Manindranath Dinda Vs Panchanon Mondal and Others

Appeals From Original Decree No''s. 204 and 205 of 1946

Court: Calcutta High Court

Date of Decision: Sept. 6, 1950

Acts Referred:
Government of India Act, 1915 â€" Section 1, 13, 2, 30, 33#Government of India Act, 1935 â€" Section 1, 175(3)#Registration Act, 1908 â€" Section 10(1), 17(1)(d), 90, 90(1), 90(1)(a)#Succession Act, 1925 â€" Section 307#Transfer of Property Act, 1882 â€" Section 107, 117, 3

Citation: 55 CWN 171

Hon'ble Judges: Guha, J; Das, J

Bench: Division Bench

Advocate: Hiralal Chakravarty, Syamadas Bhattacharya and Benode Halder For the Appellants in Appeals Nos. 204 and 205, for the Appellant;Amarendra Nath Bose and Hemanta Kumar Basu for the Respondent in Appeal No. 204, A.C. Gupta, Rubindra Nath Choudhury and Harideb Chatterjee for the Defendants Nos. 1-17 Respondent and Amarendra Nath Bose and Hemanta Kumar Basu for the Defendant No. 18 Respondent in Appeal No. 205, for the Respondent

Judgement

Das, J.
These are two appeals by the Defendant Manindra Nath Dinda against the judgments and decrees passed by Sri G. Palit,

Additional Subordinate Judge, 3rd Court, 24-Parganas and dated 31st May, 1946. The suit out of which First Appeal No. 204 of 1946 has

arisen, was numbered as Title Suit 23 of 1943 and later renumbered as Title Suit 6 of 1946. The suit out of which First Appeal No. 205 of 1946

has arisen was numbered as Title Suit No. 40 of 1943 and later renumbered as Title Suit No. 7 of 1946.

2. The two suits were heard together, and the Court below delivered one judgment disposing of the two suits.

3. In this Court, First Appeal No. 204 of 1946 was heard first and immediately thereafter First Appeal No. 205 of 1946 was heard.

4. I shall first state the case of the Plaintiff Amiya Pal Chowdhury in Title Suit No. 6 of 1946. The allegation briefly is that on 30th May, 1908.

Srimati Radha Sundari Pal Chowdhury who died in 1924 and whose estate is now in the hands of her son, Amiya Pal Chowdhury, the Plaintiff, as

the administrator to her estate, took a temporary settlement for a term of 33 years, of the disputed Towzi No. 2935, being Part V of Lot No. 135

of Mouza Radhanagore Dakhin, J. L. No. 64 within Police Station Sandeshkhali in Pargana Sunderbans in the District of 24-Parganas. The

revenue for the estate was payable in four instalments, December, January, February and March of every year, and commenced to run from April,

1921, on a progressive scale, the maximum being Rs. 1,157; she also took temporary settlement of two neighbouring Towzis Nos. 2934, 2936 on

similar terms. Before the expiry of the term there was a proposal to the Plaintiff for taking a renewal lease for a further term of 30 years. The

renewed lease was executed by the Plaintiff alone and not by the Government.

5. The Plaintiff did not notice that unlike the previous leases or the renewed leases of the other two towzis, the lease of the disputed towzi provided

for an August kist. For the default in payment of the August kist the towzi was put up to sale and was purchased by the Defendant Manindranath

Dinda on 9th January, 1942. The sale of the towzi was discovered by the Plaintiff''s Naib when he went to pay the revenue on 10th January, 1942.

The Plaintiff was then informed. The Plaintiff preferred an appeal to the Commissioner of the Presidency Division which was dismissed on 26th

March, 1942, and the sale was confirmed on 10th April, 1942. The Plaintiff accordingly brought the present suit on 22nd February, 1943, for a

declaration that the said revenue sale was a nullity or in the alternative, for setting aside the sale. The Plaintiff also prayed for a temporary injunction

restraining the Defendant from realising rent from the Plaintiff''s tenants or otherwise interfering with his rights pending the hearing of the suit and for

confirmation of possession or in the alternative, for recovery possession if the Court found that the Plaintiff was not in possession.

6. The grounds on which the Plaintiff sought for setting aside the sale or for a declaration that the revenue sale is void were set out in the plaint and

will appear from the judgment.

7. The Defendant disputed the fact of Plaintiff''s alleged absence of knowledge about the August kist or the story about the date of or source of his

knowledge of the sale and asserted that the Plaintiff was negligent and that the revenue sale was valid. It was also asserted that the Plaintiff was

estopped from disputing the sale by reason of the covenant in the Plaintiff''s lease.

8. In Title Suit No. 7 of 1946, the Plaintiff, Manindranath Dinda, after setting out his revenue purchase, alleged that the Defendants Nos. 1 to 17

who claim tenancy rights in different portions of the disputed towzi are in collusion with Defendant No. 18, Amiya Pal Chowdhury and that the

alleged leases were not bona fide transactions and did not create tenancy rights in the Defendants Nos. 1 to 17 and were unavailing against the

Plaintiff who is a purchaser at a revenue sale.

9. The Defendant No. 18, Amiya Pal Chowdhury denied the allegation of collusion and averred that there were mere talks of settlement which

never matured as the Probate Court did not grant him permission under sec. 307 of the Indian Succession Act, and that he brought suits for

ejecting the alleged tenants which he withdrew after the revenue sale. Defendants Nos. 1 to 5, 7 to 12, 14 to 17 filed a joint written statement.

They challenged the validity of the revenue sale on grounds similar to those alleged by Amiya Pal Chowdhury in Title Suit No. 6 of 1946. They set

up tenancy rights in different portions of the disputed towzi, they further alleged that these rights are protected rights, and that they had spent large

sums of money for reclaiming the lands, and that their eviction would entail great hardship.

10. At the analogous hearing of the suits in the Court below, the issues framed originally in the two suits were amalgamated and the following issues

were framed for decision at the time of trial:--

1. Have the respective Plaintiffs any cause of action?

2. Are the suits undervalued and is the court-fee paid sufficient?

3. Is the suit No. 6 barred by the principles of estopped, waiver and acquiescence?

4. Is the Indenture dated 31st March, 1941, a legal, binding and completed contract of lease or settlement?

5. Was the revenue sale in question without jurisdiction and a nullity? Was the said sale vitiated by irregularities? Has the Plaintiff in T. S. 6

sustained any substantial injury in consequence thereof? Is the sale liable to be set aside?

6. Is the interest of the Defendants in T. S. 17 a protected one? Is it liable to be annulled. Had they any tenancy under Mr. A. Pal Chowdhury?

7. Is the suit bad for non-joinder of parties ?

8. Is the Plaint ill entitled to khas possession or restoration of possession?

9. To what other reliefs, if any, are the respective Plaintiffs entitled?

11. Issues Nos. (1), (2), (3), (7) were found in favour of the Plaintiff by the Court below. The learned Advocates have not challenged the findings

on these issues.

12. Accordingly, we are concerned with decision of the Court below on Issues (4), (5), (6), (8), (9).

13. As a result of its decision on these issues the Court below decreed Title Suit No. 6 of 1946 with costs and ordered that the Plaintiff Amiya Pal

Chowdhury was entitled to the declaration that the sale of Towzi No. 2935 was illegal and null and void and must be set aside and that the Plaintiff

was entitled to evict the Defendant Manindranath Dinda.

14. Title Suit No. 7 of 1946 was dismissed on contest with costs to the contesting Defendant.

15. Manindranath Dinda, the Defendant in Title Suit No. 6 of 1946 and the Plaintiff in Title Suit No. 7 of 1946, has appealed to this Court.

16. The Court below found that the zemindary of Amiya Pal Chowdhury was grossly mismanaged and that the default was the result of such

mismanagement and not for want of funds.

17. No arguments were addressed to us on this finding.

18. The Court below also found that the renewed lease granted to Amiya Pal Chowdhury on 31st March, 1941, was void in law on the grounds

that the lease was not executed by the lessor, i.e., the Government, that the lease was not accepted by the lessor, that the lease was not registered

as required by law and that as such the revenue sale held on the basis of the void lease is a nullity.

19. Mr. Chakravarty, learned Advocate for the Appellant Manindranath Dinda, attacked all these findings.

20. The Court below found that the lease was duly confirmed by the appropriate revenue authority and that the August kist was inserted with the

knowledge of Amiya Pal Chowdhury and was valid.

21. Both these findings were challenged by Mr. Bose, learned Advocate for Amiya Pal Chowdhury.

22. The Court below found that the fact that the lease, though executed one day before the expiry of the prior lease, was nevertheless valid. The

Court below also held that the revenue sale was not held contrary to the provisions of Act XI of 1859 and that the defaulter Amiya Pal

Chowdhury did not sustain any injury much less substantial injury.

23. Both these findings were not challenged by Mr. Bose.

24. Mr. Gupta, learned Advocate for the Respondents Nos. 1-17 in First Appeal No. 205 of 1946, adopted the arguments of Mr. Bose so far as

it concerned the validity or otherwise of the revenue sale.

25. The paper book in First Appeal No. 204 of 1946 has been marked as Book A, that in First Appeal No. 205 of 1946 as Book B.

26. I shall first take up First Appeal No. 204 of 1946. Before dealing with the contentions of the parties, it is necessary to state the facts of this

case.

27. On the 28th December, 1900, a temporary settlement was granted by the Government to Srimati Radhasundari Pal Chowdhury for a term of

30 years in respect of 5,142 bighas of land which was virgin forest at a progressive revenue. The lease Exhibit 1(b) was expressed to be granted

by the Secretary of State for India in Council and was executed by the Sunderbans Commissioner and was duly registered. It contained a

condition for reclamation of a portion of the jungle at the end of five years and a covenant for forfeiture in case of failure to do so.

28. As the lessee did not reclaim any portion, the lease was cancelled on 15th February, 1908, vide Exhibit C. The lot was resumed and resettled

with the same lessee on the 30th May, 1908. A new lease in respect of the said area was granted on the same date by the Government to Srimati

Radhasundari Pal Chowdhury for a term of 33 years from 1st April, 1908. The lease Exhibit 1(a) was expressed to be made on behalf of the

Secretary for India in Council and was executed by the Deputy Collector in charge of the Sunderbans and was registered.

29. Both the above leases were in the form of leases prescribed under Rule 30 of the rules for the lease of waste lands in the Sunderbans. The

kists for payment of revenue in both these leases were December, January, February and March.

30. On the 31st March, 1941, the Government granted the disputed lease to Amiya Pal Chowdhury for a further period of 30 years from 1st

April, 1941.

31. The lease Exhibit 1 was described as an Indenture made between the Governor of the Province of Bengal and Amiya Pal Chowdhury,

Administrator to the Trust Estate of Radha Sundari Pal Chowdhury. It was signed by Amiya Pal Chowdhury, Administrator to the Trust Estate of

Radha Sundari Pal Chowdhury, on 31st March, 1941. Below the signature the following endorsement appears:

Signed and executed in my presence.

A. Khan.

A. S. O. 31-3-1941.

32. The lease was not executed by any person acting on behalf of the Governor and was not registered.

33. The lease mentioned four kists, 28th May, 28th August, 12th December and 28th February.

34. Clause (1) provided for permanent exemption from revenue in respect of one-fourth area.

35. Clause (2) fixed the revenue payable at Rs. 2,873 in the four kists mentioned above.

36. Clause (3) provided that all arrears of revenue shall be recoverable as such under the laws in force.

37. Clause (5) provided for renewal, with a condition that one-half of the area was reclaimed within the period therein mentioned and failing this,

the lease shall be liable to resumption without payment of any compensation to the lessee.

38. Clause (8) provided that boundary disputes with neighbouring estates shall be decided by the Collector subject to appeal to Board of

Revenue.

39. Clauses (9), (10) provided for maintenance of boundary pillars on the lands demised.

40. Clause (11) provided for proportionate reduction of revenue and payment of compensation for cultivated lands in case of compulsory

acquisition.

41. Clause (12) (a) provided that the land should be used for reclamation and cultivation.

42. Clause (12) (b) provided for maintenance of embankments.

43. Clause (14) conferred the right of transferability as regards the plots hereby demised.

44. Clause (15) conferred a heritable right.

45. The Court below was of the opinion that the document Exhibit 1 required to be executed by both parties on the ground (1) that it was a

combined potta and a kabuliyat and was intended to be executed by both lessor and lessee and (2) that the execution by the lessor and the lessee

was also required by sec. 107 of the Transfer of Property Act.

46. As regards the first ground, the document is no doubt stated to be an indenture and contains mutual covenants by the lessor and the lessee.

These facts are not conclusive to show that the document to he valid, must be executed by the lessor and the lessee. In the case of Raimioni Dasi

v. Mathura Mohan De I. L. R. 39 Cal. 1016, S.C. 16 C. W. N. 606(1072), a Division Bench of this Court held that an instrument of lease

executed only by the lessee and accepted by the lessor is sufficient to constitute a lease within sec. 107, Transfer of Property Act, before its

amendment by Act XX of 1929.

47. The view taken in Raimoni Dasi''s case I. L. R. 39 Cal. 1016, S.C. 16 C.W.N. 606 (1072) was held by this Court in Dinanath Kundu v.

Janakinath Roy I. L. R. 55 cal 485 (447) [on appeal 85 O.W.N. 982 (P.C.)] to have concluded this matter so far as this Court was concerned.

The decision in Dinanath Kundu''s case I. L. R. 55 cal 485 (447) [on appeal 85 O. W. N. 982 (P.C.)] was affirmed on appeal by the Privy

Council 35 C. W. N. 982 (P. C.) where the point was not further canvassed. Mr. Bose referred us to Nilmamud Sarkar v. Baul Das 14 C.W.N.

78 (1910), where a kabuliyat by itself was held not to constitute a lease. In that case, nothing further was done after the execution of the kabuliyat,

the lessee never got possession. The case is accordingly distinguishable.

48. Mr. Bose submitted that the general rule stated above is subject to two exceptions mentioned in Raimoni''s case I. L. R. 39 Cal. 1016, s. c. 16

C. W. N. 606(1072) itself.

49. The first exception was said to be that where the parties to the lease intended that the instrument should be a bilateral document and executed

by both parties, the instrument will be valid only when the same is executed by both. This exception was said to be implicit in the reasoning of the

learned Judges at page 1022. I do not find that the passages lay down such an exception. But conceding that such an exception does exist, I am of

opinion that in the present case, it is abundantly clear that execution only by the lessee and acceptance by the lessor were all that was included.

Clause (16) of Exhibit 1 shows that the document was being executed in anticipation of sanction by the competent revenue authority; as such,

execution of the document at that stage by the Government could not have been contemplated.

50. Exhibit B (1), notice to the lessee Amiya Pal Chowdhury under sec. 10 (4), Regulation VII of 1822, dated 29th March, 1941, required the

lessee to ""take the settlement and sign the jamabandi and the kabuliyat

51. The order-sheet of the Assistant Settlement Officer Exhibit 3(d) Order dated 31st March, 1941, also states that kabuliyat was executed by the

lessee.

52. Exhibit D agreement dated 31st March, 1941, executed by Amiya Pal Chowdhury also speaks of Exhibit 1 as a kabuliyat. Exhibit 6(a)

memorandum of the Settlement Officer refers to Exhibit 1 as a kabuliyat. In the plaint paragraphs 10, 13, 14 the Plaintiff Amiya Pal Chowdhury

refers to the lease Exhibit 1 as a kabuliyat.

53. Mr. Bose referred us to various matters which, in his submission, indicated that the intention must have been that the lease Exhibit 1 should be

executed by both parties.

54. In the first place, reference was made to the description of the document Exhibit 1 which was stated to be an indenture. This is inconclusive.

55. In Norton on Deeds, to which Mr. Bose referred us, it is stated that ""a deed is a writing (i) on paper, vellum, or parchment, (ii) sealed, and (iii)

delivered, whereby an interest, right, or property passes, or an obligation binding on some person is created, or which is in affirmance of some act

whereby an interest, right or property has passed."" It is further pointed out by the author that after the Law Property Act, 1925, the executant is

required also to sign off place his mark and sealing alone is not sufficient. The above remarks do not throw any light on the point before us.

56. The argument based on the use of the word indenture proceeds on a misconception of the nature of a kabuliyat. As was pointed out in Raimoni

Dasi"s case I. L. R. 39 Cal (sic)16; s. o. 16 O. W. N. 606 (1022), a kabuliyat is not an unilateral expression of intention on the part of the lessee

only but is the embodiment of the whole contract between the lessor and the lessee.

57. In the second place, reference was made by Mr. Bose to the 3rd paragraph of Exhibit 1 which states that ""the Secretary of State hereby

leases,"" as also to the lessor"s covenant in clauses (3) and (11) and to the use of the expression "hereby demised" in clauses (9) and (14). It was

suggested that these can only bind the lessor on his executing the documents. The answer to this is contained in the passage from Raimoni Dasi"s

case I. L. R. 39 Cal (sic)16; s. o. 16 O. W. N. 606 (1022) just quoted.

58. In the third place Mr. Bose submitted that the above view he contended for is, to quote his own words, ""further backed and supported by

recent legislation.

59. He referred us to (1858) 21 Vict. Cap. 106, sees. 39, 40; (1859) 22 & 23 Vict. Cap. 41, sec. 2 (1870) 33 & 34 Vict. Cap. 59, secs. 1. 2

(1915), 5 & 6, George V, Cap. 51, sec. 13, Government of India Act, 1919, sec. 30. It is not necessarv to refer to these statutes. The lease was

executed in 1941, after the Government of India Act, 1935 had come into force. Mr. Bose referred us to the case of Krishnaji Nilkant Pitkar v.

Secretary of State A. I. R. (1987) Bom 449. The case related to a contract on behalf of the Secretary of State. It was held that according to the

provisions of the law and the rules in force, the contract must be by a deed executed on behalf of the Secretary of State and in his name and by the

proper authority. The case is directly covered by sec. 175 (3) of the Government of India Act. 1935, which reads as follows:--

....all contracts made in the exercise of the executive authority of the Federal ion or of a Province, shall be expressed to be made by the Governor-

General or by the Governor of the Province, as the case may be, and all contracts and all assurances of property made in the exercise of the

authority shall be executed on behalf of the Governor-General or Governor by such person and in such manner as he may direct or authorise.

60. The requisite direction or authorisation is to be found in the Bengal Statutory Rules and Orders, 1940, 4th Edition, Vol. 1, p. 38.

61. We need only refer to clauses (8) and (37) at page 38 and page 42.

62. Clause (8) provides that in case of ""contracts and other instruments in matter connected with the lease or sale of land,"" the document is to be

executed by ""Collector of District and Deputy Commissioner."" Clause (37) which was added by notification No. 1676 J., dated the 10th May,

1939, provides that in case of ""contracts and other instruments in matter connected with the lease of lands in the course of settlement operations,

the document is to be executed by ""Land Revenue Settlement Officer.

63. In construing these clauses, we must bear in mind the opening words of the notification which recite that the notification is made in exercise of

the powers conferred by sec. 175 (3) of the Government of India Act, 1935, and relate to contracts and assurances.

64. In my opinion the lease Ex. 1 is neither a contract nor an assurance. It is thus outside sec. 175 (3) of the Government of India Act. Necessarily

the above notification and the clauess mentioned do not apply.

65. Mr. Bose also relied on Rules 7 and 8 of the Bengal Waste Lands Manual, 1936, at p. 2. Rule 8 states that the rule can be relaxed by the

Board of Revenue. The case of Bibi Sakina Khaloon v. Khirode Chandra Manna (1941) 46. C. W. N. 78 (82) which related to the Sale Law

Manual, lays clown that the rules contained therein have not the force of law.

66. In my opinion, the Rules 7 and 8 contemplate cases where the law otherwise requires the document to be executed by the Government. I am

also of opinion that the rules contained in the Bengal Waste Lands Manual have no statutory force and are not mandatory and an infraction of the

rules does not render the lease void on that ground alone.

67. Mr. Bose also referred us to Rule 275 of the Bengal Survey and Settlement Manual (1935), p. 72, which says that Collectors or Deputy

Commissioners are authorised to execute leases on behalf of the Government.

68. Rule 576 (1) of the Bengal Survey and Settlement Manual, 1935, however, makes the rules in the Manual inapplicable to settlement of waste

lands (such as the Sundarbans) which are governed by the rules for the waste lands grants.

69. Mr. Bose also referred us to the cases of Pete v. Pete 50 E. R. 1008, wilson v. Worlfreys 1(sic)5 E. R. 1270, Cardwell v. Lucas 15(sic) E. R.

691 and Pitman v. Woodbury 154 E. R. 785. These cases do not assist him. The above decisions deal with cases when the deed is made upon the

footing that both parties must sign before the document can operate; moreover the execution by the party concerned was necessitated because of

the Statute of Frauds.

70. In my opinion, the English law is correctly summarised in Halsbury''s Laws of England, Vol. X, p. 271, p. 216 (Hailsham Edition) : ""Any

person named or sufficiently indicated in a deed poll may sue to enforce any obligation thereby undertaken in his favour, notwithstanding that he

has not executed the deed, but he must observe all stipulations made therein of which the performance was a condition precedent to the liability of

the maker of the deed; and any person named as a party to the deed inter partes may sue upon any covenant made with him and therein contained

without having executed the deed, unless the transaction carried out thereby was such that his own execution of the deed was a condition

precedent to the enforcement of the covenant."" The present case is covered by the rule just quoted.

71. The facts of the present case clearly show that the lease Ex. 1 was intended to be operative even though the Government did not execute the

same.

72. In the present case the lease was approved and accepted by the revenue authorities after its execution, the signature of the lessee was

authenticated by the Assistant Settlement Officer. The lessee paid revenue for the May kist and the Government in the case accepted it, the Towzi

Register was amended and the proceedings for revenue sale were on the footing of the stipulation in the lease. The fact that in the two other leases

of adjoining estate, between Amiya Pal Chowdhury and the Government Ex. 1(c). Ex. 1(d) the documents were executed by both, is not very

material.

73. I am clearly of opinion that the lease Ex. 1 though executed only by the lessee is effective, and the fact of its non-execution by the lessor who

had accepted it and acted upon it, does not render it void. The facts and circumstances do not show that the intention of the parties was that the

lease would be operative only if executed by both the lessor and the lessee. The first suggested exception does not apply to Ex. 1.

74. The second exception, according to Mr. Bose, is that where the legislature has prescribed a form, that form has to be adopted. Reference is

made to page 1024 in Raimoni''s case I. L. R. 39 Cal 10-6; s. o. 16 C. W. N. 506 (sic).

75. In this connection, Mr. Bose traced the history of legislation regarding Sundarbans lands.

76. It is not necessary to deal with the genesis of the rules now in force.

77. Suffice it to say that in 1853 the rules were more or less crystalised. The Rules of 1853 govern the large majority of Sundarbans grants. Rule

255 (11) prescribes the form of a potta. This appears from Pargiter''s Revenue 1 story of the Sundarbans (1934 Edition), pp. 93, 95.

78. In 1879, the large capitalist rules for grants of Sunderbans lands were promulgated.

79. The present settlement was made when the Bengal Waste Lands Manual, 1936, was in force.

80. Rule 6 (4) of the Manual speaks of large capitalist rules.

81. Rule 13 lays down that with the issue of large capitalist rules and small capitalist rules, the policy of making proprietary settlements was

abandoned in favour of leasing or farming.

82. One of the conditions was that the area should not exceed 5,000 bighas and should not be less than 200 bighas in case of large capitalist

leases.

83. Rule 14 states that the lease conferred a hereditary and transferable occupancy right. The effect of this has been held to be that the lease

conferred the status of a tenure-holder with a right of successive renewals for periods of 30 years.

84. Rule 15 lays down that the terms of renewed leases would be in the discretion of the Collector.

85. Rule 16 deals with forms of large capitalist leases.

86. Appendix A, page 11, gives the form of a kabuliyat.

87. Appendix B, page 13, gives the form of an agreement.

88. Appendix C, page 15, gives the form of leases for 99 years.

89. Appendix D, page 17, gives the forms of renewed lease, for Sundarbans held under the large capitalist Rule of 1879.

90. The present lease Ex. 1 is a replica of the last form with the addition of two provisos.

91. Reference was also made to Rules 7 and 8 which lay down that Collectors and Deputy Commissioners are authorised to execute such leases

and that this should not be departed from without the sanction of the Board of Revenue.

92. In the present case, the area leased out by sec. 1 exceeded 5,000 bighas.

93. In Ex. 1(b), which was renewed by Ex. 1(a) and Ex. 1 the area was stated to be 1,542 bighas. In the report by the settlement officer dated

14th January, 1941, Ex. 6, the area was said to be 1,824 acres, i.e., about 5,075 bighas. This area was also the area recorded in the C. S.

operations Ex. C. Part II, p. 62, lines 18-20.

94. Rule 13 is, therefore, excluded and the form is not applicable.

95. The fact that in point of fact the form in Appendix D has been substantially adopted does not necessarily show that the intention was that the

instrument should be executed by both parties.

96. The exception, if any, as suggested does not apply in this case.

97. My conclusion, therefore, is that the lease Ex. 1 was accepted by the lessor and that though it was executed by the lessee alone, it is not void

on the ground that it was not executed also by the lessor.

98. Mr. Chakravarty next contested the view of the Court below that under sec. 107 of the Transfer of Property Act the lease Ex. 1 must be

executed by both the lessor and the lessee.

99. Sec. 66 of the Transfer of Property (Amendment) Act, 1929 (Act XX of 1929), added the 3rd paragraph in sec. 107 of the Transfer of

Property Act. It provided that where a lease of immovable property is made by a registered instrument, such instrument or, where there are more

instruments than one, each instrument shall be executed by both the lessor and the lessee.

100. In the first place, the lease Ex. 1 is not a registered one and, therefore, this provision does not apply.

101. Moreover, if Ex. 1 is a lease for agricultural purposes by operation of sec. 117 of the Transfer of Property Act, sec. 107 would be excluded.

102. We have, therefore, to see whether the lease Ex. 1 was for agricultural purposes or not. Ex. 1 was a renewed lease. Clause (5) proviso states

that the lot was ""originally settled for purposes of reclamation and for bringing the area under cultivation.

103. Clause (11) confers on the lessee the right to claim the cost for bringing the land under cultivation in case of compulsory acquisition.

104. Clause (12) (a) states that the property demised shall be used by the lessee ""for purposes of reclamation and cultivation and that it shall be his

duty and that of his tenants and sub-tenants of any degree to maintain it in a condition suitable for such purposes.

105. Clause (12) (b) makes the lessee responsible for maintaining embankments for keeping the lot under cultivation.

106. Clause (12) (c) provides that the act of the lessee or his tenants or sub-tenants in rendering a substantial part of the demised premises unfit for

cultivation at any time shall be a breach of clause (12) (a).

107. Hence the lease Ex. 1 unmistakably shows that the purpose of the lease was agricultural.

108. This view is supported by the decision in Jagadish Chandra Sanyal v. Lal Mohan Poddar 7 L. C. 864.

109. The Court below overlooked the definition of a tenure in sec. (5) (1) of the Bengal Tenancy Act when it observed that: ""Amiya Pal

Chowdhury was not expected to cultivate by labourers himself.

110. The Court below relied on the decision in Pramatha Nath Mitter v. Kali Prasanna Chowdhury I. L. R. 28 Cal. 744. The quotation from the

lease in that case appearing at page 746 clearly shows that in that case the purpose was non-agricultural. The Court below also relied on the case

of Ballabha Das v. Murat Narain Singh (1926) I, L. R. 48 All, 385. In that case the entire village was leased to the lessee who was put in

possession thereof and was authorised to let out land to tenants and to make collections. This was clearly a lease merely for collection of rents

mainly from non-agricultural tenants.

111. The cases relied on by the Court below have no application to the facts of the present case.

112. Mr. Bose referred us to Pargiter''s Revenue History of the Sundarbans, sec. 254, p. 92 to show that the object of the Government in granting

Sundarbans Settlement was to reclaim the area near the city of Calcutta which was the abode of wild animals and a shelter for pirates and

swindlers and was the breeding ground for pestilential diseases. This has nothing to do with the purpose for which the lease Ex. 1 was given. Such

purpose has to be gathered from the lease Ex. 1. Neither Ex. G, the order of the Settlement Officer, nor Ex. 6, report of the Settlement Officer to

which Mr. Bose referred, is of any help to his client.

113. My conclusion, therefore, is that the lease Ex. 1 was for agricultural purposes and as such sec. 107 of the Transfer of Property Act was

excluded.

114. Mr. Chakravorty contended that because the lease Ex. 1 was a Crown grant, the Crown Grants Act XV of 1895 excluded the operation of

the whole of the Transfer of Property Act.

115. The relevant provision in the Crown Grants Act is sec. 3 which runs as follows:-

All provisions, restrictions, conditions;, and limitations over, contained in any such grant or transfer as aforesaid, shall be valid and take effect

according to their tenor, any rule of law, statute or enactment of the Legislature to the contrary notwithstanding.

116. The Court below was of the opinion that the Crown Grants Act did not render all the provisions of the Transfer of Property Act inapplicable

but when the Court is required to construe a Government Grant it must do so irrespective of the provisions of the Transfer of Property Act. The

Court below relied on the cases of Dost Mohomed Khan v. The Bank of Upper India 3 All. L. J 129, Secretary of State for India Vs. Nistarini

Annie Mitter, and Kallingal Musa Kutti v. The Secretary of State for India in Council I. L. R. 48 Mad 65.

117. The last two cases do not support the view of the Court below. These cases dissent from the view taken in Munshi Lal v. The Notified Area

of Babaut I. L. R. 35 All 175 which adopted the view in Mohomed Khan"s case 3 All. L. J 129.

118. Kallingal"s case I. L. R. 48 Mad 65 was a case of lease of Crown lands. It was followed in Secretary of State for India Vs. Nistarini Annie

Mitter, and Rupan Singh v. Akhaj Singh I. L. R. 10 Pat. (sic).

119. In the case of Jnanendra Nath Nanda v. Jadunath Banerji I. L. R. (1988) 1 cal 526; (1987) 42 C. W N. 81 this Court held that grants or

leases of Sundarbans lands are Crown Grants and that the Crown Grants Act supersedes at any rate the Transfer of Property Act. This Court was

further inclined to the same view in Ambuj Bashini Chowdhuri v. Secretary of State for India in Council (1988) 42 C. W. N. 289.

120. Mr. Bose contended that the lease Ex. 1 not having been executed by the Government cannot be regarded as a Crown Grant within the

Crown Grants Act. The Act does not require that the grant should be evidenced by a writing signed by or on behalf of the Crown. All that it

requires is that in point of fact the transaction must have the effect of a grant by, or by the authority of, the Crown. For reasons already given, I

have held that the lease Ex. 1 was a bilateral document and as such operated as a grant by the Crown to the lessee.

121. The conclusion, therefore, follows that the amended sec. 107 of the Transfer of Property Act is not applicable to the lease Ex. 1.

122. The Court below was of opinion that the case of Rupan Singh v. Akhaj Singh I. L. R. 10 Pat. 208 supported the view that 22 and 22 Vict.

Cap. 41 required that Ex. 1 should be executed by the Collector. The effect of this Parliamentary statute was considered in the case of Jnanendra

Nath Nanda v. Jadunath Banerji I. L. R. [1988] 1 Cal. 626; s. c. (1987) 42 C. W. N. 81 where it was held that grants or leases of Sundarbans

lands are governed by the Crown Grants Act. I respectfully agree with the view taken in the case last cited. I dissent from the view of the Court

below that the lease became inoperative for want of execution on behalf of the lessor, vis., the Secretary of State or the Governor.

123. The Court below seemed to be of the opinion that if the lease Ex. 1 was a Crown grant, sec. 107 of the Transfer of Property Act in so far as

it required registration would be excluded. The Court below further held that sec. 90 (1) (d) of the Indian Registration Act would exclude the

operation of sec. 17 (1) (d) of the Registration Act. The Court below was, however, of the opinion set forth in Rule 56 of the Bengal Waste Lands

Manual, 1936, page 63, which provided that ""the counterpart which the lessees should be called upon to execute must be registered under the

Indian Registration Act.

124. I have already held that Ex. 1 is outside the Bengal Waste Lands Manual and that the rules in the Manual have not the force of law. As such

Rule 56 cannot be invoked in support of the view that Ex. 1 should be registered.

125. Mr. Bose challenged the view of the Court below in so far as it held that the lease Ex. 1 did not require registration under sec. 17 (1) (d) of

the Indian Registration Act.

126. Mr. Chakravarty on the other hand contended that sec. 90 (1), cls. (a) and (d) of the Indian Registration Act both applied to the present case

and as such sec. 17 (1) (d) of the Act was inapplicable.

127. I shall first deal with sec. 90 (1) (d) which speaks of ""documents issued, received, or attested by any officer engaged in making a settlement

or revision of settlement of land revenue, and which form part of the records of such settlement.

128. The document Ex. 1 was, as 1 have already stated, signed by the lessee in the presence of the Assistant Settlement Officer who signed the

document as having been signed by the lessee in his presence. It was accordingly attested by him. The Assistant Settlement Officer took a

prominent part in the matter of the settlement and was an officer engaged in making the settlement: vide Ex. 3(d) and Ex. C. The lease Ex. 1 was

filed before and confirmed by the settlement authorities. It undoubtedly formed part of the proceedings of the settlement. In my opinion sec. 90 (1)

(a) of the Indian Registration Act applied to the facts of the present case.

129. It remains for me to consider whether sec. 90 (1) (d) applied. The clause refers to ""sanads, inam, title deeds and other documents purporting

to be or to evidence Grants or assignments by Government of land or of any interests in land.

130. There is a conflict of opinion on the question whether the expression ""other documents"" should be read ejusdem generis with the preceding

words ""sanads, inam, title-deeds, etc.,"" and would exclude leases. In Munshi Lal"s case I. L. R. 36 All 176 a restricted view was taken and leases

were held to be excluded. A contrary view was taken in Kailingal"s case I. L. R. 43 Mad. 65 (sic) I. L. R. 19 Cal. 742 and Nistarini"s case I. L.

R. 6 Pat, 146 s. o. 466; A. I. R. 1027 Pat. 819. The latter view is supported by the decision in Hassan Ali v. Chutterpat Singh Dugarh (20). Mulla

in his Indian Registration Act is of the opinion that the latter view is correct.

131. I, therefore, hold that the latter view should be correct and the lease Ex. 1 comes within sec. 90 (1) (d) of the Indian Registration Act also.

132. In support of his submission that sec. 90 will not apply in the present case, Mr. Bose further contended that the lease Ex. 1 was incomplete as

regards the Crown, the Crown not having executed it and cannot be called a Crown Grant. I have already held that it is a Crown Grant. Mr. Bose

also contended that the reason for the rule must be to exempt Crown servants from attending registration office. The reason does not apply where

the Crown does not execute the document. The marginal note to sec. 90 is ""Exemption of certain documents executed by or in favour of Crown.

The clause is thus wide enough to cover documents which are executed by the Crown as also documents executed by other persons, in favour of

the Crown.

133. Mr. Bose lastly contended that the word ""or"" in the marginal note showed that the section referred only to unilateral documents and not to

bilateral documents. The argument is plausible but has no substance. Where a document is executed by the Crown and a third party, it is

nevertheless one executed by the Government and as such registration of the document is excluded.

134. The above discussion leads me to hold that the lease Ex. 1 did not require registration.

135. I have already stated that the Court below was of the opinion that the settlement with Amiya Pal Chaudhury was duly confirmed by the

appropriate authority and though the confirmation was made after the execution of the document, yet as it took place long before the sale, the

confirmation related back to the date of the document and the validity of the sale cannot be challenged on this ground.

136. Mr. Bose contended that the view taken by the Court was not correct.

137. His contention is that the case came within item 3 of Rule 632 of the Bengal Survey and Settlement Manual, 1935. The material portion of

Rule 632 runs as follows :--

Power to confirm the settlements of land revenue.... specified in the first column of the table delegated by Governor in Council under sec. 10 (1),

Regulation II of 1918, subject to limitations in the 3rd column.

8. Temporary settlement in Director of Land Records andRent roll (In agricultural land,

which the rent roll is prepared surveys (sic)alyati rent roll) not exceeding

under Chapter X of the Bengal Rs. 10,000; for a term limited to

Tenancy Act, 1885 15 years.

138. If the above rule stood by itself item 3 would not apply and the proper confirming authority would not be the Director of Land Records.

139. A correction slip, dated 6th January, 1937, has, it appears, been printed by the Government. The slip reads thus:

Slip 13, dated 6th January. 1937--

Rule 632 (1), p. 161--

3rd column, against items (2), (3) add--and in case of Sundarban lots settled under the Large Capitalist Rules of 1879--rent roll not exceeding Rs.

10,000 for a term of 30 years.

140. The slip makes item (3) applicable to the present case and the proper confirming authority would be the Director of Land Records and

Surveys, and the confirmation in the present case being by the Director of Land Records and Surveys, would be valid.

141. Mr. Bose, however, contended that the correction slip has no force in the absence of the Notification in the Gazette. Mr. Bose referred us to

the evidence of Mr. A.B. Ganguly, Revenue Secretary to the Government of Bengal, who was examined on commission. His evidence is as

follows :--

As far as I have been able to trace the delegation of power noted in the correction slip No. 13, dated 6th January, 1937, Rule 632 (1) of the

Bengal Survey and Settlement Manual, 1935, has not been notified in the Gazette.

142. The Court below was of the opinion that the presumption of regularity of official acts arose in the case. Though there may be room for

suspicion, I agree with the Court below that the correction slip followed the requisite notification which has been either mislaid or lost. On the

strength of the slip, the Director of Land Records and Surveys has for several years been confirming these settlements, and the Court should not

lightly invalidate all such settlements and unsettle titles of settlement; holders merely because the notification cannot be traced. The fact that the

Director of Land Records and Surveys confirmed the settlement a few days later, is not material in this case. The confirmation, when made, related

back to the date of the commencement of the lease. In fact the lease Ex. 1, clause (16) envisaged this. The sentence ""the settlement shall not be

valid if it is set aside by such authorities"" shows, in my opinion, that the lease was merely voidable at the instance of the superior revenue authority.

The lease was not avoided but confirmed by the latter before 7th April, 1941, vide Ex. A (1).

143. The arrears of revenue accrued and the proceedings for revenue sale were initiated much later than the date of confirmation. The validity of

the revenue sale cannot, in my opinion, be challenged on this ground.

144. The Court below was also of the opinion that the August kist is operative and that the revenue which had accrued was payable according to

the kist of 28th August.

145. Mr. Bose also challenged this finding of the Court below on this point.

146. In order to decide this point, I proceed to state a few facts.

147. The previous settlement of the disputed towzi with Amiya Pal Chowdhury was due to expire on 31st March, 1941.

148. In order to settle the towzi the Government had a draft record-of-rights prepared under sec. 103, Bengal Tenancy Act. Thereafter the

Assistant Settlement Officer proceeded to settle fair and equitable rent of the estate, vide Order No. 1, dated 15th August, 1940. Ex. 3(d) order-

sheet of the settlement proceedings. Ex. G (1) shows that the Settlement Officer disposed of the objections Ex. E (1) filed by Amiya Pal

Choudhury on 29th October, 1940. The rate was fixed at Rs. 3-8 per annum. The rent-roll was thereafter attested and remained for draft

publication for one month from 12th November, 1940, to 11th December, 1940, vide Order 7, dated 11th November, 1940, Ex. 3(d). It further

appears from Ex. 3(d) that on 12th December, 1940, two objections filed to the draft rent-roll were disposed of. It appears that on 14th January,

1941, the Settlement Officer submitted his final confirmation report Ex. 6. The report stated that the revenue had been settled at Rs. 2,873 and the

period of settlement had been fixed for 30 years from 1st April, 1941. On 23rd February, 1941, the Settlement Officer and the Assistant

Settlement Officer held a local inquiry. The report Ex. A (1) is dated 25th February, 1941.

149. On the 7th March, 1941, the Assistant Settlement Officer submitted his report Ex. C for the settlement of land revenue under sec. 104F,

Bengal Tenancy Act.

150. The report stated that the revenue will be Rs. 2,873 or Rs. 3,352 against the existing revenue Rs. 1,157 according as the lessee accepts or

does not accept the settlement unconditionally. The period of settlement will be 30 years from 1st April, 1941. The area was stated to be 5,142

bighas.

151. The report concluded as follows:--

(8) It is expected that the estate will be reclaimed within 2 or 3 years and brought under cultivation. The kists prevailing in the cultivated area of

Sundarbans estate should, therefore, be conveniently adopted by the estate. The kists should, therefore, be four as follows:--

28th May Ã¯Â¿Â½ 1/8th

28th August Ã¯Â¿Â½ 1/8th

12th December Ã¯Â¿Â½ 3/8th

28th February Ã¯Â¿Â½ 3/8th

16 as.

152. The revived final confirmation report Ex. C with the note of the Settlement Officer having been received by the Director of Land Records and

Surveys, the latter approved the settlement proceedings as recommended, and confirmed the land revenue and directed that an additional clause at

the end of the fifth clause should be inserted. The order Ex. A is dated 29th March, 1941. The order was sent to the Settlement Officer by Memo.

No. 10-2110C., Dated 29th March, 1941. By Memo No. XXXVI/22E dated 2nd April. 1941 the Settlement Officer sent a copy of Memo. No.

10-2110-C., dated 29th March, 1941, with a copy of the form of lease, vide Ex. 7.

153. It appears from the order-sheet Ext. 3(d) Order No. 11, dated 29th November (sic), 1941, that the Assistant Settlement Officer had got

Letter No. 10-2110, dated 29th March, 1941. Notice upon the lessee to execute on 31st March, 1941, was issued on 29th March, 1941, copy

of the notice sent to the lessee Amiya Pal Choudhury and dated 29th March, 1941, was marked as Ext. B/l.

154. The lessee executed the lease Ex. 1 on 31st March, 1941. Ex. 1 states the kists as follows:--

Net revenue.

1. 28th May Rs. 718-0-0

2. 28th August Rs, 718-0-0

3. 12th December Rs. 718-0-0

4. 28th February Rs. 719-0-0

Total Rs. 2,873-0-0

155. Order-sheet Ex. 3(d) shows that kabuliyat was executed on 31st March, 1941, and that on the same day the records were directed to be

sent to the press for print On 31st March, 1941, the lessee Amiya Pal Choudhury also executed an agreement Ex. D waiving his right to institute

any suit against the Province of Bengal with regard to the assessment of revenue and the terms of the kabuliyat. Order No. 13, dated 2nd April,

1941, shows that on that date final arrangement of land revenue was submitted.

156. On 4th April, 1941, the Settlement Officer by his Memo. N. 1624, dated 4th April, 1941, Ex. 6(a) on the subject--Final arrangement report

for realisation of land revenue in Crown Estate No. 2935 (Lot 157, Part V, of 24-Parganas)--stated that the lessees have accepted settlement

unconditionally and executed kabuliyat and final agreement and the land revenue may finally be approved for 30 years from 1st April, 1941, to

31st March, 1971.

158. Proposed kists for revenue are:--

28th May Rs. 718

28th August Rs. 718

12th December Rs. 718

28th February Rs. 719

Rs. 2,873

159. Referring to Memo. No. 1624, dated 4th April, 1941, Ex. 6(a), the Director of Land Records and Surveys wrote to the Settlement Officer

that the proposal was approved. The letter is Ex. A (1). 10(f) -- 339-C, dated 7th April, 1941. Ex. A (2) is the memorandum.

138. It was first contended that the kists could not be altered in the renewed lease. In the earlier lease Ex. 1(a), the kists were December, January,

February, March. There was no August kist. Cl. (5), however, provided that the renewed lease may be on such terms as the Government think fit.

The contention has no force.

160. It was next contended that no special notice was given as required by the Sale Law Manual. That the lessee knew about the change in the

kists is apparent from the fact that he paid the May kist, which was not in the earlier lease. The lessee is a responsible person. He executed two

documents on 31st March, 1941. He has his residence in Calcutta and sound legal advice was available. The notice is only required when the kists

are changed during the currency of the temporary settlement. The contention has no substance.

161. It was further contended that Rule 637 of the Bengal Survey and Settlement Manual, 1935, was not complied with as the lessee or his tenants

were not consulted. It was also pointed out that the agricultural condition, vis., that the estate yields only one crop (i.e., Aman crop) was not borne

in mind. The evidence no doubt establishes that only Aman crop is grown in the lot. The Rule, however, uses the words ""whenever possible"" and is

not mandatory. I have already observed that the lessee must have been consulted. The lands were mostly jungly at the time. The report of the

Assistant Settlement Officer Ex. C shows that only Krishna Mohan Mukherji claimed a tenancy right which was negatived. Moreover Rule 576 of

the Bengal Survey and Settlement Manual, 1935, makes Rule 637 inapplicable to Sundarbans lands. Moreover by the agreement, dated 31st

March. 1941, Ex. D, the lessee precluded himself from disputing the terms of the lease. This contention has also no substance.

162. It was lastly contended that the suggestion of the Assistant Settlement Officer in his report Ex. C had been already approved by the higher

authority, and it was not open to the latter to change the kists as suggested by him. It appears from the facts already recited that the kists proposed

by the Assistant Settlement Officer were never approved by the Director of Land Records at an earlier stage. That there was a change in the kists

before 31st March, 1941, admits of no doubt, as the lease Ex. 1 recites the new kists. This was done at the instance of the Defendant No. 1. This

fact was deposed to by the Assistant Settlement Officer, witness No. 5 for Defendant No. 1. The Court below accepted his evidence and I see no

reason to differ.

163. The new kists were insisted in the kabuliyat Ex. 1. This was approved a few days later by the Director of Land Records and Surveys. Such

ratification was provided for in cl. 16, of Ex. 1.

164. The objections raised by the Appellant to the kists in Ex. 1 are of no substance. I agree with the Court below that the August kist was

operative and valid and that the revenue was (sic)gally recoverable and that the sale is not vitiated on this ground.

165. Mr. Bose has not challenged the finding of the Court below that the irregularities spoken of were more or less fancied and that they did not

result in any loss to the Plaintiff Amiya Pal Chowdhury.

166. The above discussion leads me to hold that the lease Ex. 1 was a valid document and that the sale was perfectly valid, and that the Plaintiff

Amiya Pal Chowdhury is not entitled to any relief.

167. The result, therefore, is that this appeal is allowed, the judgment and decree of the Court below are set aside and the Plaintiff''s suit dismissed.

The Appellant is entitled to his costs in this Court and the Court below.

F. A. 205 of 1946.

168. I shall now deal with First Appeal No. 205 of 1946.

169. In this appeal, Manindranath Dinda, the Plaintiff, is the Appellant.

170. The Respondents Nos. 1-17 are the Defendants who claimed a tenancy right and a protected interest.

171. The Respondent No. 18 is Amiya Pal Chowdhury, the defaulting proprietor.

172. I have already set out the pleadings of the parties.

173. We are concerned in this appeal with the findings on Issues Nos. (5), (6), (8) :

174. The findings on issue (5) have been set out in my judgment in First Appeal No. 204 of 1946 and it is not necessary to repeat the same or the

reasons I have already given for my findings.

175. Issue No. (6) concerns the status of Defendants Nos. 1-17.

176. The Court below found that the Defendants Nos. 1-17 were licensees and that their interest was not a protected one.

177. In the Court below, Mr. Bose, learned Advocate on behalf of Amiya Pal Chowdhury, wanted to oppose the claim of Defendants Nos. 1-17

but refrained from opposing their claim on an assurance by that Court that ""he will not be in the least prejudiced by any finding which the Court

may make, regarding the said Defendants"" and that "" if he has any right against the said Defendants, on this score, that may be reserved for the

future.

178. I can see no justification for the said assurance or reservation. All the parties led evidence on the points in issue, as such the rights of all

parties should have been decided in these suits.

179. I have accordingly heard Mr. Bose on the issues arising in this appeal also.

180. I shall now record my findings on the points which were argued in this appeal by Mr. Chakravarty for the Appellant Manindranath Dinda and

by Mr. Gupta for the Defendants Nos. 1-17 and by Mr. Bose for Defendant No. 18.

181. It may be pointed out at the outset that the Bengal Land Revenue Sales (West Bengal Amendment) Act, 1950 (West Bengal Act VII of

1950), came into force on the 15th March, 1950.

182. This Act was passed by the West Bengal Legislature.

183. The Act amended the Central Act, Bengal Land Revenue Sales Act, 1859 (Act XI of 1859). Mr. Chakravarty abandoned the point made in

his opening that the Act was ultra vires of the West Bengal Legislature, It is accordingly not necessary to decide the point.

184. Sec. 4 of West Bengal Act VII of 1950 substituted a new section for the old sec. 37.

185. The amended sec. 37 (1) disentitles ""the purchaser of an entire estate in the permanently settled district of West Bengal sold under this Act

for the recovery of arrears due on account of the same"" from avoiding and annulling:

(a) tenures and holdings which have been held from the time of the permanent settlement either free of rent or at a fixed rent or fixed rate of rent,

and

(b) (i) tenures and holdings not included in exception (a) above quoted, and

(b) (ii) other leases of land whether or not for purposes connected with agriculture or horticulture, existing at the dare of issue of the notification for

sale of the estate under this Act.

* * * * *

186. It is conceded that the above amendment is retrospective and governs this appeal. This is also clear from sec. 7 of the West Bengal Act VII

of 1950.

187. In this view, the relevant inquiry in this appeal is whether the Defendants Nos. 1-17 were lessees of lands at the date of the issue of the

notification for sale. In the present case, the above notification was issued on 8th December, 1941. The question, therefore, is whether Defendants

Nos. 1-17 or any of them were lessees on 8th December, 1941.

188. In order to determine this question a few facts have to be stated.

189. I have already referred to the fact that since the settlement of 1901, the lessees did not take steps for reclaiming the lands in spite of the

conditions in the leases requiring the lessees to do so. The settlement of 1903 was due to expire on 31st March, 1941.

190. On 23rd February, 1941, the Settlement Officer accompanied by the Assistant Settlement Officer held a local inquiry. The report of the

Settlement Officer, dated 25th February, 1941. Ex. A (1), shows that the outer embankments long the rivers and khals had been constructed for

the major portion of the estate though not fully completed. The inner embankment had not been constructed. No reclamation had been made and

the estate remained a forest. Reclaimers from Khulna had just then come and had commenced cutting of jungles. The construction of bheris was

being done by three different Chakdars for different portions under certain arrangements with the lotdar. The report concluded by saying that the

jungles had not been touched previously and the present settlement proceedings resulted in the taking up of reclamation work.

191. I have already referred to the report of the Assistant Settlement Officer, dated 7th March, 1941, Ex. C, which mentions that Krishna Mohan

Mukherji unsuccessfully claimed a tenancy right in a portion of the towzi.

192. On 16th February, 1940, Amiya Pal Choudhury filed a petition in the Probate Court for granting leave to settle 2,000 bighas lands on certain

terms, Ex. B.

193. Ex. G (1) (a), Book B, Part II, page 1, shows that on 3rd March, 1940, K.M. Mukherji, Defendant No. 17 and one Swamiji (Jog

Bimalananda) were negotiating for a lease of some lands in the towzi with the manager and the Advocate of A. N. Pal Chowdhury, Defendant No.

18. The endorsement of A.N. Pal Chowdhury, dated 4th March, 1940, A. M., shows that ""the terms had been concluded and all further matters

were to be concluded with his authorised agent Sachindra Babu.

194. Ex. G (1) (b), Book B, Part II, page 2, which is endorsed on the back of Ex. G (1) (a) further shows that K.M. Mukherji was proposing the

signing of an agreement and payment to be made.

195. On 6th March, 1940, Amiya Pal Chowdhury entered into an agreement with Krishna Mohan Mukherji, Defendant No. 17, and Swami Jog

Bimalananda, Ex. B/l, wherein the former agreed to grant subject to sanction of the Court which has been applied for in permanent raiyati lease

2,500 bighas as per two separate raiyati deeds.

196. The principal terms were-

(1) Selami Rs. 1 (sic) per bigha.

(2) Rent--Nil for three years-

4 as. per bigha per year for 1350 B. S.

8 as. per bigha per year for 1351 B. S.

Re. 1 per bigha per year for 1352 B. S.

(3) Rs. 500 out of the selami was paid on that day, the balance was to be paid by or before the end of Baisakh, 1347 B. S.

(4) Execution and registration were to be performed on receipt of the balance of :he selami. Two separate raiyati deeds for 1,250 bighas each

more or less.

Paragraph (2), cl. (b), runs as follows :--

Embankment, etc.:--The land being jungly and absolutely unreclaimed now, embankments, to be made and maintained and jungles to be cleared

and otherwise reclaimed by you at your costs by or before 31st March, 1941, and time in regard to the matter is to be considered as of essence of

the contract failing which the lease shall be forfeited and on such reclamation cultivate as raiyat the same by yourselves or hired labourer or

otherwise.

197. The agreement contained at the end the following provision:--

Be it noted that in case the sanction of the Court to grant such raiyati is not obtained within a reasonable period or is refused, the sum of Rs. 500

only together with such costs as you may incur in regard to jungle-clearing (sic) and you will be entitled to cancel this agreement by writing to me in

due course. 2,500 bighas of land a little more or less in two respective plots as indicated in Lot No. 135.

198. On the same day, an amalnamah Ex. F (1), was granted on the terms hereunder.

199. Possession of the property described in the schedule of my agreement of 6th March, 1940, delivered to you to enable you to expedite and

effect works of embankment and reclamation as required of you in P. 2 under cl. (b) of the said agreement.

199. Receipt Ex. H/1 (5), dated 3rd May, 1940, shows a payment of Rs. 300.

200. On 27th March, 1940, Amiya Pal Chowdhury entered into an agreement with Panchanan Mondal and 11 other persons regarding 3,000

bighas of land. The agreement is Ex. E/l (b).

201. This agreement is similar in terms to Ex. E/l. There is an endorsement of payment of Rs. 500.

202. An amalnamah Ex. E/l (d) of even date in similar term as Ex. F/l was granted.

203. Receipts Ex. H/l (4), dated 9th June, 1940, and Ex. H/l (2), dated 16th July, 1940, show payments of Rs. 500 each by Panchanan Mondal.

204. The order sheet Ex. 3 or Ex. B of the Probate Court shows that the petition, dated 16th February, 1940, Ex. B, was taken up on 24th July,

1940. The matter was finally disposed of on 26th July, 1940, when the Court observed as follows:--.

The Administrator is permitted (under sec. 307 of the Indian Succession Act) to grant leases to the persons mentioned in the schedule to the

petition filed to-day for the areas shown against each, on the terms mentioned in the original petition filed on 16th February, 1950 (paragraph 8),

limited to the period for which the Administrator himself is entitled to hold as the terms appear to be beneficial to the estate.

205. The petition, dated 26th July, 1950, is Ex. B (2).

206. P. 6 of the petition mentions that one of the parties (obviously Swami Jog Bimalananda) has resiled.

207. P. 8 mentions that agreements for leases have been entered into with the persons mentioned in the form in Annexure ""A.

208. On 25th September, 1940, an agreement on similar terms as Ex. E (1) was entered into between Amiya Pal Choudhury and-Natabar Biswas

and another Ex. E/l (e). On the same day an amalnamah on similar terms as Ex. F (1) was granted, Ex. F/l (a), with a proviso that if the lease be

not executed on account of failure to obtain the permission of the Court, then you should give up possession of the lands without notice.

209. Receipt Ex. H/l, dated 17th June, 1940, Ex. H (1)/1, dated 5th July, 1940, and Ex. H (b)/l, dated 22nd October, 1940, show that

Nakuleswar Mondal paid respectively Rs. 575, Rs. 125, Rs. 750.

210. All the receipts were signed by Brojogobinda Sen, an officer of Amiya Pal Choudhury. These receipts are genuine and prove payments of the

sums mentioned.

211. Amiya Pal Choudhury has not produced his papers to contradict the receipt of the above sums.

212. P.W. 1, Amiya Pal Choudhury, deposed that the cost of reclamation was expected to be very heavy. As 1 shall show later on, the lot was

mostly reclaimed in 1347 B. S. and cultivation commenced in 1348. It is, therefore, clear that the Defendants Nos. 1-17 spent large sums of

money before the end of 1347, i.e. before 14th April, 1941.

213. On 24th May, 1941, Amiya Pal Choudhury filed a suit for possession of the lands in the possession of Krishna Mohan Mukherji, Defendant

No. 17. The suit was registered as Title Suit No. 42 of 1941.

214. The plaint Ex. 4 recited in paragraph (8) that the Plaintiff having failed to get the permission of the Court for a permanent lease, requested the

Defendant Krishna Mohan Mukherji to restore possession and on the latter"s failing to do so, sent a letter, dated 14th January, 1941, asking the

Defendant to take a refund of Rs. 500 paid as selami and to submit an account of the costs incurred in regard to jungle-clearing.

215. On 19th April, 1941, the Subdivisional Magistrate of Basirhat drew up proceedings under sec. 144, Cr. P. Code, against Sachindra Chandra

Das Gupta, Manager of Amiya Pal Choudhury, and others on the basis of a police report that the latter were bent upon obstructing Krishna

Mohan Mukherji in erection of bundhs.

216. The aforesaid Title Suit No. 42 of 1941 was ultimately withdrawn by the Plaintiff Amiya Pal Choudhury with liberty to bring a fresh suit by

order No. 19, dated 23rd April, 1942.

217. P.W. 3, Abdul Majid Molla, deposed that Krishna, Nakul Doctor, Natabar Biswas, Sachin Mondal, Panchanan Mondal, Duryadhan

Mondal have kutchari house in the disputed Towzi No. 2935 and that since 1347, Krishna Babu and others have erected bundhs, cleared away

the jungles, and have started cultivation since 1348 B. S. and that they have also erected huts for the purpose of cultivation and that they are still

cultivating.

218. I believe this evidence coming as it does from the Plaintiff"s side.

219. P.W. 3, Krishna Mohan Mukherji, also deposed that the terms of settlement were entered into between him and Amiya Pal Choudhury in the

latter part of February, 1940. The terms were recorded in the amalnamah Ex. F (I) and possession was given by Sachindra Babu after a fortnight,

that the work of reclamation was commenced in Baisakh, 1347 B. S., and that embankments were erected all round the lands and that cultivation

is going 011 since 1348 B. S.

220. D.W. 4, Nakuleswar Mondal, deposed that he and the original 17 Defendants had taken settlement of 3,000 bighas and paid Rs. 3,000, that

they had talks with Amiya Pal Choudhury and that Sachindra put them in possession of the entire area on 14th April, 1940, and that they cultivate

the land in khas.

221. In my opinion, the above evidence should be believed. The evidence is also borne out by the documentary evidence, Ex. A (I), etc., already

referred to and is consistent with the probabilities of the case.

222. The fact that the Defendants have no account papers is not sufficient to discredit their evidence.

223. My conclusion, therefore, is that negotiations for a settlement of the disputed land with the Defendant No. 17 for reclamation and cultivation

as raiyats started in the month of February, 1940, the main terms were concluded on 3rd March. 1940, and agreements were executed and

amalnamahs were granted, sehami was paid in part and the Defendant No. 17 was put in possession in March, 1940. Krishna Mohan reclaimed

the lands in 1347 B. S., built cutchery house and cultivated lands from 1348 B. S. Similar things happened in case of the other Defendants Nos. 1-

16. It does not appear that any rent was paid or tendered by the Defendant.

224. The question is whether on these facts a lease may be held to have been created in favour of Defendants Nos. 1-17.

225. In this country, occupation of a piece of land and assent, previous, contemporaneous or subsequent, of the landlord to such occupation is one

of the common ways of creating the relationship of landlord and tenant, in the case of Nityanand Ghose v. Kissen Kishore (1884) W. R. (Act X

Rulings) p. 52, Steer, J., observed:

We think that, though by the law of landlord and tenant, as applied in England, a person who takes and cultivates the land of another (there being

no express permission to cultivate on the side of the landlord nor any express condition to pay rent on the part of the cultivator) would not be

allowed to be regarded as a tenant, but treated as a trespasser, the peculiar circumstances of the country preclude the applicability of the technical

doctrine of the English law of landlord and tenant to such a case. Here it is a very common thing for a man to squat on a piece of land or to take

into cultivation an unoccupied or waste piece of land. Tenancy in a great many districts in Bengal commences in this way, and where it so

commences it is presumed that the cultivator cultivates by the permission of the landlord, and is under an obligation to pay him a fair rent, when the

latter may choose to demand it. If he chooses to cultivate the Zemindar''s lands and the Zemindar lets him, there is an implied contract between

them creating a relationship of landlord and tenant. Therefore we think that, under the circumstances of the case, where the Defendant avowedly

holds and cultivates the Plaintiff''s lands, he is, by the universal custom of the country, the Plaintiff''s tenant, and while so holding and cultivating is

bound to pay him a fair rent, and to give him a kabuliyat.

226. In Asim Sardar v. Ram Lal I. L. R. 25 al. 824 (327) the above principle was held to be applicable so far as agricultural lands are concerned.

227. In Berham Dutt v. Ramji Ram (1914) 18 C. W. N. 466 (460) the relationship was said to be governed not only by contract but by status.

See also Priyanath Manna v. Official Trustee A. I. R. (1928) Cal 48.

228. In Srish Chandra Nandy v. Harendra Lal I. L. R. (1939) 2 Cal. 44(sic) the principle in Nityananda''s case (1964) W. R. (Act X Rulings) p.

82 was held to be available in case of cultivating squatter and not in case of a non-cultivator settling tenant on the land of another person ignoring

the true owner.

229. In the facts of this case, the occupation of the lands by the Defendants with the assent of the landlords and the subsequent reclamation of the

same for purposes of cultivation and the cultivation of the same without let, in my opinion, created a relationship of landlord and tenant according to

the established usage of the country as stated in Nityanand Ghose"s case (1964) W. R. (Act X Rulings) p. 82.

230. It was, however, argued by Mr. Chakravarty that the rule in Nityanand Ghose"s case (1964) W. R. (Act X Rulings) p. 82 had no application

in the present case, because the assent by owner to the possession by the Defendants was a contingent one, depending on the sanction of the

Court.

231. In the first place, the amalnamah shows that the Defendants were put into possession with a view to immediate reclamation for purposes of

cultivation.

232. The agreements contemplated the sanction of the Court. Such sanction was given. It is urged that the sanction was not given to a permanent

lease as agreed upon. The order of the Probate Court, recited already, was made under sec. 307 of the Indian Succession Act. The proposed

lease was expressly stated to be for the benefit of the estate. The only limitation was that the lease was to enure for the duration of the title of the

lessor. This was a necessary limitation which the law would have implied even if the Court had sanctioned a permanent lease. A raiyati lease was

granted and such a lease would be heritable and would not be for a limited period and was substantially a permanent lease. Moreover, the

contingency provided for was essentially for the benefit of the Defendants and the option lay with them to affirm or repudiate the agreement. The

Defendants have affirmed the agreement and are agreeable to accept the other terms.

233. In my opinion, there was a substantial compliance and the contingency must be deemed to have been either fulfilled.

234. My conclusion, therefore, is that the Defendants were, before the notification of sale, lessees and are within the amended sec. 37(I) (b) (ii) of

Act XI of 1859 and the Plaintiff Manindra Nath Dinda is not entitled to avoid or annul the leases in favour of the Defendants Nos. 1-17.

235. The appeal accordingly abates as provided in sec. 7(I) (b) of West Bengal Act VII of 1950. The Appellant will be entitled to a refund of the

court-fee paid on the Memorandum of Appeal under sec. 7 (3) of the said Act as the suit and appeal were essentially for the ejectment of the

Defendants, on the strength of a purchase at a revenue sale, and I direct accordingly.

236. As the appeal fails on a ground which was not available to the Respondents Nos. 1 to 17 when the appeal was filed in this Court and as

Respondent No. 18 supported the Appellant, I am of opinion that the parties should bear their costs in this Court and the Court below. The result,

therefore, is that the judgment and decree of the Court below are varied, the Plaintiff Manindranath Dinda is entitled to a declaration of his title to

the lands in suit, the other reliefs prayed for by him are refused. Parties will bear their own costs in this Court and the Court below.

Guha, J.

I agree.