

APPELLATE CIVIL.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice McDonell.

LALL JHA (PLAINTIFF) v. NEGROO (DEFENDANT).*

1881
June 20.

Landlord and Tenant—Lease—Agreement to Lease—Doul Darhkast—Proposal—Acceptance—Contract in Writing—Registration Act (III of 1877), s. 3.

Where a *doul darhkast* amounts to nothing more than a proposal by a tenant to pay a certain rent for certain land, it does not amount to a lease or to an agreement for a lease, and does not, therefore, require registration. But if the proposal has been so accepted, that the proposal and acceptance constitute a contract in writing, then such contract must be registered.

Syed Sufilar Reza v. Amzad Ali (1) and *Maharaja Luchmissur Singh v. Mussamut Dakho* (2) followed.

Choonae Mundur v. Chundee Lall Dass (3) and *Bibee Maheroonnissa v. Abdool Guneo* (4) distinguished.

THIS was a suit for arrears of rent. The plaintiff alleged that the defendant had obtained a *malguzari* tenure of the lands for which the rent was claimed, under a *doul^o darhkast* dated the 2nd of April 1876, at a yearly rent of Rs. 46; and that he had made default in payment. The defendant denied that he held the lands at the rate alleged by the plaintiff, and also pleaded payment. The Court of first instance gave the plaintiff a decree; but this decree was reversed on appeal to the District Court of Purneah. The material portion of the Judge's judgment was as follows:—

“The suit proceeded on a *doul darhkast* dated the 2nd of April 1876. Now the *doul* purports to be signed by three witnesses, and it contains the words: ‘*isliye darhkast hamara minibtidai San 1284, sal laghayat San 1286, sal mulkike, sir-i-sal sezamin zimma kiya. Jama salana mubligh 46 rupaiya,*

* Appeal from Appellate Decree, No. 719 of 1880, against the decree of F. Cowley, Esq., Officiating Judge of Purneah, dated the 1st December 1879, modifying the decree of Baboo Lal Behary Dey, Munsif of Kishengunge, dated the 31st July 1879.

(1) *Ante*, p. 703.

(2) *Ante*, p. 708.

(3) 14 W. R., 178.

(4) 17 W. R., 509.

1881
 LALL JHA
 v.
 NEGROO.

zarb halba mujib tafsil bad kharij paya. Patwari salha sal diya karengee. It clearly is a kabuliat for a term of three years, and it ought to have been registered under s. 17 (4) Act VIII of 1871. I find it is not uncommon to put forward as mere applications for settlement, documents which are really contracts, or portions of final agreements (in regard to leases) reduced into writing, the object being to evade the registration laws. I hold that the present *doul darkhast* is really a counterpart of a lease and an undertaking to occupy, and falls within the definition of a lease in s. 3, Act VIII of 1871. As this document contains the terms of the alleged contract between the plaintiff and the defendant, the document itself is the only evidence of those terms (s. 91, Evidence Act) which can be accepted: and as the document cannot be put in for want of registration, the plaintiff's case as to the enhanced—for it is admitted to be an enhanced—jama must fail." The plaintiff appealed to the High Court.

Baboo *Rajendro Nath Bose* for the appellant.

Mr. *Sandel* for the respondent.

The judgment of the Court (GARTH, C. J., and McDONELL, J.) was delivered by

GARTH, C. J.—So far as we can see, the District Judge appears to have rejected the *doul darkhast*, which was offered in evidence in this case, upon insufficient grounds. In the case of *Maharaja Luckmishur Singh v. Mussamut Dakho* (1), we decided in a Full Bench of this Court that a *doul darkhast*, if it amounted to nothing more than a proposal by a tenant to pay a certain rent for certain land, does not amount to a lease or an agreement for a lease. If it is accepted in writing by the landlord, it is a different thing. In another case—*Syed Sufdar Reza v. Amzad Ali* (2)—which we also decided in a Full Bench, the document was not only a proposal for a lease, but had the word 'granted' signed by the landlord himself upon it. In that case we considered, that if that word was written upon the

(1) *Ante*, p. 708.

(2) *Ante*, p. 703.

document in token of the acceptance by the landlord of the tenant's proposal, it would require registration, because it would then amount to a complete offer by the tenant and an acceptance by the landlord of the terms of the proposed lease.

1881
LALL JHA
v.
NEGROO.

On the other hand, it was decided by this Court, in *Choonee Mundur v. Chundee Lall Duss* (1) and in *Bibee Meheroonnissa v. Abdool Gunee* (2), that a *dowl durkhast* being a mere proposal for a lease, unaccepted by the landlord, was not a lease within the meaning of the Registration Act. That is a very plain distinction, and we think, having regard to the rule laid down by the Full Bench, that the document here was admissible in evidence, and was improperly rejected.

The case must go back to the lower Court for retrial. If it should turn out that the landlord has agreed to the proposal of the tenant in writing, the document will of course require registration. The costs of this Court and of the Court below will abide the result.

Case remanded.

Before Mr. Justice Mitter and Mr. Justice Maclean.

BIRAJAN KOOR (DEFENDANT) v. RAM CHURN LALL MAHATA
AND ANOTHER (PLAINTIFFS).*

1881
May 6, and
July 20.

Receiver, Appointment of—Reference to District Court—Appealable Order—Civil Procedure Code (Act X of 1877), ss. 503, 504, and 505.

No appeal lies from an order passed under s. 505 of the Civil Procedure Code by a Court subordinate to a District Court, submitting the name of a person sought to be appointed a receiver, together with the grounds for the nomination, such being only a preliminary order or expression of opinion, and not an order under s. 503.

Nor does an appeal lie from the order of the District Court confirming such nomination, but the District Court ought, when the question is raised, to decide on the necessity for the appointment of a receiver, the words "or

* Appeal from Order, No. 286 of 1880, against the order of H. W. Gordon, Esq., Officiating Judge of Tirhoot, dated the 4th September 1880, affirming the order of Baboo Amrita Lal Pal, First Subordinate Judge of that district, dated the 21st August 1880.

(1) 14 W. R., 178.

(2) 17 W. R., 508.