

(1921) 12 BOM CK 0018

In the Bombay High Court

Case No : Second Appeal No. 74 of 1921

Chandmal Kesarmal

APPELLANT

Vs

Vishvanath Balvant Sohoni

RESPONDENT

Date of Decision : 23-12-1921

Acts Referred:

Citation : (1922) 24 BOMLR 300 : 67 Ind. Cas. 230

Hon'ble Judges : Shah, J; Norman Macleod, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Norman Macleod, C.J.—The plaintiff company sued to recover land which was originally leased to one Pemraj under a rent-note passed by him on the 1st October 1905. The defendants Nos. 3 and 4 who resist the plaintiff's claim are the sister's sons of Pemraj. The case for the plaintiff is that the lease was only to Pemraj and his wife and his direct descendants, thus excluding the collaterals. This construction of the document has found favour in both the lower Courts. But I do not think that that is the Way to look at this particular document which amounts to a lease of particular premises for forty years to Pemraj, and if there had been no words of limitation the lease-hold interest would pass to his heirs. The question is whether we can extract from the document any intention that the lease on the death of Pemraj and his wife should descend in a particular manner. The words are (sic) which are translated "sons and grand-sons and our lineage." It is clear from the decision in Ramlal Mookerjee v. Secretary of State I.L.R (1881) Cal. 304. P.C. that those words when found in a will convey an estate of inheritance, and the same conclusion was arrived at in Perakash Lal v. Rameshwar Nath Singh I.L.R(1904) Cal 561, where their Lordships recognised that these words had been held to convey absolute estates of inheritance, alienable and never resumable, unless in a particular case some custom were proved which would exclude the ordinary law, for instance, if it were found that these words were applied to a devise of an estate which by custom descended only in the

male line, then they could not be held to convey an absolute estate of inheritance. There is no difference whether such words be found in a will or lease, and there is nothing in this particular document on the facts proved which would show that the period of forty years for which the rent-note was to run, was to terminate before the expiry of forty years, in the event of the line of the direct descendants to Pemraj coming to an end. In my opinion this document should be construed as leasing the premises absolutely to Pemraj for a period of forty years, and the result would be that on the death of Pemraj it would go to his heirs. No doubt the fact that the wife is mentioned in the document might create a difficulty, since in the event of Pemraj dying before his wife, she might claim a life-estate in the lease to the exclusion of his heirs. However that question need not be considered. Taking a general view of the lease, and in the absence of any claim by the wife, we are entitled to come to the conclusion that it was a lease to Pemraj for forty years without any limitation. Therefore the appeal should be allowed and the plaintiff's suit dismissed with costs throughout. The direction that the plaintiff should get possession should be struck out. The direction with regard to payment of rent should stand.