

(1878) 06 CAL CK 0022

Calcutta High Court

Case No: None

Ram Doolary Kooer

APPELLANT

Vs

Thacoor Roy

RESPONDENT

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Date of Decision: June 3, 1878

Citation: (1879) ILR (Cal) 61

Hon'ble Judges: White, J; Ainslie, J

Bench: Division Bench

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### Judgement

Ainslie, J.

The plaintiff in the present case sued for the recovery of possession of certain property on the allegation that she had made a verbal settlement with the defendant; and that the term of the settlement having expired, she had given him notice to quit, but that he refused to do so, and was holding on without any right whatever.

2. The defendant in answer put forward a document dated the 23rd of September 1876, which is called a zurpeshgi lease.

3. The first Court found that the document was not genuine.

4. The lower Appellate Court reversed that finding, and came to the conclusion that the document was actually executed by the plaintiff. The Judge says that, in the present case, it is not necessary to consider how far the document may be binding upon the minor, as he will have an opportunity of challenging it when he comes of age.

5. In this view we think that the Judge was right. If the plaintiff came into Court on behalf of the minor intending to raise the question of the binding effect of that document on the estate of the minor, she should have done so distinctly in her written statement. She ignored the existence of the document altogether, and it was only when it was put forward as an answer to the case set up by her that she wished

to change the nature of her suit and raise the question as to the binding effect of the deed on the minor's estate.

6. The only question that remains is whether this document is inadmissible in evidence on the ground that it has not been registered, and that registration was compulsory.

7. This is an instrument by which possession of certain property was handed over by the plaintiff to the defendant as security for 95 rupees lent to her. It states that the lessee shall pay what is called a rent of 8 rupees 12 annas every year in this way, viz., that 2 rupees shall be paid into the Collector's treasury as the Government revenue of the property, and the remaining 6 rupees odd annas shall be kept by the lessee in satisfaction of the interest accruing on the 95 rupees advanced by him. It also states that the lessee is to have the whole of the profits in satisfaction of the interest. No condition whatever is made for the payment of the principal out of the usufruct. The document also recites that the defendant is to hold the property for four years certain, and that he is to continue in possession on the same terms so long as the money should not be paid.

8. It is contended that the interest ought to be added to the principal, and that if it is so added, the value of the interest in Immovable property passed by the instrument amounts to more than a hundred rupees, and that registration was therefore necessary. The case cited in support of this view is the case of, *Darshan Singh v. Hanwanta* ILR 1 All. 274.

9. That is a case in which the suit was founded on a bond for 99 rupees with interest for three months at the rate of 2 rupees per mensem, making a total of 105 rupees, which, as the Court says, was the least amount that could be recovered under the instrument. It was accordingly held there, that the value of the property was over a hundred rupees.

10. Now, if the deed in the present case be looked at in the same way, it is quite clear that the amount claimed in any suit which could be brought on this bond could not exceed 95 rupees, as the interest is to be paid as it accrues from the profits. Therefore, if the same test as is applied by the Allahabad High Court be applied to the present case, it would appear that this bond did not require registration. There is a case decided by this Court--*Rohinee Debia v. Shib Chunder Chatterjee* 15 W.R. 558,--which shows that where the question is whether the market-value or the expressed value is to be taken to determine the necessity of registration, the Courts will not go beyond the value entered by the parties themselves in any particular instrument.

11. There is another case--*Ishan Chunder v. Sooja Bebee* 15 W.R., 331--which is more directly in point. In that case it appears that the instrument sued on, though in form a *zurpeshgi* lease for six years, was held to be a mortgage to secure repayment of the sum of 99 rupees, and the Court decided that as such mortgage it created an

interest of a value less than 100 rupees.

12. There is a case cited by the appellant--Mow Vithal v. Tukarmn Valad Malharji 5 A.C.J. 29. Under the Registration Act of 1864 a provision was made with reference to the Stamp law for the purpose of determining the value of an interest created or transferred by an instrument. In the later Acts that provision has been omitted. If we are to look at the Stamp Act in the present case, we should have to hold that only; the principal sum ought to be taken into" account. The Bombay case was cited to show that we ought to be guided by the provisions of the Stamp Act, In that case the question was whether a lease for six months certain and to continue on for an indefinite period was an instrument of lease for a period of more than one year, and as such one requiring registration. The Court held that though, according to the Stamp Act, it would require to be stamped as a lease for more than one year, yet, for the purposes of the Registration Act, it must be taken to be an instrument of which registration was not compulsory. The Court took the fixed term of six months as determining the question of the necessity of registration, or, in other words, they determined that a favourable construction should be put on the Registration Act in any case of doubt in order to give effect to the instrument. If we are to apply that rule to the present case, I think that we ought to hold that the words of the Act construed favourably to the validity of the instrument show that the value of the property must betaken to be that which the parties themselves agreed upon.

13. Under these circumstances I think that the interest" passed under this instrument ought to be valued, for the purpose of determining the necessity of registration, at 95 rupees, and therefore the Judge was not wrong in taking it into consideration as evidence in the case.

14. In this view I would dismiss the appeal with costs.

White, J.

15. I am of the same." opinion on the merits of the appeal. I wish to say a word about the question raised on the Registration Act. The Registration Act makes registration compulsory where the interest in Immovable property, which is the subject of a conveyance, is of the value of a hundred rupees or upwards.

16. In the present case the interest, which was acquired by the defendant under the usufructuary mortgage, was a right to [66] hold this land for four years rent-free, so far as the mortgagor was concerned; and on. the expiration of that period, if the 95 rupees, which was advanced at the time of the mortgage, was not repaid, then to continue to hold the land on the same terms until the 95 rupees was repaid; the holding of the land by the defendant rent-free being treated as equivalent to and in lieu of the payment by the mortgagor of interest upon the 95 rupees.

17. The legislature has laid down no rule in the Registration Act to guide us in coming to a conclusion as how an interest of this sort in land is to be valued, or how

such an interest is to be estimated in money. Looking to the natural sense of the language used by the Registration Act, I should say that the value of the interest in the present case is what the possession of the property rent-free for four years is worth to the defendant. The parties have fixed the amount of rent which will thus come into the pocket of the defendant under the instrument at Rs. 6-12 per annum. The entire value thereof of four years' possession would be Rs. 27, and the document would not require to be registered. On the principle recognized in the Bombay case cited by my brother Ainslie, I think the contingent circumstance that the defendant; may continue to hold the land for more than four years, unless the 95 rupees is then paid off, ought not to be taken into account in deciding what is the value of the interest for the purpose of registration. I feel some difficulty in treating the 95 rupees as the value of the interest in the land in this case, when the Registration Act has laid down no rule on the subject, but left the Court to ascertain that value as best it may. If we are at liberty to look at the Stamp Act, and apply the rule there given for fixing the value of a usufructuary mortgage when possession is taken, there would be reason for holding 95 rupees to be the value of the interest created by the present document. But I am not sure that we may look at the Stamp Act in solving the question before us. Whatever doubt I may have as to the mode of estimating the value of the defendant's interest in the property in dispute, I have no doubt that, in the present case, the value of the property is below a hundred rupees, and that the instrument, therefore, is one of which the registration is optional.

18. I therefore concur in the conclusion arrived at by my brother Ainslie on this question as well as on the other questions raised by the appeal (see also *Narasayya Chetti v. Guruvappa Chetti*, I.L.B., 1 Mad., which will probably be published next month).