

LETTERS PATENT APPEAL.

Before Justice Sir Henry Scott-Smith and Mr. Justice
Martineau.

ATA MUHAMMAD AND OTHERS (DEFENDANTS)

Appellants,

versus

SHANKAR DAS AND OTHERS (PLAINTIFFS)

Respondents.

1925

March 3.

Letters Patent Appeal No. 45 of 1924.

*Indian Registration Act, XVI of 1908, sections 17, 49—
Lease fixing a yearly rent—unregistered—whether it can be
referred to in order to show nature of defendant's possession—
Indian Evidence Act, I of 1872, section 116—Denial of land-
lord's title by persons claiming through a tenant.*

A lease fixing a yearly rent, though it provides that the rent shall be payable half-yearly, is a lease of which the registration is compulsory under section 17 of the Indian Registration Act.

Held, however, that although the unregistered lease relied on in this case was inadmissible under section 49 of the Act it could be referred to in order to show the nature of the defendant No. 1's possession. And as this showed that his possession was that of a tenant, the other defendants, who claimed to be vendees from him, could not deny the title of the landlord, the plaintiff, having regard to section 116 of the Indian Evidence Act.

Varada Pillai v. Jeevarathnammal (1), and Qadar Bakhsh v. Mangha Mal (2), followed.

Appeal under clause 10 of the Letters Patent from the judgment of Mr. Justice LeRoussignol, dated 23rd January 1924.

NIAZ MUHAMMAD, for Appellants.

FAKIR CHAND, for Respondents.

1925

ATA MUHAM-
MAD
v.
SHANKAR DAS.

The judgment of the Court was delivered by—

SIR HENRY SCOTT-SMITH J.—The plaintiff-respondent sued the four^r defendants for possession of a house, alleging that he had leased it to Hamukhan, defendant No. 1, as his tenant, in 1901 and that he had subsequently executed other leases. He sued for possession on the ground that defendant No. 1 failed to pay rent for three years and refused to vacate the house. Defendants Nos. 2 to 4 were made parties on the allegation that they were in possession claiming as vendees of defendant No. 1.

Defendant No. 1 pleaded that he had always been in possession of the house, and that he had mortgaged only one room to the plaintiff, and that subsequently the mortgage had almost completely been redeemed. Several leases were produced, and there was a question whether they were admissible in evidence or not. The learned District Judge held that they were admissible in evidence, and that plaintiff had proved defendant No. 1 as his tenant. The claim was accordingly decreed.

Defendants Nos. 2 to 4 filed a second appeal in this Court, which was heard by a Judge in Chambers. The latter held that there was one lease at all events of 1909 which did not require registration, and was therefore admissible in evidence. As this lease was admissible in evidence, he was of opinion that the finding of the Courts below, based upon that lease, that the relation of landlord and tenant did exist between the plaintiff and Hamukhan, defendant No. 1, was a finding of fact which could not be impeached in second appeal. He, therefore, upheld the order of the lower Courts.

Defendants Nos. 2 to 4 have now filed this appeal under clause X of the Letters Patent.

Lala Fakir Chand raised a preliminary objection that there was no legally filed appeal before the Judge in Chambers as the memorandum of appeal was not accompanied by a copy of the judgment of the first Court, and that therefore there could be no appeal under clause X of the Letters Patent. The record shows that there was previously an appeal to this Court from an order of the District Judge refusing to set aside a dismissal in default, and in that appeal a copy of the judgment of the trial Court was filed. Under the memorandum of appeal which has been decided by the Judge in Chambers there is a note to the effect that the copy of the judgment of the trial Court is filed with that of the previous appeal. No objection was taken as to the absence of the copy of this judgment before the Judge in Chambers, and therefore it cannot be taken now. All that we have to see is whether the judgment now appealed from is right or not.

1925

ATA MUHAM-
MAD
v.
SHANKAR DAS.

The Judge in Chambers stated in his judgment as follows:—

“The lease is for one year and not for more than one year. It fixes the rent at Rs. 1-12-0 *per annum*, but it provides that the rent shall be payable in six-monthly instalments, and it further provides for ejection if the rent is not paid at the end of the year. In my opinion, this is not a lease reserving an annual rent. If a lease is for an indefinite time and fixes a rent payable *per annum*, in such a case the lease would be one falling within the definition of lease reserving a yearly rent.”

Now the lease does fix Rs. 1-8-0 and not Rs. 1-12-0 as the annual rent, though it goes on to say that the rent shall be payable half-yearly. This, however, does

1925

ATA MUHAM-
MAD
v.
SHANKAR DAS.

not alter the fact that the lease does reserve a yearly rent. Moreover, it does not appear that it was only for one year. It was for an indefinite time so long as the rent was paid at the end of each year. As the lease fixes a yearly rent, we consider that its registration was obligatory under section 17 of the Registration Act.

It has, however, been contended by counsel for the respondent that the question of registration or non-registration loses force by reason of the decision of their Lordships of the Privy Council in the case of *Varada Pillai v. Jeevarathnammal* (1). In that case certain documents were put forward as proving a gift in favour of one *Mussammat Duraisani*. Their Lordships held that, although the petitions and order produced in evidence did not amount to a gift of the land, they led to the inference that the subsequent receipt of the rents by *Mussammat Duraisani* was a receipt in the character of donee and owner of the land and therefore in her own right and not as trustee or manager for her mother and aunt. They also said that, although the petitions of 1895 and the change of names made in the register in consequence of those petitions were not admissible to prove a gift, they might nevertheless be referred to as explaining the nature and character of the possession thenceforth held by *Duraisani*.

Having regard to this decision it is urged by *Lala Fakir Chand* that the previous decisions laying down that an unregistered deed is inadmissible to prove the nature of the possession are no longer binding. In the case of *Qadar Bakhsh v. Mangha Mal* (2) it was held that the sale deed, though inadmissible for want of registration to prove title, might be

(1) (1919) I. L. R. 43 Mad. 244 (P. C.) (2) (1923) I. L. R. 4 Lah. 249.

referred to in order to ascertain the nature of the possession sought to be disturbed. This and the Privy Council decision are sought to be distinguished on the ground that in those cases the person in possession of the property was allowed to refer to the unregistered deeds in order to show that his possession was adverse and not permissive. It is contended that they do not apply to the case of a plaintiff who seeks to prove that the person in possession entered into possession by his permission and not adversely. We do not think that any such distinction can be drawn. In our opinion the lease of 1909, though unregistered and though inadmissible under section 49 of the Indian Registration Act, can yet be referred to in order to show the nature of Hamukhan's possession. It shows that Hamukhan's possession was that of a tenant under the plaintiff. This being so neither he nor the appellants who claimed through him can be permitted to deny the title of the landlord, *i.e.*, of the plaintiff, having regard to section 116 of the Indian Evidence Act.

1925

ATA MUHAM-
MAD
v.
SHANKAR DAS.

It was also urged on behalf of the appellant that the leases were not shown to refer to the whole house in dispute, and that they might very well refer only to one room as stated by Hamukhan. The word used in the leases, however, is *makan* and not *kothri*, and we therefore consider that there is no force in this contention.

The appeal fails, and dismissed with costs.

A. N. C.

Appeal dismissed.