

**Rajaram and ors. Vs. Narasinga**

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**Court :** Chennai

**Decided On :** Dec-17-1891

**Reported in :** (1892)ILR15Mad199

**Judge :** Parker and ;Shephard, JJ.

**Appellant :** Rajaram and ors.

**Respondent :** Narasinga

**Judgement :**

**Shephard, J.**

1. Two questions are raised by this appeal. It is contended, on the plaintiffs' behalf, that the Subordinate Judge was wrong in his finding of fact with reference to the instrument on which the plaintiffs found their claim; and on the defendant's side it is urged that by that instrument the plaintiffs claiming as the heirs of the original grantee, who died in 1867, acquired no title. On the question of fact, I am unable to agree with the decision of the Subordinate Judge, for, in my opinion, there is abundant evidence to prove the execution of the instrument (Exhibit K); but, in the view I take, it is unnecessary to discuss the evidence, because the construction which I think must be put on the instrument is fatal to the plaintiffs' claim.

2. The instrument is described as a fixed permanent ijara patta, and it provides for a rent to be paid according to the permanent beriz. There are no special words to

show that it was to operate beyond the life-time of the grantee, Dowlatram. The words translated 'fixed, permanent' seem to be nearly equivalent to the words istemrari mokurari common in instruments, which come before the High Court of Bengal. Dealing with a case in which the instrument under discussion contained this expression, the Judicial Committee observed that they thought it to be established that 'the words istemrari mokurari in a patta do not perse convey an estate of inheritance,' and they proceeded to hold that, in that particular case, the intention to create a perpetual grant had not been sufficiently indicated [Tulshi Pershad Singh v. Ramnarain Singh I.L.R. 12 Cal. 117 No distinction in favour of the plaintiffs can be pointed out between the instrument before the Privy Council and that which we have to construe. On the contrary, in the former, there was a clause, which, at least, showed that the grantor intended to hind his heirs. In Gopayyan v. Balaji Second Appeal No. 607 of 1874, unreported cited for the defendant, the same view was taken in this Court. There is nothing in the circumstances since the death of Dowlatram to favour the contention of the plaintiff. In my judgment, the plaintiffs have failed to prove their title and the appeal must be dismissed. I agree that each party should bear his own costs.

**Parker, J.**

3. The Subordinate Judge has found that the lease-deed (Exhibit K) has not been satisfactorily proved. The learned Counsel has, I think, shown to demonstration that this finding cannot be supported. Not only does Exhibit Q prove that a document, identical in terms with Exhibit K, must have been filed in 1859 in the proceedings before the Tahsildar, which ended In the decision (Exhibit P), but Exhibits G and R, dated the day after the execution of Exhibit K, also support the document. The genuineness of Exhibit G is not impugned, and it shows that the original permanent ijara was granted in 1848 for Rs. 650 to Jeyaram Lala and Dowlatram Lala by the deceased Vasudeva Lala and Hari Lala, the Zemindars of the mittah. Exhibit S is a copy of G which copy was also filed in 1859.

4. Exhibit H is a takid addressed by Dowlatram to the karnam Alagiri Ayyar in fasli 1268, and Exhibit J four days later shows that Jeyaram Lala resigned his share in the lease in favour of Dowlatram and informed the village officers accordingly.

Exhibit O shows clearly that Exhibit K must have been produced in 1859.

5. owlatram Lala died in 1867. After his death, we find suits were brought against his brothers (Exhibits A and B), alleging a fresh agreement in April 1868 for a permanent lease at a permanent beriz of Rs. 590-15-7 (being an increase of 12 annas and 6 pies on the rate fixed in Exhibit K). Exhibit VIII is the answer to the plaint B, and Exhibit VI, the judgment, and Exhibit CC, the appeal judgment. The permanency of the lease was not disputed.

6. Exhibits C, D, BB, XI and XII show subsequent litigation between the same parties and their representatives. These documents go to show a fresh permanent lease in 1867, the year of Dowlatram Lala's death.

7. The plaintiffs, in contending for the hereditary character of the lease, rely on the words 'Kayam Saswata' in Exhibit K. I agree with Mr. Justice SHAPHARD that it is not easy to distinguish these words from istemrari mokurari, which the Privy Council has held do not per se convey an hereditary estate unless used in conjunction with words denoting from 'generation to generation' (naslan bad naslan) or 'with sons' (ba farzandan) *Tulshi Pershad Singh v. Ramnarain Singh* I.L.R. 12 Cal. 117 In this case, however, the conduct of the parties, not less than the language of the instrument, raises a presumption that the lease was not intended to be hereditary. There was one ijara to Jeyaram Lala and Dowlatram Lala in 1848 at a beriz of Rs. 650 a second in 1856 to Dowlatram Lala alone for Rs. 590-3-1 (Exhibit K), and a third in 1867 for Rs. 590-15-7 to Rajaram Lala and Rama Lala. On these grounds, I am of opinion that the appeal must fail and should be dismissed. As a false defence was set up, I would direct that each party bear his own costs in the appeal.

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