

FaijuddIn and ors. Vs. Asrab Ali and ors.

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SooperKanoon Citation : sooperkanoon.com/868786

Court : Kolkata

Decided On : May-17-1922

Reported in : AIR1923Cal670,70Ind.Cas.570

Judge : Asutosh Mookerjee and; Chotzner, JJ.

Appellant : FaijuddIn and ors.

Respondent : Asrab Ali and ors.

Judgement :

1. This is an appeal by the plaintiffs in a suit for recovery of possession of land on declaration of title. The Trial Court decreed the suit. On appeal that judgment was reversed. On second appeal to this Court the case was remanded to the lower Appellate Court for re-consideration. After remand, the District Judge adhered to the opinion previously expressed by him, with the result that the suit has been dismissed. On the present appeal, the plaintiffs have contended that the decision of the District Judge is erroneous, as he has excluded from consideration a lease granted on the 7th April 1883 on the ground that the document, though compulsorily registrable under Section 17 of the Indian Registration Act, had not been duly registered.

2. Section 17 provides that a lease of immoveable property from year to year or for any term exceeding one year or reserving a yearly rent shall be compulsorily registrable. The question for consideration, consequently, is, whether the

document now before us is a lease from year to year or for a term exceeding one year or reserves a yearly rent. The lease purports, on the face of it, to be a settlement for a term of one year. The lease states that the tenant had presented himself, that he had prayed for a settlement for the year 1920 for a term of one year, and that the lease was accordingly granted on condition that an annual rent of Rs. 6 would be paid. The document then proceeds as follows: 'If you do not pay the rent, year by year, at the expiry of the term, we will settle the jote elsewhere or bring the lands in our possession. To this you will not be able to make any objections. You will not get credit for any rent which is paid without obtaining a receipt, and even after the expiry of the term of this pattah, if you pay to us, year by year, the settled rent, year by year, without objection, we will not settle the Said lands elsewhere. To this effect we give you settlement by this Anumati pattah for the year 1290 B.S. for a term of one year.'

3. It will be observed that the document is described as a settlement for a term of one-year in at least three places. But it is argued on behalf of the respondent that if all the terms of the lease are examined, it will be found that the lease was for more than a year, the test to be applied is, whether there was a present demise for a year only, or for a period of more than one year. The application of this test leads to a conclusion unfavourable to the respondent. If there is a present demise for more than a year, the legal consequence follows that the tenant has not the option to vacate the land at the end of a year. If from the inception of the tenancy, he is a tenant from year to year he must terminate the tenancy by an appropriate notice. On the other hand, the lease makes it abundantly clear that the tenant was allowed the option to quit the land without any notice at the end of the term of one year. He had the option to continue in occupation of the land upon payment of rent and if he chose to exercise that option, his possession thereafter would be not that of a tenant for one year but of a tenant from year to year. This is exactly what happened in the case of *Boyd v. Krieg* 17 C. 548 : 8 Ind. Dec. (N.S.) where Trevelyan, J., held that the mere fact that the tenant had the option to renew the period for which the lease was to run, did not make the tenancy a tenancy in excess of one year. This accords with the decision in *Hand v. Hall* (1877) 2 Ex. D. 355 : 46 L.J. Ex. 603 : 36 L.T. 7651 : 25 W.R. 734 which shows that the existence of the option does not create a lease for a term exceeding one year. A similar view

has been adopted in the cases of *Khayali v. Husain Bakhsh* 8 A. 198 : A.W.N. (1886) 56 : 5 Ind. Dec. (N.S.) 12 and *Apu Budgavda v. Narhari Annajee* 3 B. 21 : 2 Ind. Dec. (N.S.) 14. The decision in *Bhobani Mahto v. Shibnath Para* 13 C. 113 : 6 Ind. Dec. (N.S.) 575 is clearly distinguishable. Although the lease in that case purported to be a lease only for a year, there was a covenant that the usufructuous mortgagee would continue till the loan was re-paid. Upon a consideration of all the terms of the lease the Court held that the lease was for a period longer than a year. A similar remark applies to the decision in *Venkatachellam Chetti v. Audian* 3 M. 358 : 5 Ind. Jur. 636 : 1 Ind. Dec. (N.S.) 804. There, also, although the lease purported to be a settlement for a year, there was a covenant that the tenancy would continue, until, another document was executed, and the Court found that the deed taken as a whole created a tenancy for a longer period than one year.

4. We are of opinion that in the present case there was no demise for a longer period than one year and that, although the tenant had the option at the end of the term of one year to continue his tenancy, that did not make the lease a lease for a longer term than one year. From this point of view it must be held that the document was not compulsorily registrable.

5. It has next been contended that the lease reserves a yearly rent. It is plain, however, that this cannot be treated as a lease reserving a yearly rent, inasmuch as there was a present demise for one year. Clause (d) of Section 17 of the Indian Registration Act applies when the lease is for a term longer than one year. This position is supported by the decision in *Jugdesh Chunder Biswas v. Abedollah Mundul* 14 W.R. 68. The decision in *Mohunto Southo Pursad Dass v. Parasu Padhan* 26 W.R. 98 mentioned on behalf of the appellants is clearly distinguishable.

5. The result is that this appeal is allowed, the decree of the District Judge set aside and the case remanded to him, for reconsideration. The lease will be treated as part of the evidence, provided its genuineness is established. The District Judge will then consider whether the boundaries given in this document advance the case of the plaintiffs. Costs will abide the result.

