

Alam Mulla and anr. Vs. Surendra Kumar Karforma and anr.

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Court : Kolkata

Decided On : Jun-02-1922

Reported in : 69Ind.Cas.57

Judge : Suhrawardy and ;Cuming, JJ.

Appellant : Alam Mulla and anr.

Respondent : Surendra Kumar Karforma and anr.

Judgement :

Suhrawady, J.

1. This appeal arises out of an action for rent under the following circumstances. There was a holding standing in the name of one Tafizuddin under the plaintiffs at a rental of Rs. 52-8-0. In February 1914 the defendants purchased this holding by private treaty and it appears that they did not get their names registered in the landlord's sherista in respect of it. Subsequently the plaintiffs brought a suit for arrears of rent against the former tenant and got a decree, in execution of which they brought the holding to sale and purchased it themselves. These defendants then applied under Order XXI, Rule 90, Civil Procedure Code, to have the sale set aside on the ground of irregularity in the publication of execution processes. In the course of that litigation a petition was filed, signed by both parties to the effect that the plaintiffs settled the jama with the defendants in maurasi mokarari right having fixed the rate of rent at 14 annas per bigha and that on measurement according to

a certain standard mentioned there the defendants should execute in favour of the plaintiffs a maurasi mokarari kabuliyat. On this petition having been filed the Court which was executing the decree passed the following order: According to the solenama filed on the 10th September 1917 the petition under O, XXI, Rule 90 is allowed and the sale is set aside; and by a subsequent order passed on that date satisfaction of the decree was entered as the defendants had paid the decretal amount to the plaintiffs.

2. The plaintiffs in this suit have claimed rent from the defendants from April 1915 to January 1917. They stated their claim in these words: 'That the defendants have been holding under the plaintiffs 80 bighas 11 cottas and 7 chittaks of land in Mouzah Saihat within the said taluks at a rental of Rs. 72 10 7 1/2 gundas for the 16 annas.' In answer to the plaintiffs claim the defendants in their written statement said: 'Through the Zemindar's pressure and fear of costs of litigation and also through misgivings as to whether by litigation with the plaintiffs, Zemindars, the defendants would succeed in having the plaintiffs' fraudulent sale set aside, the defendants agreed to give a maurasi mokarari kabuliyat at a rental at the rate of 14 annas per bigha. By subsequent averment they objected to the payment of this rent on the ground that the land had not been measured and unless the plaintiffs make the jama khas and then let it to the defendants they were not competent to claim enhanced rent. In paragraph No. 6 of the written statement the defendants alleged that they repeatedly requested the plaintiffs to accept payment of the rents in suit, but the plaintiffs refused to give any cheque dakhilas by receiving the said money and so they could not pay off rents. Both the Courts below have decreed the plaintiffs' suit.

3. On appeal it is urged, first, that the solenama is inadmissible in evidence as it was not registered as it operated as a present demise, created a maurasi mokarari tenancy at a certain rate of rent, and that being so the plaintiffs are not entitled to claim the rent from the defendants on the basis of the solenama. It seems to have been argued that the plaintiffs are not entitled, this document not being admissible, to any rent whatever from the defendant!. It is not suggested that the defendants were in the position of the old tenants and were bound to pay the rent of Rs. 52-8. As I have said the plaintiffs' suit was not brought on the basis of this solenama.

Their cause of action was founded on the defendants holding their land at a certain rent. In order to prove the rate of rent, on which the defendants were holding, this petition which was filed in the execution proceedings was produced in the Court below. It is urged with great degree of insistence that the terms of this petition not having been embodied in the order passed by the Court it could not be proved except by the production of the petition or solenama which on the face of it was not registered and hence inadmissible in evidence, I am of opinion that this petition or solenama was not the foundation of the plaintiffs' claim in this suit and that it was not produced before the Court as giving rise to the plaintiffs' cause of action. It was for all intents and purposes a mere record of certain agreement which the parties had come to out of Court for the settlement of their differences existing at that time by which the plaintiffs agreed to accept the defendant as tenant with certain lights and at a certain rate of rent, to give effect to which a formal document in the shape of a kubuliyat would in future be executed by the defendants. It was merely a record of an oral agreement between the parties which was reduced to the form of writing only by way of a memorandum, and the plaintiffs have treated it as snob. If any authority is necessary to support this view it may be found in the case of *Sarat Chandra Ghose v. Sham Chand Singh* Boy 14 Ind. Cas. 701 : 16 C.L.J. 71 : 39 C. 663. No doubt on the authorities that were placed before us if this piece of paper operated as a lease with immediate effect it would require registration and could not be admissible in evidence. But the view I take of this document is, considering that its operation was not immediate but rather past, for by it the defendants agreed to pay rent not from the date he filed the petition but from an antecedent period, that it only recognized and recorded a certain understanding come to between the parties in respect of property in dispute. It is settled that the letting out of agricultural land need not be by a document only, it may be by oral agreement or even by conduct of parties. In this view of the matter I think the defendants' first contention fails.

4. Their second contention is that the solenama if not admissible in evidence no oral evidence can be given to prove the terms included in it. I think I have sufficiently answered this argument. It is oral agreement upon which the plaintiffs really relied and the solenama was produced only to show that it was as the plaintiffs say and was recorded on a piece of paper which was filed in Court.

5. The third point taken is that the plaintiffs are not entitled to claim rent at an enhanced rate for the period before the filing of the petition or solenama. It is difficult to understand the force of this contention because the defendants did not claim as succeeding to the former tenant, Tafizuddins' title and so there can be no question of enhancement of rent. The defendants agreed at the time of the composition of the case under Order XXI, Rule 90 to pay rent from the data on which the suit was brought. This suit, therefore, is not for enhanced rent but for rent at the stipulated rate.

6. The last ground taken is that, according to the calculation given in the plaint, the rent ought to be Rs. 70-10 and odd and not Rs. 72-10 and odd as claimed by the plaintiffs. It no doubt looks as if this claim of the plaintiffs requires some explanation. But this objection was neither taken in the Court of first instance nor in the Court of Appeal and it is difficult for us in second appeal to ask the plaintiffs to explain how they came to this figure which may be due to increase in area or some other cause which the learned Vakil for the respondents is unable to assign. I may remark that in both the Courts below the only point, as appears from the judgment, taken by the appellants was whether the plaintiffs were entitled to a decree for rent at the rate claimed by them. Both the learned Munsif and the learned District Judge distinctly said that that was the only point that was urged before them.

6. All the contentions of the appellants having failed, this appeal is dismissed with costs.

Cuming, J.

7. I agree.