

**Subimalchandra Chatterji Vs. Radhanath Ray**

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**SooperKanoon Citation :** [sooperkanoon.com/876621](http://sooperkanoon.com/876621)

**Court :** Kolkata

**Decided On :** Jun-23-1933

**Reported in :** AIR1934Cal235

**Appellant :** Subimalchandra Chatterji

**Respondent :** Radhanath Ray

**Judgement :**

1. This is an appeal by the defendant in a suit for ejection after service of notice to quit. The case of the plaintiff was that the defendant was a monthly tenant, whose tenancy had been determined by notice to vacate the premises. The claim for ejection: was resisted by the defendant, on the ground that there was a registered agreement for lease dated 20th April 1917, for a term of 21 years, and that the defendant was not therefore liable,, to be ejected. It is necessary to mention in this connexion that the plaintiffs in the suit were the purchasers at a sale held on 13th November 1928, in execution of a mortgage decree passed on the basis of a mortgage of the premises in question, in possession of the defendant, executed by Jugalkrishna Mallik and Phulkumari Dasee on 25th February 1924. The property in suit belonged originally to one Shyamlal Mallik, who died intestate in the year 1901, leaving him surviving his widow, Phulkumari, who obtained letters of administration, and subsequently adopted Jugalkrishna as a son, by virtue of an authority to adopt. Jugalkrishna after attainment of majority, instituted a suit for possession of the estate of Shamlal Mallik on 22nd February 1917, and the agreement to lease, on which the defendant based his title to be in

possession, was executed by Jugalkrishna on 20th April 1917, after the institution of the suit for possession against his mother, Phulkumari Dasee.

2. The suit so instituted appears to have been compromised, and it was arranged that Phulkumari was to have a life interest in the estate left by her husband, Shyamlal Mallik ; Jugalkrishna was to get the estate after the death of Phulkumari; that the garden house-the property, from which the defendant-appellant was sought to be evicted-amongst others, was to be managed jointly by Jugalkrishna and Phulkumari, and in case of disagreement between them, by the receiver appointed in the case. According to the findings of fact arrived at by the trial Court, which were not in any way reversed by the Court of appeal below, there was no disagreement between the mother and the adopted son, in regard to the management of this property, and there was collection of rent payable in respect of the same, in accordance with the terms of the agreement to lease; some of the receipts showed that Phulkumari accepted the new rental fixed by the agreement executed by Jugalkrishna, thereby ratifying the agreement. The receiver also received rent at the rate mentioned in the agreement. Plaintiff 1 was the receiver, and the mortgaged property was purchased by the plaintiffs with knowledge of the agreement executed by Jugalkrishna on 20th July 1917.

3. A reference to the terms of the agreement to lease is necessary at the stage, and it requires notice that the agreement contained all the material terms of a lease, with a stipulation that a patta shall be granted within four months of the receipt of the permission of the Court for the execution of the same. There was the further stipulation that,; if the executant of the agreement, Jugalkrishna, failed to execute a patta on the terms set out in the agreement, the person in whose favour the agreement was executed, Nalinbihari Chatterji, would be entitled to get the agreement specifically performed with the help of the Court. Jugalkrishna further covenanted that the aforesaid Nalinbihari Chatterji will continue to pay rent and remain in possession after the expiry of the terms of the existing lease, until the patta was executed. It is worthy of notice in this connexion that Jugalkrishna all along promised to execute a patta-he had never refused to do so- Phulkumari died in the year 1925, and Jugalkrishna was, on her death, entitled to execute the patta, in his own right, without the permission of the Court, as contemplated in the

agreement to lease.

4. On the above state of facts, and in view of the terms of the agreement to lease, the trial Court dismissed the plaintiffs' suit for ejectment. On appeal by the plaintiffs' the learned Additional District Judge, 24-Parganas, reversed the decision of the trial Court, and passed a decree for ejectment in favour of the plaintiffs, on the footing that the defendant-the successor in interest of Nalinbihari Chatterji, in whose favour the agreement to lease was executed by Jugalkrishna Mallik on 29th July 1917 -was only a monthly tenant, whose tenancy had been determined by notice to quit. According to the learned Judge in the Court of appeal below, the contract evidenced by the agreement to lease was uncertain, as it was not possible to fix the date, from which the proposed lease was to run, and there was no part performance of the contract to lease, inasmuch as at the date of the execution of the agreement, the lessee was already in possession; that the continuance of possession amounted to nothing in the matter of part performance. The Court below further held that the right to be specific performance of the contract having been extinguished by efflux of time-the four months' time mentioned in the agreement, within which a patta was to be executed, having expired on 30th November 1918-the defendant in the suit, out of which this appeal has arisen, was not entitled under the law to resist the action for ejectment. The defendant has appealed to this Court.

5. The case is one in which, according to the defendant-appellant before us, there was a registered agreement for a lease in the year 1917 for a term of 21 years, which was a concluded contract between the parties concerned, and which could not be avoided by the plaintiffs-the purchasers of the reversion-their purchase having been subject to the agreement, and with notice of the existence of the agreement. The agreement for lease, on which the defendant's claim to possession as tenant is based, was placed before us for our consideration; and reference has been made to the terms of the document. As indicated already, the agreement was a concluded and a complete contract between the parties concerned, with the intention that a formal document, a patta, should be executed.

6. There can be no question that a mere reference to the preparation of a formal document does not prevent a contract, otherwise binding, being complete [Rossiter v. Miller (1878) 3 AC 1124]. It has to be noticed in the next place that there was no uncertainty in regard to the commencement of the term of the lease; though not expressly stated, the time of commencement could be calculated in the case before us, with reasonable certainty. The lease was to commence from the expiration of the existing term, a fact definitely known to the parties to the agreement for the extension of an existing lease, for a further period of twenty-one years, on certain conditions settled by the agreement. It is further clear that where possession had been obtained before the agreement, the lessee having continued to be in possession all along by virtue of an existing lease, possession after the expiration of the pre-existing lease was only referable to a contract for renewal, and was to be treated as part performance of such contract: see *Dowell v. Dew* (1843) 12 LJ Ch 158.

7. The question arising for consideration next is whether the defendant had in him a right enforceable by law at the date when the action for ejectment, was brought by the plaintiffs. The period of four months mentioned in the contract, of course, had expired on 30th November 1918, and a suit for specific performance of the contract for a lease would be barred under the Limitation Act, after 30th November 1921. The matter for consideration then is whether time was of the essence of the contract, so far as the execution of a patta by Jugalkrishna Mallik was concerned. In view of the conduct of the parties, and regard being had to the clear intention of the parties expressed by the conduct there having been no refusal by Jugalkrishna at any time in the matter of execution of a patta, as found by the trial Court, it could not be held that the parties to the agreement of the] year 1917 contemplated that time was of the essence of the contract in the matter of the execution of a formal document, the patta, the lessee having been effectively in possession of the property demised by payment of rent to the party entitled to receive the same for the time being. According to the finding of the Court of first instance not reversed in appeal, plaintiff 1 as receiver had received rent from the lessee in possession, not to speak of Phulkumari, the mother of Jugalkrishna who had both of them, the mother and the son, powers of management, according to the terms of settlement of a dispute between themselves. It further appears that

the plaintiffs purchased! the property in question with knowledge of the agreement for lease.

8. On the facts and circumstances of the case before us, it could not be held that: the defendants' right to specific performance of the contract for lease was barred by efflux of time on 23rd December 1927, the date on which the suit for ejectment, out of which this appeal has arisen, was instituted by the plaintiffs. We are in agreement with the view indicated in the judgment of the learned Subordinate Judge in the trial Court, that there having been no refusal to execute a patta as contemplates in the contract for renewal of the term of the existing lease, the lessee was willing to waive his right to get a patta till Jugalkrishna became 'the full owner of the property on the death of Phulkumari in June 1925,' and taking that point of time into account, it could not be said that the defendants' right to have the contract for renewal of lease for twenty-one years, specifically performed, was in any way barred by time, at the date of the institution of the suit for ejectment, in December 1927. It is necessary to mention in this connexion that equity holds people bound by a contract which though deficient in some requirement as to form, is nevertheless an existing contract. There was a complete and concluded contract between the parties concerned in the case before us, evidenced by the agreement of the year 1917; that contract evidenced by a registered instrument, was made and was in existence, and had been followed up by performance of the material terms and conditions contained therein; and equity will hold the parties, who are in the position of Jugalkrishna Mallik, bound by the contract for lease entered into in the year 1917: see in this connexion *Ariff v. Jadunath Majumdar* . The plaintiffs were not therefore entitled to eject the defendants as 'only a monthly tenant,' after a notice to quit.

9. In the above view of the case before us, which is in consonance with justice and equities involved in the case, regard being had to the facts and circumstances arising for consideration in the same, the decision and decree passed in favour of the plaintiffs-respondents in this appeal by the Court of appeal below are set aside, and those of the trial Court, dismissing the plaintiffs' suit for ejectment are restored. The appeal is allowed with costs to the defendant-appellant throughout the litigation, including the costs in this appeal.

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