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Court : Kolkata

Decided On : Apr-29-1937

Reported in : AIR1937Cal499,173Ind.Cas.996

Appellant : Haladhar Pathak and ors.

Respondent : Madan Mohon Singha Choudhury

Judgement :

B.K. Mukherjea, J.

1. These two appeals arise out of two rent suits between the same parties and involving the same points in dispute, which were heard together in both the Courts below. The landlord claimed rents in both the suits on the basis of a solenama which was filed in Title Suit No. 356 of 1903 between the same parties and which was incorporated in the decree passed in that suit. The defendants in both these suits admitted their liability so far as the money rent was concerned, but resisted the plaintiff's claim for paddy rent, and relied upon the entries in the settlement record in support of their contention. The trial Court upheld the defendants' contention and decreed the suits in part for money rent only. It held that the solenama in Title Suit No. 356 of 1903, as it contained a stipulation for variation of rent operated as a lease, and as a lease it required registration. As it was not registered, it was not admissible in evidence, and there being no other materials upon which the plaintiff could establish his claim for paddy rent, that portion of the

claim was dismissed. There were two appeals taken to the District Judge of Bankura against these two decrees. The learned Judge came to the conclusion that the Solenama did not require registration as it was incorporated in a decree, and consequently even if it was inadmissible to prove the lease, it could be relied upon as the admission of the defendants and as such was admissible in evidence to prove the rent claimed by the plaintiff. On this view of the case the learned Judge remitted the case to the trial Court in order that the suits might be heard upon reception of the solenama as evidence in the suit. It is against these orders of remand that these two second appeals are preferred.

2. Mr. Panchanon Ghose who appears for the appellants assailed the propriety of the lower appellate Court's decision on the ground that the Court was in error in thinking that the solenama could be held to be admissible in evidence because it was embodied in the decree, or even as an admission of the parties. It seems that the learned District Judge apparently took this document as creating the lease, and having done that he was certainly not correct in thinking that Section 17, Sub-section (2), Clause (vi), Registration Act, exempted the document from the necessity of registration. It may be pointed out that Sub-section (2) reserves only those documents which are included in Clauses (b) and (c) of Sub-section (1), and Clause (d) of Sub-section (1) which mentions leases of immoveable property from year to year is not controlled by this sub-section. This view would follow from the reasoning of their Lordships of the Judicial Committee in Hemanta Kumari Debi v. Midnapur Zamindari, Co. AIR 1919 P C 79, and has been held to be so in later decisions of this Court of which the case in Sarat Chandra Das v. Sm. Sarajini Rudraja : AIR1924 Cal135 , may be cited as an instance. The other ground of the learned District Judge also seems to be faulty. An unregistered lease may be certainly used for collateral purposes and held admissible as an admission of the party for these purposes, but the rent reserved by the lease cannot be proved by it as it is a term of the lease itself and not a thing collateral to it, vide the case in Haran Chandra v. Kaliprosanna : AIR1932 Cal83 . The position therefore is this, that if the solenama be treated as a document creating a fresh lease it is inadmissible in evidence, either under Section 17(2)(vi), Registration Act, or even as an admission to prove the rent which was reserved by it. But the difficulty will disappear, if the document is not one creating a lease. Mr. Roy Choudhury who

appears for the respondent, attempts to support the decision of the lower appellate Court on the ground that there was really a pre-existing lease between the parties with regard to the identical land and all that the solenama purported to do was to suspend the rent temporarily, or at any rate to vary, or to reduce the rent. I am not convinced that it was intended for temporary suspension of rent, but surely it did vary the rents. If therefore we assume that the solenama proceeded upon the footing of an existing lease, a document which merely varies the rent in respect of an existing tenancy, may require registration, if the earlier lease is registered, on the principle enunciated in Lalit Mohan Ghose v. Gopli chauk coal co. (1912) 39 Cal 284, or the deed itself might be compulsorily registrable because it purports to limit a right in respect of an immoveable property worth one hundred rupees, or upwards.

3. In the present case there is no evidence that the earlier lease, if any, was created by any registered document, and even if the solenama be held to require registration because it came under Section 17(1)(b), Registration Act, the necessity of registration would be obviated by reason of Section 17, Sub-section (2), Clause (vi) of which expressly exempts decrees or orders of the Court from the list of documents which are compulsorily registrable under Clauses (b) and (c). On the face of the solenama, it is difficult to say, whether it in fact creates a fresh lease or not. It may be that it simply varied the existing rent without doing anything more, or it may be that certain other terms were varied and practically a fresh lease was entered into. At any event this matter which has not been properly investigated will certainly, in my opinion, require investigation. I therefore affirm the order of the learned District Judge remanding the two suits to the trial Court. The trial Court will first decide on such evidence produced by the parties, as to whether the solenama in fact purported to create a new lease or not. If it is of opinion that it is a new lease, then it shall not admit it into evidence and the decree of dismissal passed by the Court below on the previous occasion would stand. If on the other hand the Court is of opinion that the solenama did not create a fresh lease, it will admit the solenama in evidence and decide the suits after taking the solenama and other evidence on the record into consideration. Subject to the directions given above, the order of remand is upheld and the appeals are dismissed. There will be no order as to costs in these appeals. Future costs will abide the result. No

order is necessary in the alternative applications.

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