

APPELLATE CIVIL.

Before Mr. Justice Zafar Ali and Mr. Justice Addison.

ATTAR CHAND KAPUR AND SONS (PLAINTIFFS)

Appellants

versus

CHANDU LAI AND OTHERS (DEFENDANTS)

Respondents.

1928

Nov. 13.

Civil Appeal No. 1014 of 1928.

Indian Registration Act, XVI of 1908, section 17 (1) (d)—Compromise recorded by Court—varying the rent payable under a registered lease—whether admissible in evidence without registration—Section 17 (2) (vi)—whether applicable to leases.

The plaintiff sued for arrears of rent on foot of a compromise made in a previous suit fixing a higher rate of rent than that given in the registered deed of lease. The compromise was verbal but the Court took down the statements of the parties and then recorded an order embodying the lessee's promise but not that of the lessor and a decree followed in accordance with the order.

Held, that as the compromise which had not been incorporated either in the decree or in the order, as a whole, varied the terms of the registered lease with regard to the rate of rent, this variation amounted to a fresh lease which required registration under section 17 (1) (d) of the Indian Registration Act.

And, being not registered, it was not only not admissible in evidence but it did not constitute a valid and operating contract between the parties.

Bagha Mowar v. Ram Lakhon Misser (1), and *Lalit Mohan Ghosh v. Gopali Chuck Coal Co., Ltd.* (2), followed.

Charn Chandra Mitra v. Sambhu Nath (3), distinguished.

Held also, that clause (vi) of sub-section (2) of section 17 is not applicable to leases.

(1) (1917) 41 I. C. 804. (2) (1912) I. L. R. 39 Cal. 284 (F. B.).

(3) (1918) 46 I. C. 358 (F. B.).

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ATTAR CHAND
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v.
CHANDU LAL.

First appeal from the decree of Bawa Jhanda Singh, Subordinate Judge, 1st class, Lahore, dated the 8th February 1927, granting the plaintiffs a decree for Rs. 2,048, but dismissing their suit as regards ejectment of defendant No. 1.

DAULAT RAM and BISHAN NATH, for Appellants.

SHAMAIR CHAND and QABUL CHAND, for Respondents.

JUDGMENT.

ZAFAR ALI J.

ZAFAR ALI J.—This first appeal must fail for the simple reason that the compromise in the previous suit on which the plaintiffs-appellants base their claim for rent at a higher rate than that given in the registered deed of lease is inadmissible in evidence. That previous suit was brought by the lessor (whose representatives the present plaintiffs are) to recover arrears of rent at the rate stated in the lease, that is, Rs. 512 *per mensem*. The suit ended in a compromise according to which the lessee agreed to pay rent @ Rs. 600 *per mensem* from the 1st of November 1925 and the plaintiff-lessor promised that he would let the lessee use a certain door. The compromise was verbal, but the Court took down the statements of the parties and then recorded an order embodying the lessee's promise and not that of the lessor. A decree followed in accordance with the order and it is clear that all the terms of the compromise were not incorporated either in the order or in the decree.

This is one reason for holding that the compromise as a whole had not been recorded and was therefore not enforceable. Be that as it may, the next point is that the compromise varied the terms of the registered lease with regard to the rate of rent, that this variation amounted to a fresh lease which

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required registration even if it was duly recorded, because a lease is compulsorily registrable under clause (d) of sub-section (1) of section 17 of the Registration Act. Clause (6) of sub-section (2) of section 17 is not applicable to leases. In *Bagha Mowar v. Ram Lakhan Misser* (1), where a similar compromise was relied upon, a Division Bench of the Calcutta High Court held that a document which embodies a contract for variation of the rent payable in respect of a lease is in essence a lease and is compulsorily registrable and if it is not registered in accordance with law it is not only not admissible in evidence but it does not constitute a valid and operating contract between the parties. This decision was based upon *Lalit Mohan Ghosh v. Gopali Chuck Coal Co., Ltd.* (2). The learned counsel for the appellants relies upon *Charn Chandra Mitra v. Sambhu Nath* (3), which is, however, distinguishable.

No other point was urged. The appeal fails and is dismissed with costs.

ADDISON J.—I agree.

A. N. C.

ADDISON J.

Appeal dismissed.

(1) (1917) 41 I. C. 804. (2) (1912) I. L. R. 39 Cal. 284 (F. B.).

(3) (1918) 46 I. C. 358 (F. B.).