
(1880) 04 AHC CK 0001

Allahabad High Court

Case No: None

Khuda Bakhsh

APPELLANT

Vs

Sheo Din and Another

RESPONDENT

Date of Decision: April 20, 1880

Citation: (1886) ILR (All) 405

Hon'ble Judges: Tyrrell, J; Mahmood, J

Bench: Division Bench

Judgement

Mahmood, J.

I am of opinion that this appeal must prevail, and the decree of the Lower Appellate Court be set aside, and the case be remanded for disposal on the merits. My reasons for this view are, that the suit was one for possession of a piece of land and for demolition of a "charahi" "situate thereon. Both the lower Courts have found that the land belongs to the plaintiff, but that the defendants have acquired a right of easement to keep their "charahi" thereon. The learned District Judge has expressly stated that the two kabuliyats, dated the 18th January 1875, and 26th June 1876, were not admissible in evidence, as they needed registration u/s 17(4) of Act VIII of 1871, being leases of Immovable property from year to year or reserving a yearly rent. Both these documents are in the Hindustani language, and I have read them to my brother Tyrbell, and we both look upon these leases as creating no rights except those of tenants-at-will. I speak of them as "leases," because of the definition of the word in Section 3 of the Act of 1871. There is, indeed, a statement in the early part of these leases, that the land was given for more than a year; but the most important clause in them is one common to both of them, namely that at any time, at the will and mere wish of the lessor, the lessees were to give up the land only at fifteen days notice. According to the well-understood rules of construction, this latter clause governs all the previous clauses. This being so, the defendants could be asked to quit at any time before the lapse of the term. It did not create even the usual lease from month to month, but the lessees could be ejected at fifteen day notice, which is the ordinary term of notice probably required by the law, even previous to the

passing of the Transfer of Property Act, and the principle of which has been incorporated in Sections 106 and 111 of that Act. The leases therefore do not fall u/s 17(4) of the Registration Act, VIII of 1871, which was in force when the leases were executed. The clause (which corresponds to Section 17(d) of the present Registration Act, (III of 1877) is thus worded: "Leases of immovable; property from year to year or reserving a yearly rent." The leases before us do not answer this description, and no other clause of the section is pointed out under which they would fall. Their registration was therefore not compulsory, and they could not be excluded from evidence u/s 49 of Act III of 1877. The question whether registration was compulsory is governed by the registration law in force at the time that the deeds were executed; but the question of admissibility being a matter of procedure, would be governed by the present law. The Judge has altogether excluded from his consideration the two leases, which are the most important evidence in the case, and without which the merits of the case cannot be considered. We ask him to admit these leases, and re-consider the whole case upon the evidence, and to record a fresh judgment u/s 574, Civil Procedure Code. I would decree this appeal, and setting aside the decree of the Lower Appellate Court, remand the case to that Court, leaving costs to abide the result.

2. I may add that in support of the view taken by me of the leases in this case, our attention has been called by the learned pleader for the appellant to an unreported judgment of the Full Bench of this Court, since reported, Weekly Notes, 1886, p. 115, which supports the view taken by me, though the interpretation of the law in that case related to the old Registration Act of 1861.

Tyrrell, J.

3. I am of the same opinion.