APPELLATE CIVIL.

Before Edgley J.

1936

June 11, 12, 19.

RADHA RAMAN CHAUDHURI

v.

POORNA CHANDRA MAITRA.*

Evidence—Admissibility—Unregistered jamâbandi—*Onus of proof—Rent, whether consolidated or at a particular rate per unit area —Indian Registration Act (XVI of 1908), ss. 17* (1) (b), *49—Transfer of Property Act (IV of 1882), ss. 107, 117—Bengal Tenancy Act (VIII of 1885), ss. 29, 52* (1) (a).

In 1315 B.S. a lease of land for agricultural purposes was granted orally to the defendant's father. In 1326 B.S., by oral agreement with the defendant, who by then had become the lessee upon his father's death, the terms of the lease were varied. Thereafter in the same year the defendant signed a *jamâbandi* containing the terms of the lease as varied.

Held, the *jamâbandi*, although not registered, was admissible in evidence.

Gungapersad v. *Gogun Sing* (1) and *Narain Coomary* v. *Ramkrishna Dass* (2) followed.

Durga Prasad Singh v. *Rajendra Narain Bagchi* (3) distinguished.

A *jamâbandi* prepared upon a survey of the land leased was signed by the lessee. Circumstances indicated that the total rent payable by the lessee as mentioned in the *jamâbandi* was calculated at a particular rate of rent per unit area.

Held, the onus was on the lessee to prove that the *jamâ* was taken at a consolidated rent with reference to certain defined boundaries and not at a rent calculable at any particular rate per unit area.

APPEAL FROM APPELLATE DECREE by the plaintiff.

The facts of the case and arguments in the appeal appear sufficiently from the judgment.

Jateendra Mohan Chaudhuri for appellant.

*Appeal from Appellate Decree, No 536 of 1935, against the decree of Tarini Kanta Nag, Second Additional Subordinate Judge of Malda, dated Sept. 27, 1934, affirming the decree of Kishori Lal Chatterji, Munsif of Nawabganj, dated May 1, 1934.

(1) (1877) I. L. R. 3 Cal. 322.
(2) (1880) I. L. R. 5 Cal. 864.
(3) (1909) I. L. R. 37 Cal. 293; on appeal (1913) I. L. R. 41 Cal. 493; L. R. 40 I. A. 223.

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Beereshwar Bagchi and *Phaneedra Kumar Sanyal* for respondent.

Cur. adv. vult.

EDGLEY J. In the suit out of which this appeal arises the plaintiff sued the defendant for the recovery of arrears of rent at the rate of Rs. 59-14-6 per annum. His case was that the *jamâ* in suit had been settled with the defendant's father in 1315 B. S. at an annual rental of Rs. 37-11-0, in respect of an area of 32 *bighâs*, 14 *cottâs* 10 *chhittâks*. Subsequently, as a result of a survey made in 1321 B. S., a *jamâbandi* was prepared in 1326 B. S., which showed that the defendant's holding had increased in area to 40 *bighâs* and the defendant's rent was accordingly altered to Rs. 59-14-6. The defendant agreed to pay the rent as altered and actually paid it for some years. Later, when the record-of-rights was prepared, it was found that the defendant's holding actually measured 40 *bighâs* and the rent payable by the defendant was recorded at the rate at which the plaintiff now seeks to recover the arrears due to him.

The case for the defendant was to the effect that his father had purchased the *râiyati* interest in respect of the holding now in suit from Yajneshwar Mandal, the son of Abadur Mandal. At the time of his purchase the rent payable in respect of the holding was said to be Rs. 23-14-2½ *gandâs*, but in 1315 B. S., when his father obtained the landlord's recognition of the transfer, the rent was enhanced to Rs. 37-11-0. He admitted that in 1326 B. S., the rent was again enhanced to Rs. 59-14-6, but he contended that the enhancements of 1315 and 1326 B. S. were both illegal having regard to the provisions of s. 29 of the Bengal Tenancy Act, and he maintained that, in these circumstances, the plaintiff's suit should be dismissed.

The trial Court held that a new tenancy had been created in favour of the defendant's father in 1315 B. S. by virtue of the latter's recognition by the

landlord and consequently the plaintiff was entitled to realise rent at the rate of Rs. 37-11-0. The learned Munsif found, however, that the second enhancement which took place in 1326 B. S. was illegal and the difference between Rs. 37-11-0 and Rs. 59-14-6 could not be recovered by reason of the provisions of s. 29 of the Bengal Tenancy Act.

The case was then taken on appeal to the lower appellate Court and the finding of the learned Subordinate Judge was to the effect that, in the absence of a written agreement, it must be assumed that, when the defendant's father took settlement of the disputed holding in 1315 B. S., he took settlement of a consolidated *jamâ* within defined boundaries, and that the enhancement of rent effected in 1326 B. S. was therefore illegal under s. 29 of the Bengal Tenancy Act.

The position which has been adopted in this Court by the learned advocate for the appellant is that the settlement in 1315 B. S. was made with reference to certain basic rates of rent for different classes of land mentioned in the *jamâbandi* of 1312, and that this would indicate that the settlement was made not in respect of a consolidated area as alleged by the defendant but at certain rates per *bighâ* according to the classes of land mentioned in the *jamâbandi*. He further maintains that as the *jamâbandi* of 1326 B. S. and the record-of-rights showed that the area of the defendant's holding had increased, the landlord was entitled to an additional rent in respect of the excess area under the provisions of s. 52 (*1*) (*a*) of the Bengal Tenancy Act.

One of the most important items of evidence adduced in favour of the landlord is the *jamâbandi* of 1326 B. S., which shows that there has been an increase of rent in respect of the increased area of the defendant's holding since 1315 B. S. and which has been signed by the defendant. The learned advocate for the respondent contends that this *jamâbandi* was inadmissible in evidence under the

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provisions of s. 17 (*1*) (*b*) and (*d*) read with s. 49 of the Indian Registration Act. With regard to this particular document the evidence in the case is that it was prepared on the basis of a survey which was made in 1321 B. S. and that the defendant, after some hesitation, agreed to pay the altered rent demanded, and then signed the *jamâbandi* as a token of his agreement to do so. It is quite clear that the defendant held his *jamâ* under the plaintiff under an oral agreement made between the plaintiff and the defendant's father in 1315 B. S., and I agree with the Courts below in thinking that by virtue of the oral lease which was effected in that year, a new tenancy was created in favour of Shashti Charan Maitra, the father of the defendant. The lease of 1315 B. S. was taken for agricultural purposes and, therefore, it was exempted from the provisions of s. 107 of the Transfer of Property Act. The law, therefore, did not require that it should be made by a registered instrument. In 1326 B. S. it appears that the defendant by an oral agreement consented to a variation of the lease of 1315 B. S. as regards the amount of rent payable in respect of the demised land, and subsequently by signing the *jamâbandi* admitted his liability as regards the altered rent. It would, therefore, follow that, as no written lease was necessary in 1315 B. S., any variation of the terms of the oral lease of 1315 B. S. might also be made orally. In any case it cannot be said that, by signing the *jamâbandi* of 1326 B. S., the defendant created or declared an interest in immovable property within the meaning of s. 17 (*1*) (*b*) of the Indian Registration Act, as the interest in the demised land, such as it was, had been created by the oral lease of 1315 B. S., although it was varied by the oral agreement which seems to have taken place before the signing of the *jamâbandi* of 1326 B. S. Further, with reference to s. 17 (*1*) (*d*), it cannot be said that a new lease of the demised land was taken in 1326 B. S., as all that happened in that year was that the defendant

agreed orally to pay the rent as altered in respect of the land which had been leased to his father in 1315 B. S.

In the case of *Gungapersad* v. *Gogun Sing* (1) Jackson and McDonell JJ. considered the question as to whether a *dowl fehrist* to which the tenants had affixed their signatures in token of their agreement to pay certain rates of rent required registration or not. This document appears to have been similar in character to the *jamâbandi* with which we are now concerned. The learned Judges held in that case that the *dowl fehrist* was merely a memorandum or record by the *zemindâr's* agents of the rates of rent which had been settled between the *zemindâr* and the *râiyats* and that these *râiyats* had affixed their signatures to the document in testimony of their admission of the correctness of the rent which had been imposed upon them. Their Lordships went on to say:—

> It appears to us that there is nothing in the law to require a *dowl fehrist* to be either registered or stamped, nor, on the other hand, is it a document which could be regarded as binding or conclusive evidence of a contract. It is a matter of observation of course, and throws the burthen of explanation upon any *râiyat* who, having put his signature to it, afterwards disputes the facts which it recites. It may fairly be asked how came you to sign this document if you were not a consenting party to it.

The case of *Gungapersad* v. *Gogun Sing* (1) was cited with approval by White and Maclean JJ. in the case of *Narain Coomary* v. *Ramkrishna Dass* (2). In *Narayan Coomary's* case it was also argued that an entry in a certain *jamâbandi*, which had been signed by the lessee, required registration but the learned Judges held that the document in question amounted to no more than an admission on the part of the defendant that the particulars set forth in the tabular statement were true, and it could therefore be used as evidence against the lessee although it had been neither stamped nor registered. Some reliance

(1) (1877) I. L. R. 3 Cal. 322, 324. (2) (1880) I. L. R. 5 Cal. 864.

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was placed by the learned advocate for the respondent on another decision of this Court, that in the case of *Durga Prasad Singh* v. *Rajendra Narain Bagchi* (1). In that case it was held that a letter which purported to vary the terms of a registered lease which had been previously granted in respect of the demised land was inadmissible in evidence for want of registration. The principle laid down in *Durga Prasad Singh's* case was subsequently approved by a Full Bench of this Court in the case of *Lalit Mohan Ghosh* v. *Gopali Chuck Coal Company, Ld.* (2). Further, when *Durga Prasad Singh's* case came before the Judicial Committee of the Privy Council on appeal in 1913, their Lordships agreed with the findings of the High Court as regards the inadmissibility in evidence of the document to which reference has been made above: *Durga Prasad Singh* v. *Rajendra Narayan Bagchi* (3). It appears, however, that the principle enunciated in *Durga Prasad Singh's* case is not applicable to the facts of the case out of which the present appeal arises, because the original lease in that case was governed by the provisions of the Transfer of Property Act and had been effected by a registered instrument, whereas in the present case the lease of 1315 which was for agricultural purposes was granted orally, and as it was exempted from the provisions of s. 107 of the Transfer of Property Act, no registration was necessary, either in respect of the original lease or in respect of any subsequent oral variation of its terms.

Further it has been rightly pointed out by the Lahore High Court in the case of *Attra* v. *Mangal Singh* (4) that, as s. 17 of the Indian Registration Act is a disabling section, it must be strictly construed, and unless a document is clearly within the purview of that section, its non-registration is no bar to its being admitted in evidence. I must

(1) (1909) I. L. R. 37 Cal. 293.
(2) (1911) I. L. R. 39 Cal. 284.
(3) (1913) I. L. R. 41 Cal. 493; L. R. 40 I. A. 223.
(4) (1921) I. L. R. 2 Lah. 300.

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therefore hold that the *jamâbandi* of 1326 B. S. which was signed by the defendant is admissible in evidence, although it was not registered, and the contention of the learned advocate for the respondent must fail.

In his written statement the defendant admits that at the time, when the disputed *jamâ* was settled with his father, the settlement was granted in respect of an area of 32 *bighâs*, 14 *cottâs*, 10 *chhittâks*, although he maintains that this area was calculated by guess with reference to certain fixed boundaries which had remained unchanged. He further says that the land was accordingly described as comprising the aforesaid area in the *kabâlâ* which was executed in his father's favour. It is clear that a survey of the demised land was made in 1312 B. S. and that a *jamâbandi* was then prepared on the basis of that survey, and the circumstances indicate that the rent payable by the defendant's father was calculated with reference to the basic rates for the various classes of land mentioned in that *jamâbandi*. It is not contended that, as regard these basic rates, any change was effected when a fresh *jamâbandi* was prepared in 1326 B. S. In any case, even if there has been any increase in the basic rates of rent according to the *jamâbandi* of 1326 B. S., the plaintiff does not seek to recover on the basis of any such increase but on that of alleged increase of area. It would appear that by his conduct in signing the *jamâbandi* of 1326 B. S., the defendant by implication admitted that at any rate he was liable to pay rent according to the basic rates which had prevailed from 1315 to 1326 B. S., and also that he was liable to pay additional rent in respect of the additional area recorded in the *jamâbandi* of 1326 B. S. He further admitted his liability by actually paying rent at the increased rate for a considerable period. This being the case, I am of opinion that the onus would lie upon the defendant to show that his *jamâ* was actually held at a consolidated rent with reference to certain defined boundaries and, with reference to this matter, I am of opinion that the onus has been

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wrongly placed on the plaintiff by the learned Subordinate Judge.

The question, therefore, arises as to whether or not the defendant has discharged the onus which lies upon him. In my opinion he has not done so. There is no satisfactory evidence from which it can be inferred that the father of the defendant took a settlement of this holding as a consolidated *jamâ* within specified boundaries. With reference to this matter, it is reasonable to suppose that, if such had been the intention of the parties in 1315 B. S. a written *kabuliyât* would have been executed with the boundaries of the demised land clearly described therein. On the other hand, it is clear that, at the time when Shashti Charan Maitra was recognised as a tenant, the area of his holding had been carefully ascertained and measured in terms of *bighâs*, *cottâs* and *chhittâks*. It is in evidence that, shortly before he took settlement of this holding, a *jamâbandi* had been prepared in respect of the demised land, and the circumstances indicate that when settlement was granted to the defendant's father, the *jamâ* was settled with him in respect of an area of 32 *bighâs*, 14 *cottâs* and 10 *chhittâks* on the understanding that rent would be paid at the rate per *bighâ* mentioned in the then existing *jamâbandi*.

In view of what I have stated above if the plaintiff is able to show that the area of the defendant's holding has actually increased between the year 1315 B. S. and the time when the record-of-rights was prepared, he is clearly entitled to an increase of rent under s. 52 (*1*) (*a*) of the Bengal Tenancy Act. In view of the findings at which he arrived, the learned Subordinate Judge apparently did not think it necessary to consider the evidence on the question as to whether or not there has been an actual increase in the area of the holding. This evidence should now be examined with special reference to the standards of measurement which were used at the time of the surveys of 1312 and

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1326 B. S. and the nature of the surveys made on these occasions. If after such further consideration and also after allowing the parties, if necessary, to adduce such further evidence as the learned Subordinate Judge may think fit, it is found that there has been an increase in the area in the defendant's holding since 1315, the lower appellate Court should grant the plaintiff rent in respect of such increased area calculated according to the basic rates of rent which were in force in respect of the various classes of land comprised in the holding in 1315 B. S.

The judgment and decree of the learned Subordinate Judge are therefore set aside and this appeal is remanded to the lower appellate Court for further consideration in accordance with the directions contained in this judgment.

Costs will abide the final result.

Leave to file an appeal under cl. 15 of the Letters Patent is refused.

Appeal allowed; case remanded.

P. K. D.