(1930) 07 CAL CK 0002

Calcutta High Court

Case No: None

Shailendranath Mitra		APPELLANT
	Vs	
Girijabhushan Mukherji		RESPONDENT

Date of Decision: July 28, 1930

Acts Referred:

- Bengal Tenancy Act, 1885 - Section 105, 52
- Evidence Act, 1872 - Section 90

Citation: AIR 1931 Cal 596

Hon'ble Judges: M.C. Ghose, J; Guha, J

Bench: Full Bench

Judgement

Guha, J.

This appeal has arisen out of an application u/s 105, Ben. Ten. Act, made by the appellants in this Court for settlement of fair and equitable rent payable by their lessees, the respondents, in respect of a tenure, claiming additional rent on account of increase of area. On the pleadings of the parties, the questions arising for determination, as indicated by the issues raised in the case were Whether the lessees held any area in excess of what they were paying rent for was the rent of the tenure in question a consolidated one for the lands within specified boundaries and was the rent fixed in perpetuity as alleged by the lessees or was it only the rate of rent that was fixed as asserted by the lessors. The determination of the matters in controversy rests upon the question whether the landlords were entitled to base their claim solely upon a kabuliyat, Ex. 1, dated 20th Ashar 1268 B.S. which supports their case that the tenure in question was held at a rate of rent. The case of the lessees was that the terms of the kabuliyat of 1268 were varied, and new terms were substituted about two years after the execution of the kabuliyat when a patta was granted to the predecessors-in-interest of the present lessees. The patta, Ex. A, in this case, was alleged to have been executed on 21st Falgun 1270 B.S., and it was

asserted that it supported the case of the lessees in its entirety. The appellants in this Court contended before the lower Courts that the document, Ex. A, was not a genuine document; and it has been urged in this Court that, even assuming that the document was not a fraudulent document and a forgery prepared for this case, it was not admissible in evidence at all; that the document, Ex. A, produced by the respondents not having been a signed document was void and inoperative in law and could not be adduced in evidence for any purpose whatsoever. It has further been urged in this Court that, even if all objections to the use of the document, Ex. A, were raised or overruled, on a proper construction of the same, and, according to the provisions of the law as contained in Section 52, Ben. Ten. Act, the appellants were entitled to additional rent for additional area, as claimed by them in their application made u/s 105, Ben. Ten. Act.

2. As regards the question whether Ex. A was a genuine or fraudulent document, which was "the only real question for decision as admitted by both sides" before the Court of appeal below, the conclusion of the learned Special Judge, based upon the materials on the record, that there seemed to be no reason to doubt that the document, Ex. A, was really a genuine document and that he believed that the document was genuine, must be accepted. It may be stated that on a careful examination of the writings in the two documents, Ex. 1 and Ex. A, we have arrived at the same conclusion as the learned Judge in the Court below has done, that a comparison of the words "shree sahi" in both the documents show strong similarities between the two, and that there is no difference between the writing of the two documents.

3. It is next to be considered whether there is any force in the argument advanced in this Court for the first time, relating to the admissibility of the document, Ex. A. No question, which could be raised in view of the provisions contained in Section 90, Evidence Act, was raised at any previous stage of the proceeding. A presumption as to the document having been executed by Kumar Bijaykeshab Ray Bahadur, whose name occurs in the body of the document, does to my mind arise in favour of the respondents before us, and it was for the appellant to rebut the presumption, if they could by placing materials before the Court which was in their possession and power. Nothing like that was done. A question more important than the one considered above, was raised before us by urging that the document, Ex. A, not having been signed, was void and inoperative in law, and could not therefore be treated as evidence in support of the case sought to be made out by the respondents, the lessees, based entirely on this document. It has been contended that the endorsement "shree sahi" occurring in the document could not be treated as a signature of Kumar Bijaykeshab Ray Bahadur. Our attention has been drawn by the learned advocate for the appellants to the interpretation given by the General Clauses Act to the word "sign." It appears however that this interpretation is not of much assistance to the appellants, in the circumstances of the case before us. According to the general policy of the law, "signature" includes a mark : See Pran

Krishna Ternary v. Jadu Nath Trivedy 2 C.W.N. 603. : a mark being a sort of symbolic writing. In the case before us the question is whether the mark "shree sahi" can be taken to be the signature of the person whose name appears in the document, Ex. A, as the executant of the same. In our judgment the presumption of execution of the document being in favour of the respondents, that presumption extends to this also: that the mark put on the same, indicated that the document was signed by the executant by a sort of symbolic writing, which is to be taken to be the signature, in the absence of proof to the contrary. In this view of the case, the document, Ex.A, must be taken to have been signed by the executant and was valid and operative as such; and its genuineness having been established the document was a valuable piece of evidence before the Court in support of the case for the respondents in this appeal.

4. Coming next to the question of construction of the document, Ex. A, upon which very great stress has been laid by the learned advocate appearing; for the appellant, the stipulations contained in this document must be taken into consideration along with those contained in the earlier document, Ex. 1, upon which the case of the appellants rests. The document, Ex. A, itself taken as a whole, and, in the absence of any provision for a subsequent survey and adjustment of rents in accordance therewith, gives sufficient indication that the parties intended that the demise in favour of the lessee was with reference to the boundaries specified in the lease, and not with reference to the estimated area. If the whole of the instrument is looked at, and it is read along with the recitals contained in the previous document, Ex. 1,. there is no inconsistency in the document with reference to the boundaries specified in the documents, and the estimated area stated in the document Ex, A. It is permissible in a case of this description where there is a seeming inconsistency as between boundaries and the area stated in the instrument to have recourse to extrinsic evidence, and evidence of user by acts of parties, for the purpose of gathering the real intention of the parties to the instrument. The learned Judge in the Court below has stated in his judgment that it was an '' admitted fact that a rent of Rs. 360 has all along been paid for the land", presumably from the year 1278 B.S. With reference to the contention based on Section 52, Ben. Ten. Act, it is sufficient to state that the applicability of the provisions contained in that section must depend upon the nature of the contract as between the parties to the case. If the lessor intended by the contract, Ex. A, to let, and the leseee intended to take a tenure within specified boundaries, be the number of bighas in it what they may, the fact that the area proves to be larger than what was stated originally by estimate, would not entitle the lessor to additional rent. This is the real position in the case before us, and the provision contained in Section 52, Ben, Ten. Act, would not; therefore come to the aid of the appellants. On a careful examination of the recitals contained in the two documents, Ex. 1 and Ex. A, and the terms and condition of the same, which must all be read together, for the purpose of discovering the real intention of the parties to the patta, Ex. A, taken along with the evidence of conduct of parties,

the conclusion appears to be irresistible that the learned Special Judge in the Court of appeal below is right in holding that the tenure created by the document (Ex. A) is held at a consolidated rent of Rs. 360, and the rent thereof is not liable to enhancement.

5. The last contention advanced in support of the appeal remains to be noticed. It has been urged by the learned advocate for the appellants that the judgment of the Court of appeal below was not a proper judgment of reversal, and that the material findings arrived at by the trial Court have not been reversed. Although the point was stressed at some length and in great detail, with reference to some observations in favour of the appellants made by the assistant settlement officer in the trial Court, it has not been possible for us to make out that any material point in the case, arising upon the pleadings of the parties, the issues raised in the case and presented before the lower Courts for their consideration, has not been considered by the learned Judge in the Court of appeal below. We are also unable to say that any finding arrived at by the trial Court on any material point has not been reversed. The judgment of the learned Special Judge in the lower appellate Court appears to us to be clear and full; and we are not convinced that the charge levelled against the same, that it is not a proper judgment of reversal, is in any way sustainable.

6. In the result the decision and decree passed by the Court of appeal below are affirmed, and this appeal is dismissed with costs. The hearing fee is assessed at three gold mohurs.

M.C. Ghose, J.

7. I agree,