

(1920) 07 CAL CK 0042
In the Calcutta High Court

Hari Nath Bandopadhyaya

APPELLANT

Vs

Promatha Nath Dey Chowdhury and Others

RESPONDENT

Date of Decision : 05-07-1920

Acts Referred:

Registration Act, 1908 — Section 3

Citation : AIR 1921 Cal 127 : 64 Ind. Cas. 747

Hon'ble Judges : Teunon, J;Newbould, J

Bench : Division Bench

Judgement

1. This appeal arises out of a suit for specific performance of a contract. The contract was for the grant of a patni lease, and the only question in the appeal is whether a certain document described as a "bainapatra," that is, a document evidencing the payment of earnest money, not being registered, is admissible in evidence. The contention of the defendant respondents is that the document in an "agreement to lease" within the meaning of Section 3 of the Registration Act, and that u/s 17 of the said Act registration was compulsory.

2. The contention of the plaintiff appellant on the other hand is that the bainapatra is primarily an acknowledgment of receipt of money and thereafter a mere agreement creating in the plaintiff a right to obtain a document of title within the meaning of Clause (v) of Section 17(2) of the said Act. The essential portions of the document read as follows:

This bainapatra for granting patni of (my) share in (a) Zemindary is executed in the year 1318 and is as follows:--....The said mahal was settled with you in patni at an annual rent of Rs. 90-4-0. At present I have purchased the said mahal in execution of a rent decree and have taken khas possession by planting a bamboo. Now it being settled...that Rs. 901 is the premium due by you to me for the grant of a patni lease of the said mahal...and it being thus settled that in all Rs. 1,386-1-3 is due to me by you, having taken from you Rs. 785 on my promise to grant you a patni lease again (with effect) from this date at the annual rent of Rs. 42-8-0...I do execute this bainopatha, Registered patta and

kaabuliyat will be exchanged before the 30th Aghran of the current year.

3. In the case reported as Hemanta Kumari Debi v. Midnapore Zemindari Company Limited 53 Ind. Cas. 534 : 24 C.W.N. 177 : 37 M.L.J. 525 : 17 A.L.J. 1117 : (1920) M.W.N. 66 : 27 M.L.T. 42 : 11 L.W. 301 : 46 I.A. 240 : 31 C.L.J. 238 : 22 Bom. L.R. 488 : 47 C. 485 (P.C.) their Lordships of the Judicial Committee, quoting with approval the language used by Sir Lawrence Jenkins, C.J., in Panchanan Bose v. Chandi Charan Misra 6 Ind. Cas. 443 : 37 C. 808 : 14 C.W. N. 874, held that before an agreement can be held to be an "agreement to lease" within the meaning of Section 3 of the Registration Act, it must be one which operates as a lease, creates an immediate and present interest and effects an actual demise.

4. The question whether the bainapatra or acknowledgment of receipt of earnest money now in question is an "agreement to lease" within the meaning placed upon those words by their Lordships of the Judicial Committee is perhaps not free from difficulty. On the one hand the defendant respondents point to the finding that the plaintiff continued in possession after the date of the document, while the appellant rightly urges that the finding as to possession is that the plaintiff-appellants successfully maintained their actual possession under their previous title. The possession thus continued both before and after the execution of the bainapatra was thus not on the strength of the document or due to any delivery of possession by the defendant No. 1, but was possession maintained (until disturbed by defendants Nos. 2, 3 and 4) in defiance of defendant No. 1 and of the subsequent leases by defendants Nos. 2 to 4.

5. It is further pointed out by the appellants that the construction now sought to be placed on the document is contrary to the pleadings of the defendants, and that in the Court of first instance the only issue raised with regard to the "bainapatra" was whether it had been correctly stamped.

6. It is next obvious from the pleadings of both parties that the intention of the plaintiff and defendant No. 1 was that the documents of title should not be executed until the balance of the consideration money had been paid.

7. Coming to the actual language of the deed, defendant respondents lay stress on the words "from to-day," while the appellants rely on the clear provision that the documents necessary to the completion of title were to be executed and registered on some future day on or before the 30th of Aghran. To leases retrospective effect may be given; and, regarded as a patni lease, the bainapatra is incomplete as not containing the terms and stipulations considered necessary and normally found in patni leases.

8. On the whole we come to the conclusion that the document in question does not effect a present demise, and should be regarded as an agreement creating in the plaintiff a right to obtain a patni lease on the performance of certain conditions on or before the 30th Aghran 1318. The document, therefore, does not require registration and so is admissible in evidence.

9. In this view we need not discuss the farther contention of the appellant that on the admissions contained in the written statement of defendant No. 1 apart from the document, he is entitled to a decree.

10. All the other necessary findings of fact being in favour of the appellant, we decree the appeal, set aside the decree of the District Judge and restore the decree of the Subordinate Judge with costs in all Courts.