1925)27BOMLR626

Judge : Norman Macleod, Kt., C.J. and ;Coyajee, J.

Appeal No. : Second Appeal No. 826 of 1923

Appellant : Ramsing Harising

Respondent : Bai Dhanba

Disposition : Appeal dismissed

Judgement :

Norman Macleod, Kt., C.J.

1. This suit was brought by the plaintiff for possession of certain lands alleging that he was a permanent tenant thereof under the lease dated July 1, 1912, The document is a rent-note and by itself does not purport to transfer an interest in the land, so that the execution of the rent-note by the plaintiff to the owner of the land could not be said to constitute the transfer of any interest to him. Even if it had been accepted by the present defendant as alleged, as no possession had been given under it to the plaintiff, it would still remain a contract between the parties, so that the plaintiff would have for file a suit with three years from the time when the plaintiff had notice that performance was refused, for the performance of the

contract, After the arguments were closed we were referred to the decision in Syed A jam Sahib v. Ananthanarayana Aiyar I.L.R.(1910) Mad. 95 in which it was held that the registered instrument which under Section 107 of the Transfer of Property Act is necessary to create a lease within the section need not, necessarily be an instrument signed by the lessor. Such a lease might be created by the registered instrument signed by the lessee and accepted by the lessor. With all due respect I cannot think that the document in this case can operate as a transfer of an interest in the property to the lessee. It would have been otherwise if the lessee had obtained possession. Such possession would then be attributable to the document he had signed, which had been registered and accepted by the lessor, HO that in equity he would be entitled to retain his possession against the owner seeking to eject him. The plaintiff not having obtained possession has not, in my opinion, such a title aa would support a suit for possession. This appeal, therefore, must be dismissed with costs.

Coyajee, J.

2. I agree.

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