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valuation up to the appeable amount under the provisions of section 110 of the Code of Civil Procedure. The consequence is that in our opinion the case is not one which complies with the provisions of section 110 and the applications in these five suits and the application for consolidation must be dismissed. The respondents are entitled to their costs. There will be one set of costs.

*Application dismissed.*

## APPELLATE CIVIL.

*Before Dawson Miller, C.J. and Foster, J.*

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*Dec., 8, 9; Jan., 21.*

SECRETARY OF STATE FOR INDIA IN COUNCIL

*v.*

NISTARINI ANNIE MITTER*.

*Registration Act,* 1908 (*Act XVI of* 1908), *section* 90(*1*)—*lease of land by Government, whether exempted from registration—ejusdem generis, rule of, whether applicable to section* 90(*1*)(*d*)—*Transfer of Property Act,* 1882, (*Act IV of* 1882), *section* 107, *whether applies to leases granted by the Crown—Crown Grants Act,* 1895 (*Act XV of* 1895), *section* 2.

Section 17(*1*), Registration Act, 1908, requires the following documents to be registered :

" (*d*) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent ".

Section 90(*1*)(*d*), however, exempts from registration, inter alia,

" sanads, inam title deeds and other documents purporting to be or to evidence grants or assignments by Government of land or any interest in land ".

*Held*, that a lease of land by Government is covered by section 90(*1*)(*d*) and is exempt from registration.

*Held*, further, that the words " other documents purporting to be or to evidence grants or assignments by Government

* First Appeals nos. 60 and 61 of 1923, from a decision of Babu Phanindra Lal Sen, Subordinate Judge of Hazaribagh, dated the 25th January, 1923.

of land or any interest in land" are not words of such general import in themselves as to afford any scope for the application of the rule of ejusdem generis.

*Kallingal Moosa Kutti* v. *The Secretary of State for India in Council* (1), followed.

*Munshi Lal* v. *The notified area of Baraut* (2), dissented from.

Section 2, Crown Grants Act, 1895, provides

"Nothing in the Transfer of Property Act, 1882, contained shall apply..................to any grant or other transfer of land or of any interest therein....................by or on behalf of Her Majesty.........................or by or on behalf of the Secretary of State for India in Council to, or in favour of any person whomsoever;..................".

*Held*, that leases granted by the Crown are outside the operation of section 107, Transfer of Property Act, 1882, which provides that a lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent can be made only by a registered instrument.

Appeal by the plaintiff.

This was an appeal by the Secretary of State for India in Council against a decree of the Additional Subordinate Judge of Hazaribagh dismissing his suit for ejectment of the defendant.

The plaintiff's case, appearing in the plaint and the particulars delivered thereunder, was that many years ago, before the year 1888, leases for building purposes of certain lands constituting a Government khas mahal were granted to various tenants, including the predecessors in interest of the defendant, at a rent liable to revision periodically at intervals of about 15 years when fresh settlements were made by Government. Before 1888 the lease granted to the defendant's predecessor was a verbal lease, but in 1888 a fresh settlement took place, the rent being revised and a written lease being granted. Again in 1903 a further settlement was made the rent being enhanced and a new written lease being granted. At the last settlement, the date of which was not stated in the

(1) (1920) I. L. R. 43 Mad. 65. (2) (1914) I. L. R. 36 All. 176.

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plaint, but which was about the year 1918, the Government again purported to make a fresh settlement and called upon the defendant to pay an enhanced rent. The enhancement proposed was a large one, being three times the amount of the previous rent. The property had undoubtedly increased in value as houses had been built thereon. As already stated there were various leases to different tenants of different plots of lands in the khas mahal estate, and the resettlements with the tenants appeared to have taken place at the same time. The tenants protested against so large an enhancement at one time with the result that the matter was submitted by the Board of Revenue to the Lieutenant-Governor of Bihar and Orissa who decided that an enhancement of double the previous rent with a lease for 30 years with certain rights of renewal should be offered. The majority of the tenants of the estate accepted these terms but some of them, including the defendant's father who was then in possession of the property comprised in the present suit, upon being asked to take a new lease and execute a kabuliyat on the revised terms, refused to do so. In September 1920 a notice to execute a kabuliyat on the terms proposed, or to give up possession, was served upon the defendant upon whom the interest previously held by her father had then devolved. The notice expired on the 31st March, 1921, the defendant having failed to execute a new kabuliyat or to give up possession. The present suit was accordingly instituted shortly afterwards against the defendant claiming a decree for ejectment.

These facts were set out at length in the plaint and in the further particulars delivered, and in paragraph 13 of the plaint it was stated

"That the defendant had no right to continue in occupation of the holding without taking out a lease on terms and rents proposed by the Government, and in consideration of rents in other health resorts the rents claimed are very low and moderate."

It appeared therefore, that the defendant was claiming to remain in possession under the old lease

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although according to the appellant, the term had expired, and was not willing to execute a fresh kabuliyat upon terms which the Government considered reasonable. As an alternative to the prayer for ejectment it was prayed

"That, if in the opinion of the court the plaintiff be not found entitled to ejectment, the rents of the holding held by the defendant be now assessed at Rs. 135-14-0 or such other amount as the court may think fit and that the defendant be directed to pay rent at that rate with effect from the current year, or such other time as the court may think fit, and it be declared that the rates will remain in force for the next 30 years, or such other period as the court may consider fair and proper."

As this was not a suit relating to agricultural land governed by the Bengal Tenancy Act the court had no power to impose upon the parties a bargain not of their own making. The High Court, therefore, was not concerned in this appeal with that part of the claim and it need not be further referred to.

The leases alleged to have been granted to the defendant's predecessor in 1888 and 1903 were not produced by her. Her contention was that the holding in question had been in the possession of herself and her predecessors in title for over half a century at the same rent except for an enhancement of 2 annas in the rupee which was submitted to to avoid the trouble and expense of litigation and which enhancement could not be used as a ground for a periodical enhancement of rent. She further raised a plea of estoppel stating that the holdings had been built upon and improved from time to time at great cost in the bona fide belief of a perpetual tenure at a fixed rent to the knowledge of the plaintiff. The appellant was also unable to produce the leases of 1888 and 1903 but claimed to prove the contents thereof by secondary evidence by the production of correspondence entered into with the defendant's father. In the particulars delivered by the appellant under Order VI, rule 5, of the Code of Civil Procedure, he admitted that the defendant's tenancy was in its origin one for building purposes but alleged that it was terminable, the period

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of each settlement being apparently until the next revision of the settlement which ordinarily took place at intervals of about 15 years. It was further admitted on his behalf at or before the hearing that the written leases referred to were not registered. In view of these admissions, and especially the fact that the leases were not registered, a preliminary issue arose, namely, whether in the absence of registration the plaintiff was entitled to rely upon the terms of the lease and obtain a decree for ejectment.

The trial court held that leases of this nature required to be registered under section 17 of the Indian Registration Act and were not exempted from registration by section 90, and, accordingly, could not be received in evidence as provided by section 49 of the Act. He therefore dismissed the appellant's suit. From that decision the present appeal was preferred.

*Sir Ali Imam* (with him *Sultan Ahmed* and *L. N. Sinha*), for the appellant.

*B. Chakravarty* of the Calcutta Bar (with him *B. C. De*), for the respondent.

*21st Jan. 1927.*

DAWSON MILLER, C. J. (after stating the facts set out above proceeded as follows):—

The determination of the question raised in this appeal depends primarily upon the construction of section 90 of the Indian Registration Act coupled with sections 17 and 49. The Act in force when the last lease of 1903 is alleged to have been granted was the Indian Registration Act of 1877, but the sections in question do not differ in any material particular from the corresponding sections of the present Act of 1908. Under section 17(*1*) of the Act four classes of documents are required to be registered, namely,

(*a*) instruments of gift of immovable property;

(*b*) other non-testamentary instruments 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 immovable property;

(*c*) non-testamentary 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

(*d*) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent.

We are directly concerned only with the fourth class. By sub-section (*2*) it is provided that

"Nothing in clauses (*b*) and (*c*) of sub-section (1) applies to"—

various classes of documents including

"(*vii*) any grant of immovable property by Government."

This would not affect leases which come under clause (*d*) of sub-section (*1*). For their exemption, if any, we must look to section 90.

By section 49 it is provided that no document required by section 17 to be registered shall

(*a*) affect any immovable property comprised therein or..............

(*c*) be received as evidence of any transaction affecting such property.................unless it has been registered.

Section 90(*1*), however, exempts from registration, inter alia, by clause (*d*),

"sanads, inam title deeds and other documents purporting to be or to evidence grants or assignments by Government of land or of any interest in land."

The main question in this appeal is whether the lease relied on comes within the above exemption, for, if not, then neither the document itself nor secondary evidence of its contents can be admitted in evidence. The trial court held that the lease was not exempted from registration under section 90 upon two grounds, (*1*) that the interest of the Secretary of State in the property being a mukarrari interest acquired from the Ramgarh Raj, he could not in law claim a higher status in respect of the villages than a private person could have claimed under a grant of the same nature and, (*2*) that the exempting clause relied on in section 90 must be construed by reference to the

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ejusdem generis rule as laid down in *Munshi Lal* v. *Notified Area of Baraut* (1), and that the lease in question did not come within the letter or spirit of the exemption when construed on the principle enunciated in that case. It would also appear from the judgment of the learned additional Subordinate Judge, although it is not clear that he based his decision upon it, that he considered that the ground alleged in the plaint as giving rise to the right of ejectment was not the expiry by efflux of time of the lease, but a breach of a covenant to take a fresh lease upon terms proposed by the appellant, the refusal to do so amounting to a forfeiture entitling the appellant to enter. I shall deal with these three points in their inverse order.

As I read the amended plaint the cause of action is the expiry of the existing lease and the refusal of the defendant to quit on receiving notice to do so, although there is an admission that she may remain in if she will take a fresh lease upon the terms proposed by the appellant. Although the learned Judge's criticism of the plaint is not altogether without foundation I think that on the whole the facts alleged therein sufficiently indicate a cause of action founded on the termination of the lease and refusal to comply with the notice to suit.

In *Munshi Lal's case* (1), relied upon by the learned Judge of the trial court, it was held that the concluding words of section 90(*1*) (*d*) of the Indian Registration Act included only such documents as were ejusdem generies with sanads or inam title deeds and that a lease for a term of years, or reserving a yearly rent, although granted by Government, did not come within the exemption. In arriving at this conclusion the learned Judges of the Allahabad High Court appear to have been influenced by the fact that whereas grants of immovable property by Government

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were expressly exempted from registration by the second sub-section of section 17 this exemption was restricted to the documents enumerated in clauses (*b*) and (*c*) of the first sub-section of section 17 and did not apply to those mentioned in clause (*d*), namely, leases of immovable property. They inferred from this that had it been the intention of the legislature to exclude Government leases such intention would have found place in section 17 itself. With great respect to those learned Judges, I hardly think that the inference is a legitimate one, for the documents enumerated in clause (*a*) of the first sub-section as requiring registration, namely, instruments of gift of immovable property are also excluded from the exemption of Government grants in the second sub-section which is expressly confined to the documents mentioned in clauses (*b*) and (*c*). On turning to section 90 it is clear that gifts of immovable property would be included under the words "sanads and inam title deeds". It could not have been the intention, therefore, that the exemptions set out in section 90, so far as they relate to Government grants, should be co-extensive only with the exemptions contained in clause (*vii*) of sub-section (*2*) of section 17.

It is contended, however, that the ejusdem generis rule should be applied in construing clause (*d*) of section 90(*1*). It is not easy to formulate a genus to which sanads and inam title deeds would belong and which at the same time would exclude grants of a leasehold interest; and the attempts of the learned Counsel for the defendant to define the genus which would include the one and exclude the other have not been very successful. It was suggested that it should be restricted to cases in which the grant passed the whole interest of the grantor without reservation, that is to say without retaining the reversion or reserving a rent. But I can see no reason why the word "sanad" should not apply to a grant subject to conditions which form the consideration for its continuance such as a service tenure. Inams which, as the

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word implies, are in the nature of a gift are prevalent I believe in Bombay and Madras and are in many cases grants on condition of performing services. They are frequently enfranchised the effect of which is to convert the tenure from a service tenure into an estate subject to the payment of a quit rent. The term "inam title deeds", as I understand it, applied to the deeds evidencing the enfranchisement of the inam whereby the Crown releases its reversionary rights which would come into operation on failure to perform the services. In order to give effect to the clause and to ascertain its true intent and meaning I think it must be regarded as a whole. It would then appear that the documents which it is intended to exclude from the necessity of registration are those which purport to be or are evidence of grants or assignments by Government of any interest in land, including sanads and inam title deeds.

*Munshi Lal's* case (1), above referred to, was considered and dissented from by the Madras High Court in *Kallingal Moosa Kutti* v. *Secretary of State for India in Council* (2). In that case the Court considered that there was no ground for imputing to the legislature a restricted scope of the operation of section 90(*1*)(*d*) and further, even applying the ejusdem generis rule, they were not satisfied that a lease of land was not of the same character as a sanad. Of the two cases I think that of the Madras High Court is to be preferred. Moreover it seems to me that the words "other documents purporting to be or to evidence grants or assignments by Government of land or any interest in land" are not words of such general import in themselves as to afford any scope for the application of the rule. They afford in themselves a precise definition of the classes of documents which I think it was intended to exempt and I can see no reason for restricting their operation to a class of

(1) (1914) I. L. R. 36 All. 176. (2) (1920) I. L. R. 43 Mad. 65.

documents which has not been satisfactorily defined. In my opinion the lease or leases in question were exempt from registration and it is open to the appellant to prove the same or, if the circumstances should warrant it, to adduce secondary evidence of their contents.

As to the other ground upon which the learned additional Subordinate Judge based his decision no authority was referred to in support of it, and I confess I am unable to see why a lease of Crown lands granted by the Secretary of State, whilst acting under the powers conferred upon him by statute as the representative of the Crown, should be treated as a lease granted by a private individual and therefore subject to registration. Nor can the source from which the Crown derives its interest in the lands, in my opinion, have any bearing on the question for determination.

Section 107 of the Transfer of Property Act was also referred to by the learned Counsel for the respondent in support of his contention in favour of registration. The section provides that a lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent can be made only by a registered instrument. But the Transfer of Property Act does not apply to any grant, or other transfer of land, or any interest therein made by or on behalf of the Crown in favour of any person whomsoever. This is the language of the Crown Grants Act (Act XV of 1895) and, in my opinion, it leaves no doubt that leases granted by the Crown are outside the operation of the Transfer of Property Act. It was argued that a distinction should be made between grants by virtue of the prerogative rights of the Crown and grants made as a mercantile transaction for profit. If profit is to be the distinction, it might be answered that history is not without instances of the exercise of the royal prerogative for motives of gain, as a study of the grants of monopolies

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under the Tudor and early Stuart monarchs will shew. But apart from this, it is not, I think, permissible to construe the statute by reference to such a speculative matter as the motives actuating the grant. The language of the Crown Grants Act is clear and unambiguous and affords no scope for such a distinction.

Two other points were urged before us by the learned Counsel for the respondent. They both arise upon the pleadings. Although in the plaint, as originally drafted, it may be gathered that the appellant's cause of action was the refusal of the defendant to comply with the notice to quit or to accept a new lease, paragraph 13 of the plaint was originally so drafted that it might be taken that the failure to pay a fair rate of rent was the ground alleged for ejectment. The appellant accordingly applied and was granted leave to amend the plaint by alleging in paragraph 13 that the defendant has no right to continue in the occupation of the holding without taking out a lease on terms and rates proposed by the Government. It was argued before us that this amendment ought not to have been allowed, as it altered the cause of action originally alleged. I cannot accept this argument. The refusal to comply with the notice to quit was clearly indicated and relied on in the plaint at all times and, although there may have been some ambiguity in paragraph 13, I consider that the court was fully empowered to allow the amendment of that paragraph under the provisions of Order VI, rule 17, of the Code of Civil Procedure. The nature of the suit was in no way altered by the amendment nor was it shewn that the defendant was in any way prejudiced by it.

The other point urged was that even now since the amendment the plaint discloses no cause of action. It is sufficient to say that, in my opinion, if the facts alleged in the plaint are proved the appellant is entitled to a decree.

One other matter arises for consideration out of the decision of the trial court. Even if an unregistered lease granted by Government cannot be relied upon or tendered in evidence, then neither party could refer to it in support of their respective contentions. It is not disputed that the property in suit belongs to the Government as part of the Government khas mahal. The defendant claims to be in possession as a tenant having a permanent tenure under Government. The appellant has served her with notice to quit. In such circumstances, in the absence of any evidence by the plaintiff as to the nature of the defendant's tenancy, the onus would lie upon the defendant to shew that she had a right to remain in possession but this she has at present not done, and she would probably have some difficulty in proving her permanent right in the absence of the lease or secondary evidence of its contents. The learned Judge of the trial court ought not, therefore, in my opinion, to have dismissed the suit. The decree appealed from will be set aside with costs of the appeal and the case will be remanded to the trial court for hearing according to law, the appellant being allowed to prove the contents of the lease either by producing it or, if the facts proved permit, by secondary evidence. The costs of the trial already heard in the court below will abide the ultimate decision.

Before delivering this judgment I submitted it to the late Mr. Justice Foster for consideration and he returned it to me with a note that he concurred. He was subsequently taken ill and during his last illness I delivered the judgment stating before doing so that he agreed. As it was doubtful whether he would be in a fit condition to sign it I asked the learned Advocates appearing for the parties whether they were willing to accept the decision as that of the court even assuming that Mr. Justice Foster should not recover and be able to sign it. To this course they agreed. Mr. Justice Foster died on the 1st January, 1927, without being able to sign the judgment.