

**(1936) 01 CAL CK 0050**  
**In the Calcutta High Court**

Parbati Charan Mukhopadhyaya

APPELLANT

Vs

Bandeali Akon and Others

RESPONDENT

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**Date of Decision :** 17-01-1936

**Acts Referred:**

Transfer of Property Act, 1882 — Section 107

**Citation :** AIR 1936 Cal 155

**Hon'ble Judges :** R.C. Mitter, J

**Bench :** Division Bench

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**Judgement**

R.C. Mitter, J.—The question involved in this appeal is whether the plaintiff is entitled to get a decree for rent against the defendants as tenants at the rate of Rs. 76-12-7 a year or at the rate of Rs. 58-13-10 a year. It is admitted that the tenancy is a permanent tenancy. It is also admitted that Rs. 58-13-10 have been realized by the landlord from the tenants up to the year 1316. It is a finding of the Court that the origin of the tenancy is lost in obscurity, at least it was not created after the Transfer of Property Act came into force: and there is no registered document or any document showing the creation of the tenancy. The landlord's case is that at the time of the Settlement Operation under Ch. 10, Ben. Ten. Act, excess lands were found in possession of the tenants, that is to say, more land than what was stated in the collection paper of the landlord; and that in the year 1317, the tenants verbally agreed to pay additional rent for excess area, and the total rent was settled at Rs. 76-12-7 which the tenants undertook to pay from 1317, and the tenants had in fact paid at that rate since 1317. The defendants state that the rent was Rs. 58-13-10 and that is still the rent and the landlord never realized rent at the higher rate at any time, and that in any event the said contract cannot be proved except by a registered document.

2. In support of the landlord's claim he produced a large number of counter-foils of rent receipts from the year 1317 up to a few years of the suit. These counterfoil rent receipts show that rent has been realized at the rate of Rupees 76-12-7. Both the Courts below have believed these counterfoils to be genuine

and they have found that the landlord realized from the tenants from 1317 rent at Rs. 76-12-7. The Court of first instance decreed the plaintiff's claim at the aforesaid rate. But the lower appellate Court has dismissed the plaintiff's claim. From the evidence of realization of rent at the rate of Rs. 76-12-7 from 1317, the necessary inference is that that figure was arrived at by agreement between the landlord and the tenants, that is to say the tenants agreed orally to pay from 1317 at the rate of Rupees 76-12-7 instead of the low rate of Rs. 58-13-10. The lower appellate Court in granting the plaintiff a decree at the rate of Rs. 58-13-10, has held that such oral contract was ineffective in law, for such a contract must be by a registered document. If a permanent tenancy is created after the Transfer of Property Act it is clear that a registered document is necessary u/s 107, T. P. Act. The question, therefore, is whether the rent of a permanent tenancy can be varied after the passing of the Transfer of Property Act by an oral agreement, that is to say without a registered document. As I have said, the lower appellate Court has taken the view that it cannot be done without a registered document.

3. Mr. Sen on behalf of the appellant contends that the view taken by the lower appellate Court is wrong, and for that purpose he cites before me a passage from the case of Haro Prosad Das v. Ram Narain Chowdhury (1910) 11 C L J 22. The passage is to be found at p. 25 of the report, and it runs as follows:

The question to be decided in the case of every dowl therefore is as to whether it embodies a special agreement between the parties; if it does, it requires registration; if it does not the registration is not needed. Now in the case before us it cannot be said that the dowl upon which reliance was placed is a lease. There was a pre-existing tenancy; that is the common case of both the parties. The only effect of the dowl was to evidence that there had been a commutation of rent and that the rent which was previously payable, partly in kind and partly in cash, was henceforth to be paid in cash. To a document of this description the principle laid down by this Court in Satyesh Chandra v. Dhunpat Sing (1897) 24 Cal 20 and by the learned Judges of the Madras High Court in Obai Goundan v. Ramlinga Ayyar (1899) 22. Mad 217 applies. That principle is that a document given by the owner of land to his tenant or by the tenant to his landlord, varying the term of the tenancy with reference to the amount of rent to be paid is not an interest in Immovable property and does not require registration.

4. The question is whether the passage which I have italicized above, is stills good law in view of the decision of the Full Bench in Lalit Mohan Ghose v. Gopali Chuk Coal Co. Ltd. (1912) 39 Cal 284. So far as the facts of the case of Haro Prosad Das v. Ram Narain Chowdhury (1910) 11 C L J 22 are concerned there cannot be any doubt that the actual decision therein has not been affected by the Full Bench, for in that case there was no question of variation of rent of a tenancy. The rent was originally fixed partly in cash and partly in kind, and all that the landlord and tenant agreed upon was to put a value upon the rent payable in kind and agreed to pay thereafter the rent in cash only. In the

referring order to the Full Bench Woodroffe, J. and Caspersz, J., relying upon Satyesh Chandra v. Dhunpat Sing (1897) 24 Cal 20 and the case of Obai Goundan (3) (supra) noticed in the aforesaid passage in Haro Prosad Das v. Ram Narain Chowdhury (1910) 11 C L J 22 expressed the view that a document which varied an existing rent in a registered lease did not require registration. The Full Bench, however, had to consider the case of variation of rent or royalty, or reduction of rent or royalty in a lease originating with a registered document executed after the Transfer of Property Act, by reason of certain letters written by the landlord and the tenant by which an agreement for reduction of royalty had been arrived at. But in dealing with this question the Full Bench went into the matter fully and after referring to Section 107, T. P. Act, said that the plain intent of that section was that all essentials of a lease of this description, that is to say a lease of Immovable property from year to year or any term exceeding one year, or reserving an annual rent, must be embodied in one or more documents duly registered, and then it pointed out that the provision about the amount of rent was an essential element of a lease. In my judgment, therefore, the reasons so given by the Full Bench in the case of Lalit Mohan Ghose v. Gopali Chuk Coal Co. Ltd. (1912) 39 Cal 284 furnish an answer to the case which I have before me, and the said Full Bench case affected very much the law as laid down in the portion of the judgment in the case of Haro Prosad Das v. Ram Narain Chowdhury (1910) 11 C L J 22 which I have underlined. It might be mere incidentally noticed that Mookerjee, J., who delivered the judgment in Haro Prosad Das v. Ram Narain Chowdhury (1910) 11 C L J 22 was himself a party to the Full Bench judgment.

5. Having regard to these facts, I do hold that the learned Subordinate Judge is right in holding that without a registered document, the plaintiff is not entitled to claim rent at more than the rate of Rs. 58-13-10 a year. The result is that this appeal is dismissed with costs.