

(1912) 07 CAL CK 0063
In the Calcutta High Court

Ganendra Mchan Chowdhury and Others	APPELLANT
Vs	
Gya Prosad Tewari and Another	RESPONDENT

Date of Decision : 09-07-1912

Acts Referred:

Guardians and Wards Act, 1890 — Section 29
Registration Act, 1908 — Section 17, 49

Citation : 16 Ind. Cas. 52

Hon'ble Judges : Sharf-ud-din, J;Coxe, J

Bench : Division Bench

Judgement

1. This appeal arises but of a suit for rent. It appears that the defendants in Chaitra 1304, executed a registered kabuliat in favour of the plaintiffs with respect to the lands in suit. The term of this kabuliat was from 1304 to 1309, inclusive. It is said that subsequently in Assin 1810, the defendants obtained a letter from the plaintiffs' naib by which the rent was reduced from Rs. 37-8 to Rs. 37-3, on the ground that the entire land was not fit for cultivation. A condition is said to have been attached to this reduction of rent to the effect that it was dependent on the payments of the current arid back rents within a specified time. The suit was decreed by the Munsif at the rate of Rs. 37-3, and the plaintiffs' appeal to the District Judge was dismissed.

2. The plaintiffs accordingly have appealed to this Court and on their behalf, three points have been taken. The first is that this letter on which the Courts below have relied was inadmissible in evidence and reliance has been placed on the decision in the case of Lalit Mohan Ghose v. Gopali Chauk Coal Co. Limited 12 Ind. Cas. 723 : 39 C. 284 : 16 C.W.N. 55 : 14 C.L.J. 411 in which it was held that a document, embodying an agreement for reduction of rent under a previously existing lease registered under the Registration Act, requires registration.

3. It seems perfectly clear that, if this letter had been granted by the plaintiffs within the term of the lease, the decision quoted would be fully applicable. It

has, however, been argued by the learned Vakil for the defendants that this letter can be referred to for the purpose of rebutting the presumption that after the expiration of the period of the lease, the defendants continued to hold over on the same terms.

4. It appears to us, however, that in any case, this document is inadmissible in evidence. It may be remarked in passing that it was not executed in the beginning of 1310. After the expiration of the period of the lease at the end of 1309, the defendants must be presumed to have held over under the terms of the former lease and it is clear from the letter itself that the parties considered the former lease to be binding on them up to the time when the letter was written. The letter itself seems to be very similar in its terms to that referred to in the case of *Durga Prosad Singh v. Rajendra Narain Bagchi* 37 C. 293 : 4 Ind. Cas. 713 : 10 C.L.J. 570 which was the subject of consideration in the Full Bench case which we have quoted above, and was approved of in that decision. The learned Judges, in the case of *Durga Prosid Singh v. Rajendra Narain Bagchi* 37 C. 293 : 4 Ind. Cas. 713 : 10 C.L.J. 570 held that all the essential elements of the lease were contained in that letter and that its registration was compulsory u/s 17 of the Indian Registration Act. It appears to us that the letter produced in this case, which is very similar in its terras and reserves an annual rent, comes within the scope of that decision and requires registration u/s 17 of the Act and cannot, therefore, u/s 49, be received as evidence of any transaction affecting the property.

5. The second point taken on behalf of the appellants is that the letter ought not to have been acted upon because the Courts below had not found that the conditions specified in it had been fulfilled. Having given our decision on the first point it is not necessary for us to discuss this point at length; but we may say that, in our opinion, the Courts below have gone beyond the law in saying that this condition is contrary to the spirit of the provisions of the Bengal Tenancy Act. No doubt, u/s 178, no contract between landlord and tenant can take away the right of a ryot to apply for a reduction of rent u/s 38. Nothing in this letter, supposing it to be a valid contract, could or can, in our opinion, debar the defendants from instituting a suit u/s 28 of the Bengal Tenancy Act for the reduction of rent. They would have to show in that case that they were occupancy-ryots and that the soil of their holding had, without their fault, become permanently deteriorated; on neither of which points is there any findings in this case. But the fact that the defendants are entitled to bring a suit u/s 38, would not, in our opinion, entitle them in the present suit to repudiate the terms of the contract, which according to their case was freely entered into between them and the plaintiffs.

6. The third point taken is that the plaintiffs' guardian was not entitled to grant this letter u/s 29 of the Guardians and Wards Act, 1890. Having given our opinions on the other points in the case, it is unnecessary to deal with this point; but we may say that, in our opinion, a transaction of this nature, which appears

to us to be a lease for a period not exceeding five years, is not forbidden by the section quoted.

7. It seems to us, therefore, that the appeal must be allowed and the case must go back to the District Judge in order that he may dispose of the appeal after excluding from consideration the letter of Assin 1310. Costs of this appeal will abide the result.