

APPELLATE CIVIL.

Before Mr. Justice Parker and Mr. Justice Shephard.

RAJARAM AND OTHERS (PLAINTIFFS NOS. 1, 2, 4 AND 5), APPELLANTS, 1891.
Dec. 14, 17.

v.

NARASINGA (DEFENDANT), RESPONDENT.*

Landlord and tenant—Construction of lease—Word of inheritance.

A fixed permanent ijara patta confers no rights on the heirs of the demisee.

APPEAL against the decree of P. Narayanasami Ayyar, Subordinate Judge of Salem, in original suit No. 6 of 1888.

Suit for a declaration of the plaintiffs' title as *ijaralars* of the village of Chinnamottur attached to the mitta of Chinnaveppampattu and for possession of the village with mesne profits.

The plaintiffs claimed under the following document which was filed as exhibit K:—

“Confirmed permanent ijara (lease) patta granted by Jeyaram Lala and Latchma Bhoy, Zamindars of Ambarpeta mitta, in favour of Dowlatram Lala, son of Latchmana Doss, Monyagar, residing in Valayampattu.

“Particulars of rent fixed per year, according to the permanent beriz for the village of Chinnamottur attached to Ambarpeta mitta given to you, are—

“Rs. 590-3-1.

“We have given permanent lease having confirmed the permanent muchalka you have executed for the sum of rupees five hundred and ninety, annas three and pie one, you should pay the money in the mitta treasury according to the kistbandies fixed in each year within the 30th and obtain receipts. No remission will be given if there should be any loss by excess or want of rain or by the acts of the ruling power or by God. You should act in accordance with Bittajegaru's Aramayishe and Paramayishe Damasha (list showing the proportion of provisions supplied gratis). Besides this, fishery, fruit trees and

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“ wood trees, &c., belong to you only. To this effect we have
“ executed and given this confirmed permanent ijara (lease) patta.”

Fasli 1266, (Signed) Jeyaram Lala.
10th Margali of the („) Jeyaram Lala with the con-
year Nala, 22nd sent of Latchma Bhoy.”
December 1856.

It was admitted that the village had been the property of Vasudeva and Hari Lala, who in 1848 leased it to Jeyaram Lala, the defendant's brother-in-law, and Dowlatram Lala, the brother and father of the first and second plaintiffs respectively. The plaint set out, with reference to the above instrument, as follows :—

“ Afterwards, the said Vasudeva Lala and Hari Lala having
“ died, the said village of Chinnamottur was in fasli 1266, on
“ 10th Margali of the year Nala, 22nd December 1856, perma-
“ nently leased out after them by the late mittadars Jeyaram
“ Lala, younger brother of the said Vasudeva Lala, and Lakshmi
“ Bhoy, wife of the said Vasudeva Lala, solely to Dowlatram
“ Lala, on condition of paying the circar peishush amounting
“ to Rs. 590-13-1 per year, and, accordingly, he, and after him,
“ his undivided brothers and family members, the first plaintiff
“ and Ram Lala, the father of plaintiffs 3, 4 and 5, had been
“ enjoying it uninterruptedly until the end of 1876.”

It was further alleged that in 1877 Jeyaram Lala (since deceased) denied the plaintiffs' title, ousted them unlawfully and sold the village to his brother-in-law, the defendant.

Plaintiffs Nos. 1, 2, 4 and 5 preferred this appeal.

Mr. Norton and Parthasarathi Ayyangar for appellants.

Ramasami Mudaliar for respondents.

SHEPHERD, J. :—Two questions are raised by this appeal. It is contended, on the plaintiffs' behalf, that the Subordinate Judge was wrong in his finding of fact with reference to the instrument on which the plaintiffs found their claim; and on the defendant's side it is urged that by that instrument the plaintiffs claiming as the heirs of the original grantee, who died in 1867, acquired no title. On the question of fact, I am unable to agree with the decision of the Subordinate Judge, for, in my opinion, there is abundant evidence to prove the execution of the instrument (exhibit K); but, in the view I take, it is unnecessary to discuss the evidence, because the construction which I think must be put on the instrument is fatal to the plaintiffs' claim.

The instrument is described as a fixed permanent *ijara patta*, and it provides for a rent to be paid according to the permanent beriz. There are no special words to show that it was to operate beyond the lifetime of the grantee, Dowlatram. The words translated "fixed, permanent" seem to be nearly equivalent to the words *istemrari mokurari* common in instruments, which come before the High Court of Bengal. Dealing with a case in which the instrument under discussion contained this expression, the Judicial Committee observed that they thought it to be established that "the words *istemrari mokurari* in a *patta* do not *per se* convey an estate of inheritance," and they proceeded to hold that, in that particular case, the intention to create a perpetual grant had not been sufficiently indicated (*Tulshi Pershad Singh v. Rammarain Singh*)(1). No distinction in favour of the plaintiffs can be pointed out between the instrument before the Privy Council and that which we have to construe. On the contrary, in the former, there was a clause, which, at least, showed that the grantor intended to bind his heirs. In *Gopayyan v. Balaji*(2) cited for the defendant, the same view was taken in this Court. There is nothing in the circumstances since the death of Dowlatram to favour the contention of the plaintiff. In my judgment, the plaintiffs have failed to prove their title and the appeal must be dismissed. I agree that each party should bear his own costs.

PARKER, J.—The Subordinate Judge has found that the lease-deed (exhibit K) has not been satisfactorily proved. The learned counsel has, I think, shown to demonstration that this finding cannot be supported. Not only does exhibit Q prove that a document, identical in terms with exhibit K, must have been filed in 1859 in the proceedings before the Tahsildar, which ended in the decision (exhibit P), but exhibits G and R, dated the day after the execution of exhibit K, also support the document. The genuineness of exhibit G is not impugned, and it shows that the original permanent *ijara* was granted in 1848 for Rs. 650 to Jeyaram Lala and Dowlatram Lala by the deceased Vasudeva Lala and Hari Lala, the Zemindars of the mittah. Exhibit S is a copy of G, which copy was also filed in 1859.

Exhibit H is a *takid* addressed by Dowlatram to the karnam Alagiri Ayyar in fasli 1268, and exhibit J four days later shows

(1) 1.L.R., 12 Cal., 117.

(2) Second Appeal No. 607 of 1874 unreported.

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that Jeyaram Lala resigned his share in the lease in favour of Dowlatram and informed the village officers accordingly. Exhibit O shows clearly that exhibit K must have been produced in 1859.

Dowlatram Lala died in 1867. After his death, we find suits were brought against his brothers (exhibits A and B), alleging a fresh agreement in April 1868 for a permanent lease at a permanent beriz of Rs. 590-15-7 (being an increase of 12 annas and 6 pies on the rate fixed in exhibit K). Exhibit VIII is the answer to the plaint B, and exhibit VI, the judgment, and exhibit CC, the appeal judgment. The permanency of the lease was not disputed.

Exhibits C, D, BB, XI and XII show subsequent litigation between the same parties and their representatives. These documents go to show a fresh permanent lease in 1867, the year of Dowlatram Lala's death.

The plaintiffs, in contending for the hereditary character of the lease, rely on the words "Kayam Saswata" in exhibit K. I agree with Mr. Justice Shephard that it is not easy to distinguish these words from *istemrari mokurari*, which the Privy Council has held do not *per se* convey an hereditary estate unless used in conjunction with words denoting from "generation to generation" (*naslan bad naslan*) or "with sons" (*ba farzandan*) *Tulshi Pershad Singh v. Ramnarain Singh*(1). In this case, however, the conduct of the parties, not less than the language of the instrument, raises a presumption that the lease was not intended to be hereditary. There was one *ijara* to Jeyaram Lala and Dowlatram Lala in 1848 at a beriz of Rs. 650, a second in 1856 to Dowlatram Lala alone for Rs. 590-3-1 (exhibit K), and a third in 1867 for Rs. 590-15-7 to Rajaram Lala and Rama Lala. On these grounds, I am of opinion that the appeal must fail and should be dismissed. As a false defence was set up, I would direct that each party bear his own costs in the appeal.

(1) I.L.R., 12 Cal., 117.