80 CWN 788

Calcutta High Court

Case No: Appeal from Original Decree No. 289 of 1975

Anima Das Sharma and Anor		APPELLANT
	Vs	
Rev. Dr. Lawrance Trevor Picachy and Others		RESPONDENT

Date of Decision: June 17, 1976

Acts Referred:
Evidence Act, 1872 â€" Section 3, 65, 67, 90#Land Acquisition Act, 1894 â€" Section 18#Registration Act, 1908 â€" Section 52, 52(1)(a), 57, 57(5), 58#Transfer of Property Act, 1882 â€" Section 107, 2

Citation: 80 CWN 788

Hon'ble Judges: R.K. Sharma, J; M.M. Dutt, J

Bench: Division Bench

Advocate: Pramatha Nath Mitter and S.G. Poddar, for the Appellant; Banamali Das, Tapas Kumar Banerjee and Ranen Mitra, for the Respondent

Final Decision: Dismissed

Judgement

1. This appeal arises out of proceedings for appointment of compensation u/s 18 of the Land Acquisition Act, 1894.

2. The land comprised in premises No. 20, Harey Krishna Sett Lane, Calcutta measuring 6 bighas 7 cottahs 12 chhataks 33 Sq. ft. was acquired

by the Government under the said Act. The Collector determined the value of the land at Rs. 2,58,786.56. He also valued the structures standing

on the acquired land at Rs. 27,500/- and that of the trees at Rs. 750/-. The compensation for the land was awarded to Sm. Amiya Bala Debi, the

landlady, and the compensation for the structures and trees was awarded to the respondent Rev. Dr. Lawrence Trevour Picachy S. J. Archbishop

of Calcutta, the Executor to the estate of Brahmachari Bewachand Animananda (hereinafter referred to as Animananda). Amiya Bala and the

respondent both filed reference petitions u/s 18 of the Act. Amiya Bala claimed that she was entitled to the value of the trees. On the other hand,

the respondent claimed the entire amount of compensation including that for the land which was awarded by the Collector to Amiya Bala. The case

of the respondent was that Animananda was the mourashi mokurari tenant, that is, a permanent tenant, in respect of the said premises No. 20,

Harey Krishna Sett Lane, Calcutta under the superior landlady Amiya Bala Debi. According tote the terms of the will of Animananda, the

respondent become the sole executor to his estate including the said premises and was entitled to the entire value of the land comprised in the said

premises excepting 20 times of the annual rent thereof payable to Amiya Bala. This claim was denied by Amiya Bala and she alleged that

Animananda was only a tenant at will in respect of the acquired land. The only question that was involved in the said two reference cases was

whether Animananda was a permanent tenant in respect of the acquired land.

3. The Special Land Acquisition Judge who heard these two reference cases came to the findings from the evidence adduced before him that

Animananda had a permanent interest of a mourashi mokurari tenant in the acquired land. In that view of the matter, he awarded the entire amount

of compensation to the respondent excepting a sum Rs. 554/- being 20 times of the annual rent, which was awarded to Amiya Bala. Accordingly,

the reference case of Amiya Bala was dismissed and that of the respondent was allowed. After the disposal of the reference cases, Amiya Bala

died and the present appeal has been filed by her heirs.

4. The acquired premises No. 20, Harey Krishna Sett Lane, Calcutta consisting of 6 bighas 7 cottahs 12 chhataks 33 Sq. ft. of land appertained

to the Zemindary estate of Raja Binoy Krishna Deb Bahadur of Calcutta comprising 82 bighas 11 cottahs 9 chhataks of land. By a registered deed

of sale dated January 19, 1923, Animananda purchased from one Balai Chand Sircar tow parcels of mourashi mokurari land, one measuring 5

bighas more or less as described in part I of the schedule to the sale deed and the other measuring 1 bighas more or less as described in Part II of

the said schedule for a total consideration of Rs. 31,000/-. It appears from the recitals in the sale deed that Balai had a permanent tenancy in

respect of the land sold under the Zemindar Raja Binoy Krishna Deb Bahadur. It is not disputed that the land purchased by Animananda by the

said registered deed of sale is the acquired land. After purchasing the land Animananda constructed buildings and structures and used to run an

educational institution known as ""Boy''s Own Home"". The name of Animananda was mutated in the sherista of Raja Binoy Krisna Deb Bahadur

and also in the sherista of his successor-in-interest Kumar Pradumna Kumar Deb Bahadur. Sm. Amiya Bala Debi purchased the said Zemindary

estate from Kumar Pradumna Kumar Deb Bahadur comprising a total quantity of 82 bighas 11 cottahs 9 chhataks of land, by a registered deed of

conveyance dated December 23, 1930, for a consideration of Rs. 3,250/- only. It has been already stated that the acquired land or the land which

was purchased by Animananda formed part of the said Zemindary estate purchased by Amiya Bala. Animananda also got his name mutated in the

sherista of Amiya Bala and she also recognized him as tenant. Ext. 10 series which are the receipts granted by the Calcutta Corporation show that

Animananda was both the owner and occupier of the said acquired premises. It is not disputed that Animananda constructed pucca structures and

buildings and he was holding a school under the name of ""Boy''s Own Home"". There was no change in the amount of rent that was paid by

Animananda to the Zemindars including Amiya Bala.

5. Mr. Promatha Nath Mitter, learned Advocate appearing on behalf of the appellants has urged that there is no evidence that the tenancy of

Animananda or of his vendor Balai Chand Sircar had commenced before the Transfer of Property Act, 1882, as such, no inference of permanent

tenancy can be drawn from facts and circumstances. It is contended by him that u/s 107 of the Transfer of Property Act, a permanent tenancy can

only be proved by the registered document of lease. This point was not taken in the court below, but as it is appoint of law we have allowed him to

raise the point for the first time before us. There can be no doubt that u/s 107 of the Transfer of Property Act, a permanent tenancy can only be

created by a registered document. In this case, the respondent did not file any document showing the creation of a mourashi mokurari tenancy in

respect of the acquired land in favour of the vendor of Animananda. There is also considerable force in the contention of the appellants that a

permanent tenancy created after the Transfer of Property Act can only be proved by the production of a registered indenture of lease and cannot

be inferred from certain facts and circumstances, namely, long possession, fixity of rent, construction of permanent structures, successive transfers

of the lease-hold interest etc. In the instant case, the learned Judge has not merely relied upon the said circumstances but he has also relied upon

certain other facts, which will be stated presently. It has been noticed that after his purchase from Balai Chand Sircar, Animananda got his name

mutated in the sherista of Raja Binoy Kumar Deb Bahadur and thereafter in the sherista of Kumar Pradumna Kumar Deb Bahadur. He also got his

name mutated in the sherista of Amiya Bala after she purchased the Zemindary estate. It has been observed by the learned Judge and, in our

opinion, quite rightly, that it should be presumed that the name of Animananda was mutated in the Sherista of Amiya Bala on the strength of the

deed of conveyance executed by Balai Chand Sircar in favour of Animananda in which the interest of the vendor in the acquired land was

described as that of a mourashi mokurari tenant. Amiya Bala who was the Zemindar should be presumed to be aware of Balai''s interest as that of

a permanent tenant. If Balai was not a permanent tenant, she would have refused to mutate the name of Animananda or would have mutated his

name only as a tenant at will as claimed by her. The mutation of the name of Animananda in the Zemindary sherista shows that the Zamindar

accepted him as a permanent tenant in respect of the acquired land. Apart from the facts stated above, there is an express admission by Amiya

Bala about the permanent nature of the interest of Animananda in the land in question. Ext. 8 a letter dated February 28, 1968 written by her son

and constituted attorney R. L. Das Sarma to the Second Land Acquisition Collector, Calcutta. Paragraphs 4 and 5 of this letter are as follows:

(4). That the balance portion of the land as notified being premises No. 20, Harey Kristo Sett Lane, Calcutta, is an old School premises originally

run and established by Swami Animananda under it''s the then famous name ''Boy''s Own Home''. The School premises including the land and tank

and building on it have been gifted to the Archbishop of Calcutta who is the present owner of the premises by gift from Swami Animananda. The

place is an ideal one for a residential school under the care of Archbishop of Calcutta, which is very badly needed.

(5). Swami Animananda, as we know, was intimately connected with the freedom movement of the country and his attempts and last desire may

be fulfilled if an ideal residential school is started in the place, where he died.

In paragraph 6 of the letter Amiya Bala has been stated to be the superior landlady. This letter is a clear admission of the status of Animananda as

the owner of eh acquired premises. In other words, Ext. 8, there has been an admission by or on behalf of Amiya Bala about the status of

Animananda as the permanent tenant of the premises. R. L. Das Sharma, who was examined as O.P.W. 1 said in his evidence that the letter Ext. 8

was written by him to stop the acquisition, as in the locality there was no other school of locality there was no other school of that type and they

intended the continuance of the school in the said premises. He also admitted that the school raised buildings to which they did not object because

the property was held for the purpose of the school. The rent was admitted by him to have never been enhanced. It may be that for the purpose of

preventing the acquisition of the premises in question he had written the said letter, but it is difficult to hold that the facts stated in the said letter

about status of Animananda as the owner of the premises and that of Amiya Bala as the superior landlady, are not true. By Ext. 8 a clear admission

has been made by or on behalf of Amiya Bala as to the permanent interest of Animananda in the acquired premises. We have already referred to

the fact about the mutation of the name of Animananda in the landlord''s sherista. The learned Judge relied on the above facts including the said

admission of Amiya Bala and came to the conclusion that Animananda was a permanent tenant of the acquired premises. It seems that before the

learned Judge both the parties proceeded on the footing that a permanent tenancy could be inferred from circumstances and no contention was

made on behalf of Amiya Bala that it could not be so inferred in view of section 107 of the Transfer of Property Act.

6. Be that as it may, as the point was for the first time raised before us, one the prayer of the respondent Archbishop of Calcutta, we allowed him

to file an application for additional evidence under Order 41, rule 27 of the CPC praying fort admitting in evidence the certified copies of certain

registered documents which he could find after search in the Registration Office. The certified copies of these documents are (1) a registered deed

of conveyance dated February 20, 1920 by which Balai Chand purchased the mokurari mourashi interest of Sm. Sulakshana Manjari Dasi and

another in the acquired land; (2) a registered patta dated November 23, 1905 granted by Raja Binoy Krishna Deb Bahadur in favour of the said

Sm. Sulakashana Manjari Dasi granting her mourashi mokurari right in the acquired land and (3) a registered Kabuliyat dated November 23, 1905

executed by the said Sm. Sulakshana Manjari Dasi in favour of Raja Binoy Krishna Deb Bahadur for the grant of mokurari mourashi right in the

acquired land. At this stage it may be stated that it appears from the rent receipts granted by the landlords that the acquired land by the landlords

that the acquired land was the subject-matter of four jamas or tenancies standing in the name of Animananda.

7.The application for additional evidence has been opposed by the appellant. They have used an affidavit-in-opposition. It has been inter alia

alleged in the affidavit that the respondent was negligent in conducting his case in the court below and that he is now trying to patch up the weak

part of his case and to fill up the omissions, which are the products of his own negligence. Further, it has been alleged that the respondent never

cared to make proper enquiries about the evidence which might be in existence in support of his case, while the case was pending in the court

below. It is argued on behalf of the appellants that as the respondent was negligent in not producing the certified copies of the documents

mentioned above, his application for additional evidence should not be entertained. It is also contended that the evidence on record is sufficient for

this Court to pronounce judgment and, therefore, in any event, the application should be rejected. A number of judicial decisions have been cited

on behalf of the appellants laying down the circumstances under which additional evidence can be received by the Appellate Court. It is not

necessary to refer to all these decisions which are uniform so far as the legal principles relating to acceptance of additional evidence are concerned.

The leading decision on the point is that of the Privy Council in Parsotim v. Lal Mohar, L.R. 58 IndAp 254. In that case, Sir George Lowndes

observed:

Under r. 27(1) (b) it is only where the appellate Court ""requires"" it (i.e., finds it needful) that additional evidence can be admitted. It may be

required to enable the Court to pronounce judgment, or for any other substantial cause, but in either case it must be the Court that requires it. This

is the plain grammatical reading of the sub-clause. The legitimate occasion for the exercise of this discretion is not whenever before the appeal is

heard and a party applies to adduce fresh evidence, but ""when on examining the evidence and it stands, some inherent lacuna or defect becomes

apartment"" ..... It may well be that the defect may be pointed out by a party, or that a party may move the Court to supply the defect,

but the requirement must be the requirement of the Court upon its appreciation of the evidence as it stands.

Sir George Lowndes further observed :-

.....the power so conferred upon the Court by the Code ought to be very sparingly exercised, and one requirement at least of any

new evidence to be adduced should be that it should have a direct and important bearing on a main issue in the case.

8. We should like to refer to a decision of the Supreme Court in K. Venkataramiah Vs. A. Seetharama Reddy and Others, . In that case, Das

Gupta J., who delivered the judgment of the Court pointed out ""There may well be cases where even though the Court finds that it is able to

pronounce judgment on the state of the record as it is, and so, it cannot strictly say that it requires additional evidence ""to enable it to pronounce

judgment"", it still considers that in the interest of justice something which remains obscure should be filled up so that it can pronounce its judgment

in a more satisfactory manner. Such a case will be one for allowing additional evidence ""for any other substantial cause"" under R. 27(1) (b) of the

Code.

9. It follows from the principles of law laid down by the Privy Council and the Supreme Court in the above two decisions that it is the requirement

of the appellate court to enable it to pronounce judgment or for any other substantial cause that the appellate court may admit additional evidence,

subject, however, to this, as pointed out by Das Gupta J., that even though the appellate court is able to pronounce judgment still it may admit

additional evidence, if it considers that in the interest of justice something which remains obscure should be filled up so that it can pronounce its

judgment in a more satisfactory manner.

10. In the instant case, it is difficult for us to hold on the materials on record that the tenancy in respect of the acquired land had commenced after

the Transfer of Property Act, and it was also not the case of Amiya Bala in the court below. Nor is there any direct evidence to show the

commencement of the tenancy before the Transfer of Property Act. We do feel that for the purpose of pronouncing judgment additional evidence

is required. The appellants have opposed the prayer of the respondent for the reception of the additional evidence on the ground that the

respondent was negligent and careless in not filing the documents in the court below. In the first place, it may be pointed out that the point which

has now been urged on behalf of the appellants, namely, that if the tenancy of the acquired land had been created after the Transfer of Property

Act, it could only be proved by the production of a registered document of lease and not otherwise, was not raised in the court below. If the point

had been taken in the court below, the respondent could have adduced in evidence, the certified copies of the said documents. Secondly, when it

is the requirement of the appellate court that it should receive additional evidence for the purpose of removing the lacuna or defect, though such

lacuna or defect is pointed out by a party or a party moves the Court to supply the defect, the question of careless or negligence of the party who

points out the defect or lacuna or moves the Court to supply the same is immaterial.

11. But an intriguing question has been raised by Mr. Mitter, on behalf of the appellants. It is contended by him that the certified copies of the said

documents cannot go into evidence without proof of execution of the original documents. It has been urged by him that the documents filed by the

respondent being only the certified copies, no presumption u/s 90 of the Evidence Act is available to him as to the execution of the original

documents, although the original documents are more than 30 years old. There was some conflict of judicial opinion as to whether the presumption

u/s 90 was applicable to copies or certified copies of documents 30 years old. But it has been held by the Judicial committee upon a review of all

authorities that section 90 clearly requires the production to the Court of the particular document, in regard to which the Court may make the

statutory presumption. Further, it has been pointed out that if the document produced is a copy, admitted u/s 65 of the Evidence Act as secondary

evidence, and it is produced from proper custody and is over thirty years old, then the signatures authenticating the copy may be presumed to be

genuine (Kunwar Basant Singh v. Kunwar Brij Raj Saran Singh, L.R. 62 IndAp 180). The Supreme Court in Harihar Prasad Singh v. Deonarain

Prasad and others, AIR 1956 S. C. 305 relied on the Privy Council decision referred to above and held that the presumption enacted in section 90

can be raised only with reference to original documents and not to copies thereof. In view of the above two high authorities, there can be no doubt

that the statutory presumption u/s 90 is not applicable to certified copies of documents.

12. Another objection which has been raised on behalf of the appellants to the admission of the said certified copies in evidence is that none of the

circumstances mentioned in section 65 of the Evidence Act is present and that, accordingly, the same cannot be admitted as secondary evidence.

We are, however, unable to accept this contention. Some of the circumstances as mentioned in clause (c) of section 65 are as follows :-

(c). When the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from

his own default or neglect, produce it in reasonable time.

In his application for additional evidence, it has been averred by the respondent that before January 10, 1976. He had no knowledge about the

existence of the three documents the certified copies of which have been filed for admission in evidence. As the respondent has produced the

certified copies, it may be reasonably inferred that he is not in possession of the original documents. Indeed, it is his case that he had no knowledge

about the existence of the same. The property has been bequeathed by Animananda by his will dated January 24, 1922 to Archbishop of Calcutta

with a direction that the property should be used ""for the education of purely Indian boys"". Animananda died on January 12, 1945 and the will was

probated on August 29, 1945. The respondent, the present Archbishop of Calcutta, is the successor-in-interest of the original legatee and

executor. It will not be unreasonable to presume that the respondent had not received from his predecessor-in-office, the original documents of title

of Animananda. We do not find any reason to disbelieve the allegation of the respondent in his application for additional evidence that he was not

aware of the existence of the documents of which the certified copies have been filed, till January 10, 1976. The position is that the respondent is

not in possession of any of the original documents nor is he aware of as to what had happened to the same. He is unable to produce the original

documents of title of Animananda. The non-production of the original documents by the respondent is not due to his own default or neglect. In our

opinion, there cannot be any evidence of absolute loss and whether a document is lost or not has to be inferred from circumstances. A thing is said

to be lost when it cannot be discovered. The respondent has not been able to discover the original documents. In these circumstances and

particularly in view of the fact that the respondent is not aware of the whereabouts of the original documents, we hold that the original documents

have been lost. In our view, the conditions mentioned in clause (c) of section 65 are fulfilled and, accordingly, the certified copies may be received

in evidence as secondary evidence of the original documents. The contention of the appellants in this regard is rejected.

13. On behalf of the appellants a further objection has been taken to the certified copies of the documents being admitted in evidence. It is

contended that even though the respondent may adduce the certified copies as secondary evidence of the original documents u/s 65, there is still

another impediment which must be removed by him, namely, that he has to prove the execution of the original documents. In support of this

contention much reliance has been placed on the observation of Sir Asutosh Mookerjee in a Special Bench decision of this Court in a contempt

case ""In the matter of Tarit Kanti Biswas, Printer and Publisher of Amrita Bazar Patrica and Ors""., 21 C.W.N. 1161. At page 1211 of the report

Sir Asuthosh observed """.....for although the secondary evidence may be admissible, the party who produces the evidence may be admissible, the

party who produces the evidence is not relieved of his obligation to prove the execution of the document, just as if the original had been produced.

Unless the case is covered by Section 90 of the Indian evidence Act or the legislature has expressly provided that the document or endorsement

thereon is receivable in evidence without proof of execution, as, for example, in section 60 of the Indian Registration Act."" Relying on this

observation, it is contended that as section 90 of the Evidence Act is inapplicable to the instant case, the respondent must prove the execution of

the documents as required by section 67 of the Evidence Act. Section 67 provides that if a document is alleged to be signed or to have been

written wholly or in part by any person, the signature or the handwriting of so much for the document as is alleged to be in that person''s

handwriting must be proved to be in his handwriting. What is contended on behalf of the appellants is that there must be directed evidence of proof

of execution of the documents. If direct evidence is insisted on, it must be said that the documents will never be proved, for at this distant time none

of the persons who witness such execution is available. The respondent has no personal knowledge about the execution and he is unable to testify

the same. Does it mean that when there is loss of evidence by death or otherwise the execution of registered document cannot be proved? The

answer to this question must be in the negative. Section 67 does not itself lay down any particular mode of proof. It does not require that direct

evidence of the signature or handwriting of the person alleged to have executed the document must be given of some person who witnessed such

execution. If that be the intention of the legislature which, in our opinion, it cannot be, many documents will fail for want of proof. The definition of

the word ""proved"" as given in clause (2) of section 3 does not also support the contention that the execution must be proved by direct evidence.

He thinks, we may rely on circumstantial evidence which is some proof of the execution of the documents. At this stage, it may be pointed out that

although the appellants have used an affidavit-in-opposition to the application for additional evidence, throughout the affidavit, there is no allegation

that the original documents were not executed by the persons alleged to have executed the same. In other words, there is no challenge to the

genuineness of the original documents. In paragraph 7 of the affidavit-in-opposition, a sweeping statement has been made to the effect that the

deponent does not admit anything as stated in paragraphs 13 to 16 of the application for additional evidence. Such a statement as made in

paragraph 7 cannot be construed to mean that the appellants have denied the genuineness of the original documents as contended on their behalf.

By non-traverse the appellants have impliedly admitted the execution of the original documents. This is one of the circumstances which cannot be

ignored, but should be taken notice of by the Court while considering proof of execution of the documents.

14. The original documents are all registered and the copies of the same which are sought to be adduced in evidence are certified copies issued by

the registering officer u/s 57 of the Indian Registration Act. It is now well settled that registration is a solemn act and the certificate of registration of

a document is prima facie evidence of the execution of the same. In the Privy Council case of Gangamoyi Debi v. Trailukhya Nath ILR 33 Cal

537, sir Ford North, observed :-

The registration is a solemn act to be performed in the presence of a competent official appointed to act as Registrar whose duty it is to attend to

parties during the registration and see that proper persons present are competent to act, and are identified to his satisfaction, and all things done

before his signature will be presumed to be done duly and in order. Of course it may be shown that deliberate fraud upon him has been

successfully committed; but this can only be by very much stronger evidence than is forthcoming here.

Again, the matter was considered by the Privy Council in M. Ihtisham Ali v. Jamma Prasad, AIR 1923 P.C. 56. Lord Phillimore observed :-

There is no doubt that the deed was executed for it was registered, and registered in a regular way, and it is the duty of the Registrar, before

registering, to examine the grantor of someone who, he is satisfied, is the proper representative of the grantor, before he allows the deed to be

registered. There can be no doubt therefore that Ehan Ali Khan executed the deed and was party to its registration.

In Gopal Das v. Sir Thakurji, AIR 19743 P.C. 8, the Privy Council relied, on the certificate of registration of a will in proof of the execution of the

same. It is clear from the decisions referred to above that the certificate of registration is some evidence of execution of a registered document.

15. In the instant case, the original documents are not forthcoming but the certified copies are there. It has been already noticed that the certified

copies have been issued u/s 57 of the Indian Registration Act. Sub-section (5) of section 57 provides that all copies given under this section shall

be singed and sealed by the registering office and shall be admissible for the purpose of proving the contents of the original documents. The

contents of the original documents include also the signature s of the persons executing the same. Sub-section (2) of section 60 lays down that the

certificate shall be signed, sealed and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has

been duly registered in manner provided by the Act, and that the facts mentioned in the endorsements referred to in section 59 have occurred as

therein mentioned. Section 59 refers to the endorsements made by the registering officer u/s 52 and 58. Section 52(1)(a) requires that the date,

hour and place of presentation, and the signature of every person presenting a document shall be endorsed on every such document at the time of

presenting it. u/s 58(1) (a) the particulars to be endorsed on every document admitted to registration, other than a copy of a decree or order etc.,

are the signature and addition of every person admitting the execution of the document, and if such execution has been admitted by the

representative, assign or agent of any person, the signature and addition of such representative, assign or agent. Sections 57(5) and 60(2), if read

together, undoubtedly raise a presumption as to the due registration of a document which is again evidence of execution of the same. It, therefore,

follows that a certified copy of a registered document admissible u/s 65 of the Evidence Act, is some proof of execution of the original document

by virtue of section 57(5) read with section 60(2). We do not think that the view which we take militates against the decision of the Privy Council

in Basant in Harihar Prasad Singh''s case or of the observation of Sir Asutosh Mookerjee in the Special Bench case ""In the matter of Tarit Kanti

Biswas"", referred to above. In Basant Singh''s case, the will in question was not registered, but a plain copy thereof was adduced in evidence.

Even in the case, the Privy Council considered circumstantial evidence in proof of the execution of the will. In Harihar Prasad Singh''s case, the

documents that came up for consideration were the certified copies of some objection petition. The said petitions were not registered documents

and, as such, the Supreme Court had not to consider the effect of the registration of documents on the proof of execution of the same. All that the

Supreme Court has ruled in that case following the decision of the Privy Council in Basant Singh''s case is that the presumption enacted in section

90 of the Evidence Act can be raised only with reference to the original documents and not to copies thereof. The copies that were before the

Supreme Court were not, as already stated, certified copies of registered documents. The observation of Sir Asutosh Mookerjee in the said

Special Bench case also did not relate to certified copies of any registered documents, but they were returns kept in the custody of the Registrar of

the Joint Stock Companies Even in that observation Sir Asutosh expressed the view that a document or endorsement thereon as contemplated by

section 60 of the Indian Registration Act is receivable in evidence without proof of execution. That observation, in our opinion, supports to some

extent the view which we have taken.

16. For the reasons stated above, we hold that the certified copies of he documents that have been filed by the respondent are admissible in

evidence under clause (c) of section 65 of the Evidence Act and the fact that the original documents are registered documents, there is a

presumption as to the due execution thereof by the persons alleged to have executed the same, in view of section 57(5) read with section 60(2) of

the Indian Registration Act. We make it clear, however, that we may not be understood to lay down the proposition that whenever certified copies

of registered documents are produced, there is no necessity to prove the execution of the same in accordance with section 67 of the Evidence Act.

But when there is loss of evidence relating to the execution of any document, the Court may in a suitable case rely on the registration certificate as

prima facie evidence of proof of execution. In that view of the matter and for satisfactory pronouncement of judgment relating to the issue under

consideration, we admit in evidence the certified copies of the documents mentioned above and mark the Patta dated September 14, 1905

executed by Raja Binoy Krishna Deb Bahadur in favour of Sm. Sulakshana Manjuri Dasi as Ext. XI(H. C.), the Kabuliyat dated September 14,

1905 executed by Sm. Sulakshan Manjuri Dasi as Ext. XII (H. C.) and the deed of sale dated January 24, 1920 between Sulakshana Manjuri

Dasi and another and Balai Chand Sircar as Ext. XIII(H. C.).

17. Now we may consider the certified copies of the documents on merits. By the Patta and Kabuliyat both dated September 14, 1905, Exts. XI

(H. C.) and XII (H. C.), a permanent lease was granted by Raja Binoy Krishna Deb Bahadur to Sm. Sulakshan Manjuri Dasi in respect of land

which corresponds to 4 bighas and a half of the acquired land, at an annual rent of Rs. 19/-. By the deed of sale dated January 24, 1920,

Sulakshana Manjuri Dasi along with her husband Kumar Harish Chandra Roy transferred and sold to Balai Chand Sircar for a consideration of Rs.

30,000/-, two pieces or parcels of mourashi mokurari garden land measuring 5 bighas more or less. One of these two parcels of land measuring

41/2 bighas and appertaining to a Jama of Rs. 19/- was leased out by Raja Binoy Krishna Deb Bahadur to Sulakshana Manjuri Dasi by the Patta

and Kabuliyat, Exts. XII(H. C.) and XIII(H. C.) mentioned above. It appears from the schedule to the sale deed that Sulakshana''s husband,

Kumar Harish Chandra Roy who was also one of the transferors was a tenant under Raja Binoy Krishan Deb Bahadur in respect of the remaining

half bigha of land at an annual rent of Rs. 20 and pice 6 only. There is no dispute that the whole of these 5 bighas of land transferred by the sale

deed is a part and parcel of the acquired land which measures 6 bighas 7 cottahs 12 chhataks 33 sq. ft. It has been already noticed that by a deed

of sale dated January 1, 1923 Balai Chand Sircar transferred his mourashi mokurari interest in 5 Bighas of land appertaining to the jamas of Rs.

19/- and Rs. 2 and pice 6 and also his mourashi mokurari interest in 1 bigha of land more or less, that is, in all he transferred 6 bighas of land more

or less to Animananda. It has been already pointed out that so far as the said 4 bighas and a half of land appertaining to the jama of Rs. 19/- is

concerned, there cannot be any dispute that Exts. XI (H. C.) and XII (H. C.) prove the creation of the permanent tenancy in favour of Sulakshana

Manjuri Dasi, the predecessor-in-interest of Balai Chand Sircar and Animananda.

18. It is, however, urged on behalf of the appellants that the respondent has failed to prove the creation of the tenancy of Kumar Hairsh Chandra

Roy in the half bigha of land appertaining to the jama of Rs. 2 and pice 6 only, and also the creation of tenancy in 1 bigha of land as mentioned in

part II of the schedule to the sale deed of Balai Chand Sircar. Before proceeding to consider the said contention of the appellants, it may be

recorded that 6 bighas of land mentioned in the document of Balai is identical with the acquired land. The respondent has not been able to produce

any document showing the creation of a permanent lease in favour of Kumar Harish Chandra Roy relating to the said half bigha of land having an

annual rent of Rs. 2 and pice 6 only nor has he been able to produce any document in respect of the remaining 1 bigha of land as mentioned in part

II of the schedule to Balai''s sale deed. It is contended on behalf of the respondent that in view of the fact that the origin of the tenancy of

Animananda in respect of the said 1 bigha and a half of land is unknown and of the long possession of the predecessor-in-interest of Animananda

or Balai without any interruption by anybody, it should be presumed that there was such a grant of permanent lease, but it was lost. In other words,

the respondent relies on the presumption of lost grant. This contention has been strenuously opposed on behalf of the appellants. It is contended

that prima facie the Transfer of Property Act applies to the case and the onus is on the respondent to prove that the case comes within any of the

exceptions as mentioned in section 2 of the Transfer of Property Act. It is next contended that if a lost grant is to be presumed, the presumption

must be that the grant must have originated before the commencement of the transfer of Property Act, that is, July 1, 1882. Simply because the

origin is not known the presumption of lost grant cannot be made unless it can be presumed from long possession and other circumstances that the

grant originated before the Transfer of Property Act. If any presumption of lost grant is to be made regarding a grant alleged to have been made

after the Transfer of Property Act that grant must also be presumed to have complied with section 107 of the Transfer of Property Act in order

that the grant to be held to be valid, but such a presumption cannot be made. We may now consider the said contentions of the appellants.

19. Section 2 of the Transfer of Property Act provides for the saving of certain enactments, incidents, rights, liabilities etc. Section 2 is as follows :-

In the territories to which this Act extends for the time being the enactments specified in the schedule hereto annexed shall be repealed to the extent

therein mentioned. But nothing herein contained shall be deemed to affect :

(a) the provisions of any enactment not hereby expressly repealed:

(b) any terms or incidents of any contract or constitution of property which are consistent with the provisions of the Act, and are allowed by the

law for the time being in force:

(c) any right on liability arising out of a legal relation constituted before this Act comes into force, or any relief in respect of any such right or liability

: or

(d) save as provided by section 57 and Chapter IV of this Act any transfer by operation of law or by, or in execution of, a decree or order of a

Court of competent jurisdiction:

and nothing in the second Chapter of this Act shall be deemed to affect any rule of Muhammadan Law.

20. We are not impressed with the contention of the appellants that unless the respondent''s case comes within any of the exceptions of section 2,

the respondent cannot prove the permanent lease by any mode other than that mentioned in section 107 of the Transfer of Property Act, even

though the lease might have been created before that Act. As already noticed, section 2 is a saving provision and it has nothing to do with the

question of establishing the permanent right of the respondent in the acquired land. The argument of the appellants proceeds on the assumption that

the leases of Animananda in the said 1 bigha and a half of land commenced after the Transfer of Property Act. The question whether any

presumption of lost grant can be drawn or not has no bearing on the provision of section 2. Where the origin of the tenancy is not known the Court

may presume an origin in some lawful title. Such a presumption can be drawn from certain facts, namely, long possession, successive transfers of

the tenancy right, construction of pucca structures to the knowledge of the landlords etc. which are all present in the instant case. When the origin is

unknown it cannot also be said when possession commenced, for if the date of commencement of possession of the original lessee is known the

origin of the tenancy will also be known. Kumar Harish Chandra Roy was a tenant in respect of half a bigha of the acquired land which he

transferred to Balai in 1920. It is not known when Kumar Harish Chandra Roy acquired his tenancy right or who was his predecessor-in-interest.

There is no evidence before us to show that the tenancy in respect of the said half a bigha of land commenced after the transfer of Property Act.

This reasoning also applies to the remaining 1 bigha of land as described in part II of the schedule to the deed of sale of Balai in favour of

Animananda. In view of the facts stated above, it will not be unreasonable to presume the origin in some lawful title. As soon as that presumption is

made it has to be held that Animananda had permanent tenancy rights in the said one bigha and a half of the acquired land. The Transfer of

Property Act does not expressly or by necessary implication bar the drawing of such a presumption. In AIR 1930 103 (Privy Council) , the Privy

Council has observed that this presumption is one based on the policy of law and is not a part of the law of evidence. The presumption applies not

only to the factum of a grant but also as to it legality. The presumption of the origin in some lawful title implies that the permanent tenancies in

respect of the said one bigha and a half of the acquired land were created before the Transfer of Property Act, for such tenancies could be validly

created without registered documents only before the commencement of the said Act. Moreover, it has been already noticed that by the letter Ext.

8, Amiya Bala admitted the ownership, that is, the permanent title of Animananda in the acquired land. In view of the aid admission, it will be

presumed that the tenancy of the acquired land commenced before the Transfer of Property Act. This presumption is rebutted so far as the tenancy

of the said four bighas and a half of the acquired land is concerned, but it stands un-rebutted in respect of the remaining land. It is true that the onus

is on the respondent to prove permanency of the interest of Animananda, but after the said admission onus shifts to the appellants to show that the

was a monthly tenancy or that it commenced after the Transfer of Property Act. So the presumption will hold good with regard to the remaining

land, as the appellants have failed to rebut the same. The certified copies of the documents, Exts XI (H. C.) to XIII (H. C.) satisfactorily prove the

permanent title of Animananda to 41/2 bighas of the acquired land, and regarding the remaining land, we are of the view that in the facts and

circumstances of the case, it should be presumed that the permanent tenancies were created before the Transfer of Property Act.

21. It is, however, contended by Mr. Mitter that the presumption of lost grant can be made only when the landlord seeks to evict the tenant. We

regret, we are unable to accept such a wide proposition of law. No authorities has been cited before us in support of that proposition. Even

assuming the same to be a sound one, this case may be considered to be one for eviction of the respondent by the appellant for the reasons stated

hereafter. After the acquisition, the land comprised in the tenancy of the respondent, has been converted into money. The appellants seek to

recover the compensation for the acquired land and if they are successful it would mean depriviation of the interest of the respondent in the

acquired land which may be regarded as tantamount to his eviction. Be that as it may, we are unable to hold that the application of eh doctrine of

presumption of lost grant is confined to cases for eviction of tenants by the landlords and no other cases. The contention of the appellants is

accordingly, rejected.

22. The learned Judge has referred to some circumstances on the basis of which he inferred the permanent title of Animananda in the acquired

land. One of the most significant circumstances as pointed out by the learned Judge i.e. that while in 1923 Animananda purchased the tenancy

interest of Balai Chand Sircar for a consideration of Rs. 31,000/-, in the acquired land measuring 6 bighas 7 cottahs 12 chhataks 33 sq.ft., in 1930

Amiya Bala purchased the entire Zemindary estate measuring 82 bighas 11 cottahs 9 chhataks for a consideration of Rs. 3,250/- only. There have

been successive transfers of the tenancy interest in respect of the acquired land and pucca structures were constructed with the knowledge of the

superior landlords including Amiya Bala. As Amiya Bala purchased the Zemindary estate it can be presumed that she got all the papers of that

estate. Although, it is the contention of the appellants that Animananda was only a tenant at will in respect of the acquired land, no document has

been produced on behalf of the appellants to show when such tenancy had commenced. There has been successive mutations of the tenant''s name

in the landlord''s sherista and the last mutation of the name of Animananda relating to his interest in the acquired land was in the sherista of Amiya

Bala presumably on the basis of the transfer made by Balai to Animananda by the deed of sale in which there is a clear recital that Balai has a

mourashi mokurari interest in the land. The rent receipts which have been produced on behalf of the respondent do not show that Animananda was

only a monthly tenant at will. On top of all there is the admission of Amiya Bala of the ownership or permanent right of Animananda in respect of

the acquired land.

23. After considering the facts and circumstances of the case, we are of the view that the learned Judge is perfectly justified in declaring that the

respondent is entitled to the whole of the compensation money awarded for the land compromised in the acquired premises excepting a sum of Rs.

554/-. The judgment and decree of the learned Judge are affirmed and this appeal is dismissed with costs.

24. In appeal F.A. 289 of 1975 the appellants have challenged the judgment and decree of the learned Judge refusing to award the compensation

for trees assessed at Rs. 750/-. In view of our judgment delivered in the other appeal (F.A. 288 of 1975), the appellants have no right to claim

compensation for trees standing on the acquired land.

Accordingly this appeal is also dismissed.

There will be no order for costs.

Sharma, J.

25. I agree.