
(1926) 03 AHC CK 0012
In the Allahabad High Court

Jhabba Singh

APPELLANT

Vs

Chhajjoo

RESPONDENT

Date of Decision : 05-03-1926

Acts Referred:

Citation : AIR 1926 All 445 : 94 Ind. Cas. 169

Judgement

1. These appeals arise out of three suits brought by lessor for the recovery of arrears of theka money due by a lessee for the years 1328, 1330 and 1331 Faslis. The theka was granted on the 5th of May 1918 by a registered lease, which secured to the lessor a rent of Rs. 1,125 per year. Three years after the grant of the lease, two groves standing in the village, comprised in the lease, which apparently yielded some profit to the lessee, were cut by the lessor with the consent of the lessee; and the arrangement between them was that the lessor shall give credit on account of the groves cut to the extent of Rs. 246 per year towards the rent secured by the lease.

2. The question for consideration here is whether such an arrangement can be proved in variation of the terms of the original lease; or in other words whether the oral evidence to prove such an arrangement is excluded by Section 92(4) of the Indian Evidence Act, 1872. It is a well-established rule that a subsequent oral, agreement, varying the terms of a registered lease, or suggesting that the rent payable was really less than what was stated in the registered kabuliyat or lease cannot be proved. But in the present case the agreement was virtually an agreement to give credit to the extent of Rs. 246 per year out of the rent owing to certain groves having been cut by the lessor and the profits of the leasehold property having been consequently reduced.

3. The counsel for the plaintiffs-appellants has referred to the decisions in Mayandi Chetti v. Ooliver (1899) 22 Mad 261 and Karampalli Unni Kurup v. Thekku Vittil Muthorakutti (1903) 26 Mad 195. In none of these cases was any payment made in cash or kind to operate as a pro tanto discharge of liability secured by the lease. All that was set up was an oral agreement to reduce the

rent; but nothing was paid which could be treated as an equivalent to the rent agreed to be remitted. In *Beni Madhub Gorani v. Lalmoti Dassi* 6 CWN 242 and in *Manindra Chandra Nandi v. Durga Sundari Dasya* AIR 1917 Cal 734 oral evidence was admitted to show that despite the execution of a registered kabuliyat, the tenant had paid rent at a lower rate than that stated in the kabuliyat, and the acceptance of that rent by the lessor was relied on as establishing that the intention of the parties was that the kabuliyat was from the first not to be acted upon or that there had been a waiver of the strict terms of the lease. As pointed out in *Ariyaputhira Padayachi v. Muthukumarasawmy Padayachi* AIR 1914 Mad 489 a liability created by a registered instrument may be proved to have been extinguished by letting in admissible evidence (including oral evidence) of payment of that liability or by letting in admissible evidence of any other transaction which operates as a mode of payment. In *Kattika Bapanamma v. Kuttika Kristnamma* (1907) 30 Mad 231 it was held that while a subsequent oral agreement to modify the terms of a registered maintenance deed cannot be proved, the fact that in particular years the obligee was in possession of certain lands of the obligor and paid herself the maintenance amount out of the profits of the lands can be proved. Treating the transaction as a mode of payment or a discharge or waiver of a portion of the rent, due to the profits of the groves, comprised in the lease and cut by the lessor, having been reduced, there was no reason for refusing to allow evidence in proof of such a discharge or waiver. No question of set-off really arises. The appeals are dismissed under Order 41, Rule 11, Civil P.C.