
(1914) 03 CAL CK 0019
In the Calcutta High Court

Kattayani Debi

APPELLANT

Vs

Port Canning and Land Improvement Co.

RESPONDENT

Date of Decision : 09-03-1914

Acts Referred:

Registration Act, 1908 — Section 17

Citation : 25 Ind. Cas. 274

Hon'ble Judges : Beachcroft, J; Asutosh Mookerjee, J

Bench : Division Bench

Judgement

1. The substantial question in controversy" in this appeal is, whether the rent of the tenure held by the defendant-appellant under the plaintiffs-respondents is enhanceable. The plaintiffs constitute a Joint Stock Company which has its head quarters in Bombay and its local office in Canning Town, On the 20th October 1876, the Company appointed one Cowasjee Edalji as their attorney to take and obtain possession of the property which includes the disputed tenure. On the 8th March 1885 Cowasji Edalji drew up a memorandum which embodied the arrangement made by him on behalf of the Company with five persons, who were teachers by "profession, and constituted a company known as "Teacher and Company." The memorandum recited that with effect from the commencement of the year 1291, that is, from the 12th April 1884, Teacher and Company had taken possession of a thousand bighas of land in three separate parcels within defined boundaries. The jungles were to be cleared by the lessees, the lessor Company to contribute to the expenses of reclamation at the rate of Re. 1 per bigha in the case of two of the parcels and at the rate of Re. 1-8 per bigha in the case of the other parcel. The land was to be held rent-free for the first four years; in the fifth year, rent was to be paid at the rate of four annas per bigha; in the sixth year at 8 annas per bigha; in the seventh year at 12 annas and in the eighth year at Re. 1-1 per bigha. It was further stated that the last mentioned rate of Re. 1-1 per bigha was to be the maximum rate of rent in mourasi mulcarari tenure. This memorandum was signed by Cowasji Edalji as agent of the lessor Company and also by Dwarkanath Roy, their Superintendent, and was

made over to the lessees. It is not disputed that the terms of this arrangement have been carried out and in accordance therewith the lessees have constructed the usual embankments and culverts, have reclaimed the land and have been in occupation thereof. A few years after the memo-randum, the land was divided amicably amongst lessees, and in 1898 the representatives of two of them obtained mourasi mukarari leases formally executed in their favour by the lessors. The defendant-appellant is the daughter and representative-in-interest of one of the five original grantees. On the 11th March 1910, that is 25 years after the date of the memorandum of arrangement, the Company instituted the present suit for enhancement of rent of the tenure. The Court of first instance held that the rent was not liable to enhancement, but that the Company was entitled to have the rent re-adjusted by assessment of excess lands, if any. Upon appeal the District Judge has held that the tenure was enhanceable and has remitted the case to the Court of first instance for an inquiry as to the fair rent payable. The present appeal is directed against the order of remand.

2. The first and the most vital question for consideration is, what was the nature of the tenancy? It has not been disputed that if the memorandum of arrangement is a genuine instrument and is admissible in evidence, the tenure was mourasi and mukarari. In the Court of first instance, objection was taken to the reception of this document in evidence on the ground that it was neither stamped nor registered as required by law. This objection was overruled and the Subordinate Judge also expressed a doubt as to its genuineness. Upon appeal, no question of admissibility of the document was raised before the Judge who pronounced in favour of its genuineness, and the case has been decided on the assumption that the document had been properly received in evidence. In this Court an earnest endeavour has been made on behalf of the Company respondent to support the position that the document is not admissible in evidence. It has been argued that the document is an agreement to lease, if not a lease, and that in either view the document was compulsorily registrable u/s 17 of the Indian Registration Act, read with the definition of the term "lease" given in Section 3. Reference has been made to the cases of *Loll Jha v. Negroo* 7 C. 717, *Purmanand Das v. Dharsey* 10 B. 101, *Ramasuamy Ayyar v. Tirupathi* 27 M. 43 : 13 M.L.J. 356, *Champaklatika v. Nafar Chandra Naik* 8 Ind. Cas. 44 : 13 C.L.J. 300 : 13 C.W.N. 536 and *Mahipal Singh v. Lalji Singh* 10 Ind. Cas. 705 : 17 C.W.N. 166 at p. 168 to support the argument that there was a present demise made by the memorandum which was consequently either a lease or an agreement to lease. We are not prepared to accept this contention as well-founded. The document does not demise any property and is neither a lease nor an agreement to lease. It is what it purports to be on the face of it, namely, a memorandum of the arrangement which had been made with the grantees by the agent of the Company on their behalf, under which they had taken possession with effect from the 12th April 1884. In this view the document was rightly admitted by the Court of first instance. We may add that in that Court defendant called upon the Company to produce the counter part of the

memorandum. Her case was that the memorandum had been drawn up in duplicate, that one copy was given to her predecessor-in-interest and that the other copy was retained by the Company. On behalf of the Company it was stated that the counter part had been lost; but it has been explained before us that this did not mean that the Company admitted the genuineness of the document produced by the defendant but merely indicated that no trace of a counter part could be found in their office. The Company, however, produced a book which contained an abstract of this memorandum, entered some years after the date when the original was executed. This is plain from the circumstance that at the foot of the entry there is a note that the land had been partitioned and the shares of the grantees as arranged amongst themselves are stated in detail. It may be taken then that the entry in the book produced by the Company was not contemporaneous with the execution of the memorandum of arrangement. Even if we confine our attention to this entry it is plain that the tenure was intended to be *mourasi* and *mukarari*. The entry is to the effect that the land would be held rent-free for the first four years, and that during the next four years the rent would be progressive, namely, four annas, eight annas, twelve annas and seventeen annas in successive years. But there is no statement as to who was to reclaim the jungle. This indicates conclusively that the entry was not intended to be an absolutely full and accurate copy of the original memorandum: it was in essence an abstract of the terms as arranged between the agent of the Company and the grantees. If, now, we confine ourselves to the abstract as contained in the book and bear in mind the principle recognised in the cases of *Soorason-daree Delia v. Golamali* 15 B.L.R. (P.C.) 125 note : 19 W.R. 141, *Rajaa Suttosurrin Ghosal v. Moheshchander Miller* 12 M.I.A. 263 : 2 B.L.R. (P.C.) 23 : 11 W.R. (P.C.) 10 : 2 Suth. P.C.J. 180 : 2 Sar : P.C. J. 420 : 20 Eng. Rep. 338; *Dhunput Singh v. Gooman Singh* 11 M.I.A. 433 : 9 W.R. (P.C.) 3 : 2 Suth. P.C.J. 92 : 2 Sar. P.C.J. 309 : 20 Eng. Rep. 164; *Hum Prasad Roy Chaudhuri v. Chundee Churn Boyragee* 9 C. 505 : 12 C.L.R. 251 and *Robert Watson & Co. Ltd. v. Radha Nath Singh* 1 C.L.J. 572, it becomes plain that the tenure was never intended to be *enhanceable*; and we are fortified in this view when we find further that no attempt has been made to enhance the rent during a period of at least 17 years. The land was obviously let out for purposes of reclamation, to be effected by the lessees at their expense though the lessor also undertook to make a contribution thereto. It was to be held during the first four years without payment of rent. The rent was thereafter to be progressive till the maximum mentioned was reached, and there was no provision for a further rise. The reasonable inference to draw from these circumstances is that the parties intended that when the specified maximum had been reached, there would be no further increase. As was well observed by Mr. Justice Wilson in *Huro Prasad v. Chundee Churn* 9 C. 505 : 12 C.L.R. 251, if the contrary view were adopted, the inference would follow that after the maximum had been reached, the lessors might, in the very next year, seek to enhance the rent payable, which could hardly have been the intention of the parties. Whether, therefore, we look to the memorandum produced by the defendant which contains an express recital that the tenure was

mourasi and muharari or confine our attention to the entry in the book produced by the Company, which, though merely an abstract, sets out the material terms with sufficient fulness, there is no room for doubt that the tenure was intended to be not enhanceable.

3. The question next arises, whether the Manager of the Company was competent to grant a mourasi and mukarari lease of this description. The extent of his authority depends primarily upon a power-of-attorney dated the 20th October 1876. It has been strenuously argued before us on behalf of the Company that the terms of this" power must be strictly construed; and reference has been made in support of this view to the rule recognised in *Bryant v. La Banque du Peuple* (1893) A.C. 170 : 62 L.J.P.C 68 : 1 R. 336 : 68 L. T. 546 : 41 W.R. 600, *Roy Radha Kissen v. Nauratan Lal* 6 C.L.J. 490 at p. 500 and *Bindubashini Dasi v. Giridhari Lal Roy* 3 Ind. Cas. 330 : 12 C.L.J. 115. Our attention has been invited specially to the passage in the power-of-attorney which authorises the agent to accept kabuliats or counter parts of mourasi leases granted by the Company-to raiyats and it has been argued that in view of the well-known distinction between mourasi and muharari leases *Munrunjun Singh v. Leelanand Singh* 3 W.R. 84 the agent must thus be deemed to have been authorised to grant only mourasi or hereditary leases and not muharari leases, that is, leases by which rent is fixed in perpetuity. The appellant has, on the other hand, contended with considerable plausibility that the term mourasi" has been used in the power-of-attorney, as it is familiarly used in popular language, as equivalent to mourasi and muharari," and that the agent was intended to be vested with authority to grant mourasi and muharari leases, specially in view of the well-known fact that, for purposes of reclamation mourasi and muharari leases are ordinarily granted to lessees who have to bear the burden, wholly or partially, of the costs of reclamation. Reference has also been made to the terms of a lease granted to the representative of one of the original grantees on the 25th April 1908 after the land had been partitioned amongst the lessees. This, lease is described in its commencement as a mourasi pattah and the concluding paragraph states that, under the conditions previously mentioned, a muharari pattah is granted to the lessees named. An examination of the terms of the lease, however, shows plainly that what is granted is a mourasi and mukarari pattah. It has been argued with some force on behalf of the appellant that in so far as this Company at any rate were concerned the term mourasi" was used by them as equivalent to mourasi and muharari". In reply it has been argued on behalf of the respondent that reference cannot rightly be made to a document of subsequent date to explain the terms of the power-of-attorney which had been executed more than 20 years before *Bhagwat Buksh v. Sheo Pershad* 21 Ind. Cas. 481 : 18 C.L.J. 277 at p. 303 : 18 C.W.N. 297, *Kamaleswiri Pershad v. Kanai Singh* 20 Ind. Cas. 171 : 17 C.W.N. 1159 : 19 C.L.J. 348 . In our opinion, the appellant need not rely upon the argument mentioned, and it is not material for the purposes of this appeal to hold that the term mourasi" in the power-of-attorney was used in a loose or popular sense as equivalent to mourasi and

muharari". The decision of the case must depend upon two fundamental questions, namely, first, was the lease granted by the agent within the apparent scope of his authority; and, secondly, was the tenancy created by him ratified by the Company?

4. In so far as the first of these questions is concerned it is plain that the lease granted was within the apparent scope of the authority of the agent. It has been admitted in this Court and the statements is" fully borne out by the evidence on the record that Cowasji Edalji was appointed the first agent* of the Company in this part of the country on the 20th October 1876. He was their chief representative hero, and there is no indication whatever that in the management of this property, he acted under the direction of any superior authority. He was in the service of the Company for a long series of years and retired in 1903. There is also no suggestion that when this particular grant was made, Cowasji Edalji committed an act of fraud, or that he was, in any way, not entirely faithful in the discharge of his duties, or that he betrayed the trust reposed in him by his employers. The fact cannot be, and has not been, disputed that the agent, at any rate, was under the impression that he had authority to grant a mourasi muharari lease on the terms already described. The grantees also were under the same impression. There is further evidence to show that Cowasji Edalji did, as a matter of fact, grant mourasi and muharari leases to other persons in respect of land which had to be reclaimed and brought under cultivation. This was, no doubt, sought to be qualified by one of the witnesses, who suggested that when a mourasi muharari lease was granted by the agent, he obtained permission from, the Directors in Bombay. But there is nothing to show that the lessees were ever apprised of this fact. It cannot be disputed that every act done by an agent in the course of his employment on behalf of his principal, and within the apparent scope of his authority, binds the principal, unless the agent is in fact unauthorised to do the particular act and the person dealing with him has notice that in doing such act he is exceeding his authority *National Bolivian Co. v. Wilson* 5 A.C. 176 at p. 209 : 43 L.T. 60 *Duke of Beaufort v. Neeld* 12 Cl. & F. 248 : 9 Jur. 813 : 8 E.R. 1399, *Trickett v. Tomlinson* (1863) 13 C.B. (N.S.) 663 : 7 L.T. 678 : 143 E.R. 263 : 134 R.R. 688 . The grantees, in the case before us, would be entitled to presume that the agent, who had admittedly authority to grant reclamation leases, had acted with regularity and within the scope of his authority *Royal British Bank v. Turquand* 6 E. & B. 327 : 24 L.J.Q.B. 327 : 1 Jur. (N.S.) 1086 : 119 E.R. 886 : 103 R.R. 461, *Agar v. Athenaeum Life Assurance Society* 3 C.B. (N.S.) 725 : 27 L.J.C.P. 95 : 4 Jur. (n.s.) 211 : 6 W.R. 277 : 140 E.R. 927 : 111 R.R. 817 *Bargate v. Shortridge* 5 H.L.C. 297 : 24 L.J.Ch. 457 : 10 E.R. 914 : 101 R.R. 163., *Montreal & St. Lawrence Light By. Co. v. Robert* (1906) A.C. 196 : 75 L.J.P.C. 33 : 94 L.T. 229 : 13 Manson 184 . In the circumstances of the present case, it is plain that the act done by the agent was within the apparent scope of his authority and is binding upon his principals. The first ground upon which the appellant seeks to hold the Company bound by the lease must be maintained.

5. In so far as the second question is concerned, it has been argued on behalf of the appellant that the tenancy was ratified by the Company, and that as it was ratified, it could be ratified only in its entirety; in other words, that even if the Company be assumed to be entitled to repudiate the unauthorised act of their agent, they could not adopt it in part and repudiate it as to the remainder that is, if they acquiesced in the arrangement made by their agent, they could accept the grantees as tenants only on all the conditions settled by him, the transaction could be confirmed either in its entirety or not at all. This contention is supported by the principle recognised in *Attwood v. Small* 6 Cl. & F. 232 : 2 Jur. 200 : 7 E.R. 684 : 49 R.R. 115 and *Bristow v. Whitmare* 9 H.L.C. 391 : 31 L.J.Ch. 467 : 8 Jur. (n.s.) 291 : 4 L.T. 622 : 9 W.R. 621 : 11 E.R. 781 : 131 R.R. 242 and enunciated by Story in his classical treatise on Agency (section 250) in the following terms: "The principal cannot, on his own mere authority, ratify a transaction in part and repudiate it as to the rest, and hence the general rule is deduced that where a ratification is established as to a part, it operates as a confirmation of the whole of that particular transaction of the agent". In view of this elementary doctrine it has not been, and it cannot be, disputed on behalf of the Company respondents that if there was ratification, the transaction must be deemed to have been ratified in its entirety. But it has been argued, and very properly argued, that before the Company can be held bound by ratification they must be proved to have had full knowledge, or, at any rate, means of knowledge of all the essential facts of the transaction into which their agent had entered on their behalf *Savery v. King* 5 H.L.C. 627 : 25 L.J.Ch. 482 : 2 Jur. (N.S.) 503 : 4 W.R. 471 : 10 E.R. 1046 : 101 R.R. 299, *Haseler v. Lemoyne* 5 C.B. (N.S.) 530 : 28 L.J.C.P. 103 : 4 Jur (N.S.) 1279 : 7 W.R. 14 : 141 E.R. 214 : 116 R.R. 753, *Gunn v. Roberts* 9 C.P. 331 at p. 335 : 43 L.J.C.P. 233 : 30 L.T. 424 : 22 W.R. 652 : 2 Asp. M.C. 250 . In our opinion, there is ample material on the record to show that the Company had such means of knowledge in the very book produced by them. The book, evidently kept in the regular course of business, contains a large number of entries similar to the one exhibited in this case. It is in fact a book in which entries were systematically made and a record was kept of transactions relating to settlements of land made by the agent on behalf of the Company. An examination of the entries in the book would have disclosed to a Director of the Company, or to any person entitled to exercise powers of supervision over the agent, the nature of the settlement made by him. We hold accordingly that the Company must be deemed to have ratified the particular transaction now before the Court. The second ground upon which the appellant seeks to hold the Company bound by the lease must consequently prevail.

6. The result is that the appeal must be allowed, the order of the District Judge set aside and the decree of the Court of first instance restored. This order will carry costs both here and in the Court of Appeal below. We assess the hearing fee in this Court at three gold mohurs.