

(1918) 01 CAL CK 0066
In the Calcutta High Court

Jahurmul Babu

APPELLANT

Vs

Keramutullah Molla and Others

RESPONDENT

Date of Decision : 31-01-1918

Acts Referred:

Citation : 45 Ind. Cas. 196

Hon'ble Judges : Richardson, J;Beachcroft, J

Bench : Division Bench

Judgement

1. The only point which was or could be argued on this appeal relates to the question whether the gomasta Ishan Chandra Pandey had authority to settle the disputed yote or holding with the defendant Karamtullah. It is contended that the Courts below have not found that he had authority. In the first Court 12 issues were found but there is no specific issue directed to that question. As to evidence it appears that the defendant Keramutnllah produced an amalnama signed by the gomaeta and certain rent receipts also signed by the gomasta. In the Trial Court the learned Subordinate Judge delivered a long and exhaustive judgment from which it would seem that as the case was placed before him, the discussion turned on the genuineness of the documents referred to and not on the question of the gomasla's authority. If the latter question had been argued before the learned Subordinate Judge in the way in which it has been argued before us, the learned Subordinate Judge would no doubt have dealt with it expressly. The learned Pleader for the plaintiff relies on a passage in the judgment of the learned District Judge in the lower Appellate Court. The learned District Judge says this: "in this consideration, it is hardly, worthwhile to discuss the evidence as to whether the gomastas had power to grant the amalnamas or not but I should hold that" the fact of, rent having been accepted, would be a very clear indication that the gomastas had such implied power." That no doubt indicates that, the authority of Ishan Chandra Pandey to grand the amalnama was mooted but nothing" would seem to have been said to the learned Judge about the authority of the gomasta to grant rent receipts. The Judge has found in effect that whether or not the gomasta had authority to grant the amalnama and

whether or not amalnama is admissible in evidence the receipt of rent by Ishan Chandra Pandey presumably on behalf of his employer is sufficient to prove the tenancy of the defendant Keramutullah. In our opinion no sufficient ground has been shown for saying that that finding is vitiated by any error of law. Even if Ishan Chandra Pandey had no authority in the first instance to grant the amalnama or to settle the holding with Keramutullah, nevertheless if rent was afterwards received from Keramutullah and found its way into the pocket of the plaintiff, that would be evidence of ratification by the plaintiff of the gomasta's act on which the Court might act. We are informed that the plaintiffs' son was examined but his learned Pleader is unable to point out any statement in the deposition to the effect that the rent received by the gomasta did not find its way into the landlord's pocket. In the absence of the evidence the ordinary presumption would be that the gomasta performed his duty and duly delivered the rent he collected to his employer. In connection with this question we have also to bear in mind the observations made by the Court on the subject of a gomasta's authority in the case of Sudaman Jamadar v. Behari Mahton 10 Ind. Cas.456 : 15 C.W.N. 953 The present, case turns substantially on matters of fact and there is no sufficient reason why we should disturb the concurrent decree of the Courts below.

2. The appeal must be dismissed with costs.