
(1944) 07 PAT CK 0001
In the Patna High Court

Rani Bhuneshwari Kuer and Another APPELLANT
Vs
Babu Sajiwan Prasad Singh and Others RESPONDENT

Date of Decision : 25-07-1944

Acts Referred:

Registration Act, 1908 — Section 17(1)(b), 17(1)(d)
Transfer of Property Act, 1882 — Section 107

Citation : AIR 1945 Patna 67

Hon'ble Judges : Reuben, J;Chatterji, J

Bench : Full Bench

Judgement

Chatterji, J.—These three appeals arise out of three suits (Rent Suits Nos. 177, 178 and 281 of 1940) originally instituted by Eani Bhuneshwari Koer, appellant 1, against different persons for recovery of bhaoli rent for the years 1345 and 1346 fasli in respect of certain raiyati holdings situated in village Eouna Sherpur, District Gaya. Appellant 2 is the Maharajadhiraj of Darbhanga (referred to hereinafter as the Maharaja) who was originally impleaded as a pro forma defendant in all the three suits but subsequently made a co-plaintiff in Suits Nos. 178 and 281. Eani Bhuneshwari Koer will be referred to hereinafter as the plaintiff. The proprietary interest in the said village Rouna Sherpur which vests in the plaintiff is subject to five mokarrari tenures, three of, 4 annas each and two of 2 annas each, the total rental being Rs. 6193 6-0. By a Sadhua Patua deed dated 15th August 1931 the plaintiff mortgaged with possession her proprietary interest in the entire village to the Maharaja with the stipulation that in the event of the mortgagee purchasing any of the mokarrari tenures in execution of a decree for" arrears of rent due in respect thereof, the mortgagor would be entitled to get sir possession of the tenure on payment of the purchase-money to the mortgagee purchaser and would pay rent of the same to the mortgagee during the subsistence of the mortgage. The Maharaja purchased the two tenures of 2 annas each in execution of rent decrees and got possession of the same in 1344 and thereafter he is said to have transferred them to the plaintiff in accordance with the above stipulation with effect from 1345. Accordingly, the

plaintiff as mokarraridar in respect of 4 annas brought these rent suits on 9th September 1939.

2. The defendants in the first two suits who are the raiyats of the respective holdings" concerned are themselves mokarraridars in respect of two of the tenures of 4 annas each. The defendant in the third suit was the mokarraridar in respect of one of the two defaulting tenures of 2 annas each which were purchased in execution of rent decrees by the Maharaja and said to have been subsequently transferred by him to the plaintiff. The suits were contested on the grounds, inter alia, that the holdings were not properly described, that the plaintiff had no right to sue, and that the bhaoli rent was commuted to cash rent by hukumnamas dated 15th Asarh 1338 granted by the mokarraridars with effect from 1339. Suits Nos. 178 and 281 were tried jointly with another suit with which we are not concerned. Suit No. 177 was tried separately. All the suits, however, were tried by the same Munsif.

3. In all the three suits the learned Munsif disbelieved the case of commutation. As regards the description of the holdings, he accepted the plaintiff's case. In Suit No. 177 he held that the plaintiff, having obtained a deed of assignment dated 3rd November 1940 from the Maharaja, was entitled to a decree for the rent for 1346 only as the claim for 1345 was barred. He accordingly decreed this suit in favour of the plaintiff for the rent of 1346 only. In the other two suits he held that the plaintiff, having no document of title, had no right to sue, but the Maharaja, having been made a co-plaintiff, was entitled to a decree. Accordingly these two suits were decreed in favour of the Maharaja. From these decrees the defendants preferred appeals, and the plaintiff filed cross-objection in respect of the claim for 1345 in Suit No. 177. These appeals were heard together by the Subordinate Judge. He held that the holdings were not properly described, that the bhaoli rent was commuted to cash rent, that the plaintiff was not entitled to a decree in suit No. 177 and that in the other two suits the Maharaja was not entitled to any decree. He accordingly allowed the appeals and dismissed all the three suits. Hence these second appeals by the plaintiffs. Appeal No. 512 arises out of Suit No. 177, Appeal No. 513 out of Suit No. 178 and Appeal No. 520 out of suit No. 281. The first point argued by Mr. L. K. Jha for the appellants is that there . was no valid and bona fide commutation of bhaoli to cash rent. The Subordinate Judge's finding on, the point has been attacked, in the first place, on the ground that the hukumnamas Ex. B series by which commutation, is said to have been effected are inadmissible in evidence as they are unregistered. The terms of the hukumnamas being similar, it will be enough to reproduce one of them, Ex. B:

Whereas, in accordance with your request, rent of the land mentioned below, of which the khata numbers and survey plot numbers are given below and which were held as Bhaoli lands from before, has been commuted into Nakdi rent at an average rental of Rs. 2 per Bigha besides cesses, i. e., rupees 70-11-0 besides cesses; it is desirable that you should pay Rupees Seventy and annas eleven per

year as rent besides cesses for the lands mentioned below according to the custom of Kist prevalent in the village and therefore this hukumnama is being given to you for your assurance and satisfaction to be used in time of need.

4. Mr. Jha's contention is that this document falls u/s 17(1)(b), Registration Act, which provides that the following documents shall be registered:

Other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property.

5. Upon the plain wording of the document it is obvious that the commutation had already been effected and that its object was merely to serve as evidence of the same. Our attention has been drawn to the fact that the defendants' own case in the written statement was that the commutation was effected by the hukumnamas. But in considering the question of admissibility of a document we must construe it on its own terms and not according to how the parties themselves understand it. The distinction between an agreement and evidence of the agreement may be overlooked by the parties. The hukumnama Ex. B does not embody an agreement but is merely evidence of the agreement already come to. That being so, it cannot be said to create; declare or limit any right to or in immovable property.

6. This view receives support from *Hara Prasad Das v. Ramnarain Chowdhury* (10) 11 C. L. J. 22 cited by Mr. Baldev Sahay for the respondents. In that case the document under consideration was a "dowl" which was a memorandum showing the rents payable by all the tenants of the landlord's estate. Their Lordships held that 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

and that therefore the dowl did not require registration. The effect of the hukumnama Ex. B is much the same. The cases in *Muthu Vija Raghunatha v. Periasami Pillai* A. I. R. 1940 Mad. 379, *Durga Prasad Singh v. Rajendra Narain Bagchi* (10) 37 Cal. 293, *Lalit Mohan Ghosh v. Gopali Chuck Coal Co., Ltd.* (12) 39 Cal. 284 and *Parbati Charan Mukhopadhyaya Vs. Bandeali Akon and Others*, relied upon by Mr. Jha are distinguishable. In the first case, *Muthu Vija Raghunatha v. Periasami Pillai* A. I. R. 1940 Mad. 379 the Full Bench had to consider two classes of documents, both being consent statements signed by the tenants, but in different forms. In both classes there was provision for payment of rent in cash instead of in kind and exchange of pattas and muchalikas on the basis of cash rent. One class was construed to contain merely an undertaking by the tenant to accept a patta on the basis of cash rent, if it were drawn up in accordance with the terms mentioned in the consent statement. In other words, there was merely an offer by the tenant and not a

completed agreement. The other class was held to embody a definite agreement to pay rent for ever in money instead of in grain. It was held that the former class did not require registration, but the latter did. Their Lordships said: "An agreement which varies the rent payable by the lessee requires registration." The hukumnama Ex. B in the present case does not constitute an agreement, and therefore even according to the above decision, does not require registration.

7. In the second case 37 Cal. 2933 Which was varied on appeal on different grounds by the Privy Council in Durga Prasad Singh v. Bajendra Narayan 223 Cal. 493 I.A. the point for consideration was whether a letter addressed by the lessor to the lessee by which the rent payable under a mourosi mokarrari lease was reduced was admissible in evidence. Besides a definition of the reduced rental, the letter contained a recital of the area of the land demised under the lease, the nature of the interest granted by the lease, and the instalments in which the rents were payable. It was held that it contained all the essential elements of a lease and that even if it were treated merely as an agreement for reduction of the rent, it was in effect an agreement purporting to limit an interest in immovable property; in either view it was not admissible without registration. The hukumnama Ex. B in the present case does not constitute either a lease or an agreement. In the third case 39 Cal. 2844 it was held by the Full Bench that a document which varies the amount of rent to be paid under an existing lease registered as required by Section 17(1)(d), Registration Act, as also the incidents of such payments, namely, the date of payment and consequences of default of payment requires registration. In the present case there is no question of variation of the rent payable under an existing registered lease. In the next case A. I. R. 1936 Cal. 1556 the question for consideration was whether the rent of a permanent tenancy can be varied after the passing of the Transfer of Property Act by an oral agree, ment, that is to say, without a registered document. The question turned on Section 107, T. P. Act. Here we are concerned with raiyati leases to which Section 107, T. P. Act, does not apply by reason of Section 117 of the same Act. In my view the hukumnama Exs. B series do not require registration and are admissible in evidence.

8. In the result, I would allow the appeals, set aside the decision of the Subordinate Judge and remand the cases to him for disposal according to law in the light of the observations made above. Costs will abide the result.

Reuben, J.

9. I agree.