

APPELLATE CIVIL.

Before Mr. Justice LeRossignol and Mr. Justice Zafar Ali.

NANAK CHAND (DEFENDANT) *Appellant*,

versus

MUHAMMAD ZAHUR-UD-DIN (PLAINTIFF)
SARB DIAL (DEFENDANT) *Respondents*.

Civil Appeal No. 2664 of 1918.

Indian Registration Act, XVI of 1908, sections 2 (7), 17 (i)
(d)—*Agreement to lease—whether admissible in evidence if not registered.*

The point for decision was whether a document acknowledging receipt of Rs. 25 as earnest money and agreeing to lease plaintiff 2 *bighas* 14 *biswas* of land for 5 years on an annual rental of Rs. 180 was receivable in evidence, not being registered.

Held, that under section 2, clause (7) of the Registration Act "lease" includes an agreement to lease and as the document was clearly "an agreement to lease" it was inadmissible in evidence, as under section 17 (i) (d) it required registration.

In this respect an agreement to lease must be discriminated from an agreement to sell.

Second appeal from the decree of Khan Bahadur Khwaja Tasaddug Hussain, District Judge, Ludhiana, dated the 24th June 1918, varying that of E. Lewis, Esquire, Junior Subordinate Judge, 2nd Class, Ludhiana, dated the 16th April 1918, decreeing plaintiff's claim.

FAKIR CHAND, for Appellant.

UMAR BAKHSH, for Respondents.

The judgment of the Court was delivered by—

LEROSSIGNOL J.—The plaintiff came into Court on the strength of a document by which he alleged that Sarb Dial, defendant No. 1, on the 8th May 1917, acknowledged receipt of Rs. 25 as earnest money and agreed to lease plaintiff 2 *bighas* 14 *biswas* of land for five years on an annual rental of Rs. 180. He alleged that defendant No. 1, instead of executing a

formal lease in his favour, had leased the land to defendant No. 2 and had given him possession. He further alleged that defendant No. 2 had full knowledge of the agreement with plaintiff and he prayed for possession of the land and for an order to compel defendant No. 1 to execute a lease in accordance with the terms of the agreement. He asked in the alternative for damages of Rs. 1,000 against defendant No. 1.

The first Court found that both defendants had joined in a fraud on the plaintiff and decreed him possession for five years, and the District Judge on appeal confirmed the decree holding that it was unnecessary that a formal lease in plaintiff's favour should be executed.

In second appeal it is urged that the document on which the plaintiff's claim is based is not merely a receipt for earnest money but is an agreement to lease, that it is inadmissible in evidence to prove the contract as it should have been registered and that consequently no oral evidence in support of the contract is admissible. In our opinion the contention for the appellant must prevail. In his plaint the plaintiff refers to the document as embodying the agreement between himself and defendant No. 1, and it is obvious that it is more than a mere receipt. The terms of the lease, its duration, the annual rent and the date on which possession is to be given, are set forth in detail in this document, and there can be no doubt that it is an agreement to lease. Now, under section 2 (7) of the Registration Act a lease includes an agreement to lease. In this respect an agreement to lease must be discriminated from an agreement to sell, and under section 17 (1) (d) of the same Act all leases of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, must be registered. The lease in question, reserving as it does an annual rent of Rs. 180, does not belong to a class of leases which may be exempted by the Local Government under the proviso to section 17 (1) (d) of the Registration Act.

In this view the plaintiff's suit is unsupported by any evidence and must be dismissed. We accordingly

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accept the appeal and dismiss the plaintiff's suit with costs throughout.

A. N. C.

Appeal accepted.

APPELLATE CIVIL.

Before Mr. Justice LeRossignol and Mr. Justice Zafar Ali.

BOMBAY, BARODA AND CENTRAL INDIA
RAILWAY, BOMBAY (DEFENDANT) *Appellant,*

versus

MANOHAR LAL-PARWIN CHAND (PLAINTIFF)
Respondent.

Civil Appeal No. 1094 of 1921.

Indian Railways Act, IX of 1890, sections 5 (6) 77, 140—Claim for compensation against a Railway administered by a Railway Company—whether notice to the General Traffic Manager is sufficient.

Held, that in the case of a railway administered by a Company notice of a claim for compensation under section 77 of the Indian Railways Act, may be given to the Agent of the Railway Company in India, but notice to a subordinate of the Agent is not the notice contemplated by that section.

Great Indian Peninsula Railway Company v. Chandra Bai (1), Great Indian Peninsula Railway Company v. Dewasi (2), Nadiar Chand v. Wood (3), and Seshachellam Chetty v. The Nizam's Guaranteed State Railway Company (4), distinguished.

Miscellaneous appeal from the order of J. Coldstream, Esquire, District Judge, Delhi, dated the 8th March 1921, reversing the decree of Lala Dwarka Prasad, Subordinate Judge, 2nd Class, Delhi, dated the 29th November 1920, and remanding the case.

M. L. PURI, for Appellant.

SARDHA RAM, for Respondent.

(1) (1906) I. L. R. 28 All. 552.

2) (1907) I. L. R. 31 Bom. 534.

(3) (1907) I. L. R. 35 Cal. 194.

(4) (1911) I. L. R. 36 Mad. 55.