

(1947) 09 PAT CK 0005
In the Patna High Court

Pradip Singh

APPELLANT

Vs

Ambika Singh and Others

RESPONDENT

Date of Decision : 02-09-1947

Acts Referred:

Evidence Act, 1872 — Section 167

Citation : AIR 1948 Patna 185

Hon'ble Judges : Manohar Lall, J

Bench : Division Bench

Judgement

Manohar Lall, J.—These appeals were originally heard by two learned Judges of this Court but as they differed upon the applicability of the provisions of the Registration Act to certain hukumnamas, the entire appeals have been referred to me by the learned Chief Justice for disposal under Rule 5, chap. 2, part 1 of the Patna High Court Rules.

2. When the appeals were argued before me it appeared on a perusal of the judgments of the Courts below that besides the hukumnamas, there was other evidence, both oral and documentary, which enabled the Courts below to come to the conclusion that there was commutation of rent of the holdings in suits. Accordingly, I asked the learned advocate for the appellants and the respondents to satisfy me whether in the face of these clear findings it was still necessary to decide the point of law on which the learned Judges differed. The learned advocates agreed that even if the hukumnamas were inadmissible on account of non-registration, there was other evidence in the case which supported the finding of fact arrived at by the two Courts below.

3. I have read and re-read the judgments of the two learned Judges and the judgments of the Courts below, and I have also read and reread the entire evidence in the case, and I am compelled to take the view that the question of law upon which the learned Judges differed does not really arise for decision in the present case, and accordingly I do not decide that question which is academic for the purpose of these appeals.

4. The facts of the appeals are extremely simple. The claim of the plaintiff-respondents was for arrears of bhaoli rent for the years stated in the plaints of the two suits. The defence was that the predecessors-in-interest of the plaintiffs had commuted the rentals on a cash basis. In support of that, apart from the oral evidence, some hukumnamas were produced and some rent receipts were relied on showing payment at the commuted rate. To this the plaintiffs replied that both the hukumnamas and the receipts were forgeries and the oral evidence in support of the commutation was unreliable.

5. The trial Court came to the conclusion (1) that the hukumnamas were genuine; (2) that, the receipts relied upon by the defendants are genuine; and (3) that the oral evidence of the-defendants was reliable in support of commutation. Accordingly he decreed the plaintiff's suits for the amount at the rate of rent fixed in the hukumnamas and the receipts less payments made in cash.

6. In appeal, the learned Subordinate Judge also came to the same conclusions but he observed at more than one place in his judgment that the defendants have been able to prove both by documentary and oral evidence that the outgoing landlord Shah Zaffar Sajjad commuted the bhaoli rent into nakdi before he transferred his interest to the plaintiff appellant. At page 12 of the judgment he says that the learned Munsif was justified in accepting the evidence of D.W. 2 that the hukumnamas were duly executed, and then observed that these hukumnamas are not the only evidence of commutation but they were followed by receipts showing realisation of cash rent for the holdings in suits, and he goes on to give reasons why he does not believe the plaintiff's case that the receipts were forgeries. He also gave reasons why he disbelieved the plaintiff's evidence when he put forward certain laggits and arrear list said to have been received from the previous landlord to show that the arrears did not contain any cash arrears for the holdings in suits but the arrears were at bhaoli rate.

7. In second appeal to this Court, the point as to non-registration of the hukumnamas and therefore their inadmissibility was raised for the first time. No such question was raised in the Courts below, but this being a question of law was rightly allowed to be raised in second appeal.

8. In my view, however, as stated already, the question does not arise for decision as the findings of the Courts below, referred to above, Were that apart from the hukumnamas there was other evidence in the case which entitled the Courts below to come to findings of fact that the rent of the holdings have been commuted the fact that reliance was placed on inadmissible evidence is no ground for interference in second appeal (see Section 167, Evidence Act.)

9. Bennett J. in the concluding portion of his judgment has observed that as the Courts below held that the receipts were genuine documents, there was no reason for differing from the concurrent findings. But he proceeded to observe:

These receipts, in themselves, however, are insufficient to discharge the burden

of proof of a permanent commutation from bhaoli to naqdi, since they are equally consistent with a temporary concession or agreement restricted solely to the year in question in each case.

10. With the greatest respect, this was a new case and should not have been allowed to be raised in second appeal. In the Courts below the contest between the parties was whether the hukumnamas and the receipts evidenced a temporary commutation. The evidence of the defendants' witness starting from D.W. 2 was to the effect that the commutation was for all times. The defendants relied in support of their defence not only on the hukumnamas but also on the receipts and on the oral evidence. It was not suggested to any of the witnesses of the defendants in cross-examination that the commutation was a temporary commutation for one year only. In these circumstances, it appears to me that the learned Judge was in error in investigating for himself for the first time in second appeal the question of fact which was not raised in any of the Courts below. The question would have been entirely different if the parties had differed on the interpretation of a document of title as was the case in *Durga Prasad Singh v. Rajendra Narain Bagchi* (10) 37 Cal. 293 approved by the Privy Council in *Durga Prasad Singh v. Rajendra Narain Bagchi* (13) 41 Cal. 493.

10. In these circumstances, in my opinion, these appeals are concluded by findings of fact and must be dismissed with costs.