

(1936) 01 CAL CK 0033

Calcutta High Court

Case No: Appeal from Appellate Decree No. 1691 of 1933

Abdul Rahaman Molla

APPELLANT

Vs

Abdul Hossain Molla
and OthersRESPONDENT

Date of Decision: Jan. 15, 1936

Final Decision: Dismissed

Judgement

Edgley, J.

In this case Mr. P. Ahmed, Additional Subordinate Judge, Howrah allowed an appeal from the decision of Babu Nararath Mukherji, Munsif, 3rd Court, Howrah. It appears that in the suit out of which this appeal arises, the Plaintiff sued for a declaration of his tenancy rights in respect of 4 1/2 bighas of land which he claimed to hold as lessee under the mutwallis of the Kamaria Mosque. According to the Plaintiff's case, he bought this property in 1916 in execution of a decree against one of the descendants of Punjab Molla who is said to have been the original mutwalli of the Mosque. Immediately after the purchase some other descendants of Punjab Molla preferred a claim, alleging that the land in question appertained to the wakf property of the Mosque. but their claim was disallowed. Subsequently Defendants Nos. 1 and 2 in the suit out of which this appeal arises instituted Title Suit No. 622 of 1916 against the Plaintiff and they claimed that the property in suit was the wakf property of the Mosque and could not be attached and sold. This suit was dismissed. A little later Defendants Nos. 2 and 7, Yar Ali Molla and Zulfakkar Molla, instituted another title suit, namely suit No. 560 of 1917, against the Plaintiff on grounds similar to those on which Title Suit No. 622 of 1916 had been instituted. The suit was compromised on the 2nd April, 1918, under a document, Ext. 20. This document was incorporated in the decree and it was directed that the suit should be decreed in terms of the solenama which should be treated as a part of the decree. The Plaintiff claims that by virtue of the terms of this solenama he became the lessee of the disputed property. The case for the Defendants was to the effect that, in any event, under the solenama dated the 2nd April, 1918, no tenancy could be created because the document in question had not been registered. It was also urged that the original

mutwallis had no authority to dispose of the property of the Mosque and that, in these circumstances, the Plaintiff's claim should be dismissed.

2. One of the principal grounds on which the lower Appellate Court allowed the appeal against the decision of the learned Munsif was that the solenama operated as a lease and it could not be admitted as evidence because it had not been registered. On this point the learned Advocate for the Appellant has directed my attention to the provisions of sec. 17 (1) (b) and 17 (2) (vi) of the Registration Act. By virtue of a recent Act, namely Act 21 of 1929, sec. 17 (2) (vi) has been amended, but at the time when the solenama was made, namely in 1918, sec. 17 (2) (vi) provided that nothing contained in clause (b) of sec. 17 (1) should apply to any decree or order of a Court. It is therefore argued that inasmuch as the solenama, dated the 2nd April, 1918, had, as a matter of fact, been incorporated in the decree, it was therefore admissible in evidence without registration and in support of this contention reference has been made to a decision of their Lordships of the Judicial Committee of the Privy Council in the case of Hemanta Kumari Debi v. The Midnapore Zemindary Co. L.R. 46 IndAp 240: S.C. ILR 47 Cal. 485; 24 C.W.N. 177 (1919) in which their Lordships made the following observation:--

Though this judgment does not in terms refer to sec. 17 (2) (vi) of the Registration Act, it gives full effect to the opinion that their Lordships have formed as to its interpretation. The decree in the present case is a decree which makes no difference whatever in its language between one part and another part of the compromise; it incorporate the whole; and it is, in other words, a decree, which, though affecting the lands in the suit as a decree, incorporates the whole of the agreement which led to the suit being compromised. For this reason their Lordships think that the registration of the agreement was unnecessary and that the decree is sufficient evidence of its terms.

3. Having regard to this decision, the learned Advocate for the Respondents admits that on this particular point the decision of the lower Appellate Court appears to be wrong. He contends, however, that even if the solenama be treated as admissible in evidence, the Plaintiff, nevertheless, should be held to have failed in establishing his case.

4. In the first place, it is contended on behalf of the Respondents that they cannot be considered, in any event, to be bound by the decree in Suit Nos. 560 of 1917, because they were not in fact parties to that suit. In the suit in question the two Plaintiffs were Yar Ali Molla and Zulfakkar Molla. Defendant No. 1 was Abdul Rahman Molla, the Appellant now before this Court and 4 other persons who were said to be tenants holding under him. In the suit out of which this appeal arises Abdul Rahman Molla is the Plaintiff, but the majority of the Defendants are persons whose names do not appear among the parties to Suit No. 560 of 1917. There is, therefore, considerable force in this contention which has been urged on behalf of the Respondents.

5. The most important point, however, which has been argued on behalf of the Respondents is that, in any event, the two persons who compromised the Title Suit No.

560 of 1917 with Abdul Rahman Molla were not properly appointed mutwallis under the provisions of the Mohamedan Law. There is a clear finding to this effect in the judgment of the learned Subordinate Judge and having regard to the circumstances of the case, I am of opinion that this finding is correct. These people do not appear to have been appointed by any previous mutwalli, nor were they appointed as such by the District Judge. It would further appear that, as regards this particular walf property, there must have been a number of managing mutwallis and as there is nothing to show that Yar Ali Molla and Zulfakkar Molla, at the time when they filed the petition, were acting on behalf of the whole body of mutwallis,, it would appear that the solenama in question must be regarded as inoperative on this ground. Further, even if it be assumed that Yar Ali Molla and Zulfakkar Molla had been properly constituted mutwallis under the provisions of the Mohamedan Law, it is nevertheless clear that they had no authority to deal with the property in suit by creating a permanent lease in favour of Abdul Rahman Molla. It appears to be well settled law that a mutwalli has no authority to grant a permanent lease unless he has been expressly authorised by the wakf deed to do so or unless he has obtained the leave of the Court for this purpose. In a case of this sort it would not appear to be sufficient to obtain the leave of the Munsif as it has been held that the District Judge is the Kazi under the Mohamedan Law and it is to him that an application should be made for the purpose of obtaining sanction to a lease. [Fakrunnessa Begum v. The District Judge of the 24-Pergannas 24 C.W.N. 880 (1920)].

6. Having regard to the above considerations I must hold that inspite of the fact that the solenama dated the 2nd April, 1918, must be treated as admissible in evidence, the Plaintiff has nevertheless been unable to establish his claim. The judgment and the decree of the lower Appellate Court will, therefore, be affirmed and this appeal is dismissed with costs. Application for leave to file a Letters Patent Appeal in this case is refused.