

APPELLATE CIVIL.

Before Mr. Justice White and Mr. Justice Maclean.

1880
April 6.

NARAIN COOMARY (PLAINTIFF) v. RAMKRISHNA
DASS (DEFENDANT).*

Admissibility in evidence of Unstamped and Unregistered Document—Entry in Book showing extent of holding and rate of rent—Admission.

A lessor having let certain lands to a lessee under a verbal agreement, the lessee entered upon possession. Afterwards, and during the lessee's occupation, an entry showing the extent of the holding and the amount of rent payable in respect of it was made in a book of the lessor and signed by the lessee. In a suit subsequently brought by the lessor against the lessee for arrears of rent, the lessee did not deny that he was a tenant of the lessor, but disputed the extent of his holding and the rate of rent.

Held, that the entry in the book of the lessor did not, although signed by the lessee, amount to a lease or to an agreement for a lease, but to an admission only, and could therefore be used as evidence against the lessee, although neither stamped nor registered.

Baboo *Juggodanund Mookerjee*, Baboo *Ohunder Madhub Ghose*, and Baboo *Bussunt Coomar Bose* for the appellant.

Baboo *Umbica Churn Bose* for the respondent.

THE facts of this case appear sufficiently from the judgment of the Court (WHITE and MACLEAN, JJ.), which was delivered by

WHITE, J.—This was a suit brought by the Dowager Ranee of Burdwan against a tenant, with whom she alleged that a verbal agreement had been made, under which he took in zemindari certain land in Assar 1281 (June–July 1874). The suit was for arrears of rent for the years 1282 and 1283 (1875 and 1876).

The defendant, who is the respondent before us, did not deny that he was her tenant, but disputed the extent of his holding and the rate of rent.

* Appeal from Appellate Decree, No. 910 of 1879, against the decree of W. Macpherson, Esq., Judge of Cuttack, dated the 30th January 1879; reversing the decree of Baboo Roroda Kant Mozumdar, Deputy Collector of that district, dated the 28th September 1878.

The Munsif passed a decree in favor of the Ranees.

On appeal that decree was reversed by the Judge of Cuttack, not upon the merits, but on the ground that a certain document, which was contained in a book belonging to the zemindari of this lady, and which related to the jammabandi of the particular district in which the respondent held the land in question; amounted to a lease or an agreement for a lease, and not being stamped or registered could not be used in evidence.

We have had the document translated, and it appears to be in the form of a tabular statement containing in the first column a year and date, the name of the zemindar,—that is, the respondent,—the number of the holding, and the amount of rent for the several years, 1281, 1282, and 1283, the rent column of each year being subdivided into three columns, in which are inserted the jamma or amount of rent, amount of disbursement, and balance of rent; and in the last column appears the signature of the defendant. The document contains no particulars about the duration of the tenancy; nor is any date affixed to the signature.

A verbal agreement was proved in the lower Court to have been made between the defendant and the lady's agent; and this document was put in evidence to meet the defendant's objection about the extent of his holding and the rate of rent.

The lower Appellate Court has treated this document as a lease or agreement for a lease, and consequently held, that he was not at liberty to admit the verbal evidence which was produced in the first Court.

I am unable to concur in the view taken by the Judge of the document. In my opinion it amounts to no more than an admission on the part of the defendant that the particulars set forth in the tabular statement are true, and consequently the document requires neither to be stamped nor registered.

In determining whether this document comes within the language of the Stamp Acts, the Court has to consider whether the document produced is one which fairly falls within the description of any one or more of the documents there mentioned. If it does, it must be stamped; otherwise it is not liable to be stamped. The opinion which I have arrived at is supported

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by the decision of one of the Benches of this Court in the case of *Gunga Persad v. Gogun Sing* (1). There a very similar, and in all material particulars an almost identical, document was offered in evidence. The Judges held that it was admissible without stamp; and when the reason which induced the Court to come to that opinion is examined, it is the same as that given by me for my present decision,—namely, that the document only amounts to an admission.

The existence of the document in question in no way excluded the evidence of the verbal agreement, which was produced on the part of the Maharanee. The Judge in the lower Appellate Court says, that if the document is admissible, he should hold that the decision of the Deputy Collector on the merits was right. This expression of the judicial opinion enables this Court to dispose of the case without a remand, and to restore the decision of the first Court.

The appeal will be allowed with costs, and the appellant will also have her costs in the lower Appellate Court.

Appeal allowed.

ORIGINAL CIVIL.

Before Mr. Justice Wilson.

1880
 Aug. 9.

MONINDROBHOOSUN BISWAS v. SHOSHEEBHOOSUN BISWAS
 AND OTHERS.

Commission to examine Purdahnashin Lady—Costs.

The Court will not order the costs of a commission to examine a defendant who is a *pardahnashin* lady to be paid by her, or order the estimated cost of the commission to be paid into Court, although the application for the commission is made by the lady herself.

THIS was a suit for partition. One of the defendants, Juggodumba Dasse, now applied to be examined on commission upon the ground that she was a Hindu *pardahnashin* lady of