
(1914) 02 AHC CK 0013
In the Allahabad High Court

The Notified Area Of Babaut

APPELLANT

Vs

Munshi Lal

RESPONDENT

Date of Decision : 02-02-1914

Acts Referred:

Citation : (1914) ILR (All) 176

Hon'ble Judges : Ryves, J;Piggott, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Ryves and Piggott, JJ

1. This is a first appeal from an order of remand, and is one of a series of connected appeals which may be disposed of by a single judgment. In Baraut, in the Meerut district, there, is certain land which is the property of Government, though it has been assigned for purposes of management to the Notified Area Committee. That body desired to establish a market upon this land in the neighbourhood of a railway station. It was accordingly arranged that leases of portions of the said land should be granted for a period of years to a number of traders and merchants, subject to certain conditions, the object of which was to secure the effective establishment of the desired market. Owing to circumstances with which we are not concerned the scheme has fallen through, the lessees have taken no action under their leases, and no market has been established. The case for the plaintiffs is that the lessees have broken their contract and are liable under the terms of the contract for various sums of money, for the recovery of which these suits have been brought. The lessees set up number of defences, with only one of which we are now concerned. There was indeed another technical defence impugning the right of the plaintiffs to sue upon leases in which the Secretary of State for India is the ostensible lessor, but the finding that the plaintiffs are entitled to sue as "assigns" of the Secretary of State has not been attacked in argument before us and appears to be correct. What we have to deal with is a point of registration law. In each of the suits in question

the plaintiffs tendered in evidence as the basis of their claim an unregistered lease purporting to be by the Secretary of State for India in favour of the defendants. The court of first instance held that all these leases required registration under the provisions of Section 17 {I}(d) of the Indian Registration Act (No. XVI of 1908); as they were not registered, they were inadmissible in evidence and could not affect the immovable property described therein. If this finding is correct, the suits must necessarily fail. It has, however, been reversed by the lower appellate court, which has remanded all the suits for disposal on the merits. The defendants are appealing against these orders of remand. These orders cannot be supported On the grounds on which they proceed. The learned District Judge has in effect held that each of the leases in suit is a lease for a period of not more than one year, because it contains a covenant giving the lessor a right of re-entry in the event of a breach of conditions on the part of the lessee, and there is at least one condition which must either be fulfilled or broken by the lessee in the course of the first year of the lease. The "term" of a lease for purposes of registration must, however, be understood to mean the period for which the lessee is protected against dispossession at the will and pleasure of his lessor, or in other words, the length of time for which the lessee is entitled to continue in possession, provided he himself fulfils all the stipulated conditions. The leases before us are, therefore, leases for a "term" of thirty years. They are also in our opinion leases "reserving a yearly rent." The District Judge has referred to certain reported cases, such as *Khayali v. Husain Bakhsh* I. L. R. (1938) AH. 198. and *Khuda Bakhsh v. Sheo Din* (1886) 8 All. 405.... The case of *Intizam Fatima v. Ali Bakhsh* 1911 8 A. L. J. 609. was decided with express reference to the terms of the Registration Act (No. XX of 1866) which was in force when the lease then under consideration was registered. There does not seem to have been anything in the provisions of the leases discussed in any of these cases which bound the lessor to maintain the lessee's possession for a longer period than one year, if he did not see fit to do so, however scrupulously the lessee might have performed his part of the contract.

2. On behalf of the respondents, however, it has been sought to show that the District Judge was right on other grounds. Broadly speaking, it is contended that leases by the Secretary of State for India do not require registration, whatever their terms may be. This point does not seem to have been taken in the court below, and we allowed the appellants an adjournment in order that it might be fully argued.

3. According to Section 90 (1) (d) of the Indian Registration Act, amongst the documents the registration of which is not obligatory are

Sanads, inam title-deeds and other documents purporting to be or to evidence grants or assignments by Government of land or of any interest in land.

4. The documents now before us however are in no way *ejusdem generis* with sanads or inam title-deeds. The transactions which they purport to evidence were entered into in the ordinary way of business by the Baraut Notified Area

Committee in virtue of the assignment made to them by the Secretary of State. If it had been intended by the Legislature to exclude all leases by or on behalf of Government from the operation of Section 17 of the Indian Registration Act, the exemption would have been embodied in that Section itself. It may be that Section 90 (1) (d) is intended to go somewhat further than Section 17 (2) (vii), and that some document of title, might conceivably come before the courts of which it could be said that, although in some sense a "lease," it was nevertheless essentially a document of the nature of a sand or inam title-deed, evidencing a "grant or assignment by Government" of land, or of some interest in land; but leases by or on behalf of Government are not exempted as such, and the leases now before us do not appear to come within the letter or the spirit of the exemption.

5. If this be the correct view of the provisions of the Indian Registration Act, it becomes unnecessary to consider further the wording of Section 107 of the Transfer of Property Act (No. IV of 1882) according to which such leases as those now under consideration could be effected only by registered instrument. On behalf of the respondents the provisions of Sections 2 and 3 of the "Crown Grants Act" (No. XV of 1895) were referred to. The object and intention of that Act was considered by a Bench of this Court in *Dost Mohammad Khan v. The Bank of Upper India* (1906) 8 A. L. J. 139 and 628 and we agree with the interpretation there put upon its provisions. It is difficult to see how these could be construed so as to exclude all leases executed by or on behalf of Government from the operation of Section 107 of the Transfer of Property Act 1 (No. IV of 1882). It was not seriously contended before us that they would exclude the operation of the Indian Registration Act, which itself provides for the cases in which documents are exempted from registration when executed by or on behalf of Government.

6. The result is that we agree with the court of first instance that the leases in question are inoperative and inadmissible in evidence for want of registration. We accept this and the connected appeals, set aside the orders of the lower appellate court and restore the decree of the court of first instance dismissing the suits, The plaintiffs will pay all costs.