

(1868) 11 CAL CK 0010

Calcutta High Court

Case No: Special Appeal No. 1951 of 1868

Ramkumar Mandal and Others

APPELLANT

Vs

Brajahari Mridha

RESPONDENT

Date of Decision: Nov. 26, 1868

Judgement

Phear, J.

The defendants' case in this suit rested upon a title which he set up under a certain potta, which the lower Court refused to receive as evidence, on the ground that it was not registered. The term of this potta is expressed by the common form with which we are so familiar shan ba shan. This has been invariably interpreted by this Court to mean a year-by-year-tenancy, that is a tenancy which is certain for the period of one year, and will continue beyond that period until it is properly put an end to by either party. We think that a potta, the term of which is defined by these words, falls within the 4th clause of Section 17, Act XX of 1866^{*}; and that it is a lease for a terra exceeding one year. Therefore, by the provisions of that section, the document must be registered, otherwise, by Section 49 of the same Act, it cannot be received as evidence in any Court whatever. It follows that the first objection made on special appeal to the judgment of the Court below falls to the ground. The remaining objection is one which is based upon the nature of the title of the defendant, but inasmuch as the title-deed, which is the primary evidence of that title, cannot be received, the Court would have been wrong if it had looked at secondary evidence of the same. This objection, therefore, also fails, and the special appeal must be dismissed with costs.

Instruments of which the registration is compulsory.	Sec. 17:--The instruments next hereinafter mentioned shall be registered, provided the property to which they relate shall be situate in a district in which, and provided they shall have been executed on or after the date on which the said Act No. XVI of 1864 or this Act shall have come or shall come into operation (that is to say):--
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1. Instruments of gift of immoveable property.
2. Instruments (other than an instrument of gift) which purport or operate to create, declare, assign, limit, or extinguish whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards to or in immoveable property.
3. Instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation, or extinction of any such right, title, or interest; and
4. Leases of immoveable property for any term exceeding one year.