

THE
INDIAN LAW REPORTS

BOMBAY SERIES

APPELLATE CIVIL.

Before Mr. Justice Patkar and Mr. Justice Baker.

IN RE MANEKLAL MANILAL.*

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July 12

Indian Stamp Act (II of 1899), section 2 (16) (b) and Article 35 (a), (b) and (c)—Lease—Agreement to lease—Simple agreement—Stamp on the agreement—Indian Registration Act (XVI of 1908), section 2 (7).

On January 15, 1920, an agreement bearing a stamp of one anna was passed in favour of one M by N. The agreement recited that M was to secure a registered lease in respect of a plot of land from its owner and after the lease was secured, N was to advance a sum of rupees two lakhs for building shops on the land, and after the construction of the shops N agreed to take the shops on rent for a period of fifteen years; that the rent was to commence after the shops became ready and were delivered into the possession of N, and that the rent was fixed at Rs. 455 per year for each shop. On January 22, 1920, M secured a registered lease from the owner. A question having been raised whether under Article 35, Schedule I of the Stamp Act, 1899, the document constituted a lease or an agreement to lease :—

Held, that the document was a simple agreement stating that on the fulfilment of certain terms a lease would be granted and was not an agreement to lease which effected an actual demise or operated as a lease *in presenti* :

Hemanta Kumari Debi v. Midnapur Zamindari Company⁽¹⁾; *Secretary of State v. Sir Mahomed Yusuf*⁽²⁾; *Panchanan Bose v. Chandī Charan Misra*⁽³⁾; and *Swaminatha Mudaliar v. Ramaswami Mudaliar*,⁽⁴⁾ referred to.

CIVIL reference made by the Collector of Ahmedabad under section 61 of the Indian Stamp Act.

Two documents (Exhibits 416, 417) were produced in Civil Suit No. 996 of 1921 in the Court of the First Class Subordinate Judge at Ahmedabad. The document, Exhibit 416, was in terms as follows :—

“ We four persons (viz.) Sha Motilal Govindlal and Sha Chunilal Malukchand and Patel Keshavlal Girdharlal and Patel Mangaldas Tulseydas residing at Ahmedabad together make the following agreement. To wit :—As to 4,260

*Civil Reference No. 2 of 1926.

⁽¹⁾ (1919) L. R. 46 I. A. 240.

⁽²⁾ (1910) 37 Cal. 808.

⁽³⁾ (1919) 21 Bom. L. R. 1130.

⁽⁴⁾ (1920) 44 Mad. 399.

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square yards of lands taken on rent by Parikh Maneklal Ranchhoddas from Bai Dhanlaxmi, daughter of Bawa Jamnadas Balakdas, we (aforesaid) four persons together have to come to an agreement with regard to our keeping in the name of Sha Motilal Govindlal out of us, 68 shops on the said land in accordance with the plan made by him and vacant land appertaining thereto and it is agreed to advance such monies as may be required for the same at interest at the rate of six per cent. to Sha Motilal Govindlal out of us. And the shares in respect of the profit and loss thereof have been fixed as mentioned below :— * * *

We are to receive profits and make good losses in accordance with the same. And whatever works we do in respect of this partnership, we are to do the same with the consent of all the four of us and the shares of each one (of us) are to be taken as mentioned above. We will make a "Pacca" (fair) document in respect of the same, after the fair document is made in respect of the said land and we will settle the terms thereof amicably in consultation with one another. . . . Date 14th of January 1920 (Here follow the signatures of four persons).

To

Sha Motilal Govindlal.

(This is) passed in writing by Patel Keshavlal Girdharlal and Patel Mangaldas Tulseydas. To wit :—In the partnership as set out in writing at the back (of this paper) each of us had a share of three annas. In return for the same, Rs. 1,700 seventeen hundred (rupees) have been agreed (to be paid) to each (of us) per year in a lump sum and a writing has been caused to be passed by you and we both persons have separated from this partnership. Date the 22-1-1920 (Here follow the signatures of two persons)."

The *second* document, Ex. 417, ran as follows :—

"To Parikh Maneklal Manilal Ranchhoddas (This is) passed in writing by Sha Motilal Govindlal.

To wit :—You have (taken on rent) from Bai Dhanlaxmi, daughter of Jamnadas Balakdas, lands admeasuring 4,260 square yards of land, situate along with the public road leading to Sugar Market without the Panch Kuva Gate of Ahmedabad. I have bound myself to take on rent all the shops on the said land (constructed) according to the first plan from you for a period of fifteen years. Rs. 11,001 (in words) eleven thousand and one rupees have been paid in cash to you in respect of earnest monies in connection with the same to-day and the remaining (sum of) Rs. 13,999 (in words) thirteen thousand nine hundred and ninety-nine rupees will be paid to you in three or four days from to-day and the sum of Rs. 25,000 (in words) twenty-five thousand will be fully paid up to you by me.

On the aforesaid land that is there at present you are to construct shops and for the purpose of incurring costs for building the same, I am fully to pay to you one lac and seventy-five thousand rupees or such smaller amount than the same as will be required (for the purpose) in accordance with the details given below :—

1. When you commence the (construction of) building I am to go on paying at the rate of Rs. 20,000 twenty thousand rupees per month from month to month.

2. As regards aforesaid monies which are paid by me, you are to give credit to me in full in respect of the same without (paying) interest, at your as well as my convenience within the aforesaid period by deducting the same out of rents.

3. Your rent shall accrue due after the shops become ready and after you deliver possession thereof to me and I am to continue to pay the same every three months thereafter.

4. As regards the rents in respect of the aforesaid shops, I am to pay to you rent at the rate of Rs. 455 in words four hundred and fifty-five rupees per twelve months for each shop.

I bind myself with you according to the above agreement and after your lease is registered, I shall execute a fair document in respect of the same in your favour and shall get one executed (by you). * * * Date the 15th January 1920."

On January 22, 1920, Dhanlakshmi executed a registered lease of the land to Maneklal.

The Subordinate Judge impounded the two documents and recovered Re. 0-8-0 plus Rs. 5 as stamp duty and penalty, for each, treating them as agreements.

The Collector of Ahmedabad made a reference to the High Court under section 61 of the Indian Stamp Act for revision of the decision of the Civil Court on the following grounds:—

"*Deed Exhibit 416.*—In my opinion this is an agreement as to its first part, dated January 14, 1920, and a release by two persons of their several interests, as to its second part, dated January 22, 1920, and therefore requires stamp of Re. 0-8-0 on the first part, and of Rs. 5-0-0 plus Rs. 5-0-0 on the second part, Rs. 10-8-0 in all plus penalty of Rs. 105-0-0

Deed Exhibit 417.—In my opinion this is a 'lease' as defined in section 2 (16) (b) of the Stamp Act.

The definition of 'lease' in this Act is much wider than the definition in the Transfer of Property Act. The learned Sub-Judge holds that lease must be executed by the lessor. This is not so. Section 2 (16) (b) clearly shows that an undertaking in writing to occupy or pay rent for immovable property is a lease.

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This deed is therefore in my opinion liable to stamp duty on Rs. 2,00,000 under Article 35 (b), Rs. 2 lakhs being treated as *money advanced*.

Stamp duty of Rs. 2,000 *plus* penalty of Rs. 20,000 is therefore recoverable."

The reference was heard.

H. V. Divatia, for plaintiff No. 2

G. N. Thakor, with *R. J. Thakor*, for the defendants.

PATKAR, J. :—This is a reference made by the Collector of Ahmedabad invoking our revisional powers under section 61 of the Indian Stamp Act with reference to the decision of the Joint First Class Subordinate Judge, Ahmedabad, before whom two documents, Exhibits 416 and 417, were produced. The learned Subordinate Judge was of opinion with regard to Exhibit 416 that it was an agreement, and required a stamp of eight annas *plus* Rs. 5 as penalty. The Collector of Ahmedabad is of opinion that the document is an agreement as to the first part and a release as to the second part, and therefore required a stamp of 8 annas with regard to the first part and Rs. 5 *plus* Rs. 5 on the second part, Rs. 10-8-0 in all *plus* penalty of Rs. 105. This position is not contested on behalf of the defendants. We, therefore, accept the view of the Collector, and hold that the document, Exhibit 416, is in part an agreement, and in part a release, and requires a stamp of 8 annas for the first part and Rs. 5 on the second part.

With regard to the second document, Exhibit 417, the Joint First Class Subordinate Judge was of opinion that it was an agreement. The Collector of Ahmedabad is of opinion that an agreement to lease is a lease as defined in clause (b) of section 2 (16) of the Indian Stamp Act, that the amount of Rs. 2 lakhs constituted a premium for the lease, and the duty leviable was Rs. 2,000 under Article 35 (c) of

Schedule I of the Indian Stamp Act. The document, Exhibit 417, was passed in favour of Maneklal by Motilal Govindlal with reference to 4,260 square yards which belonged to one Bai Dhanlaxmi. The document was passed on the basis that Maneklal would secure a registered lease from Bai Dhanlaxmi, and after the lease was secured, Motilal was to advance a sum of about Rs. 2 lakhs for building shops on the land, and after the construction of the shops Motilal agreed to take the shops on rent for a period of 15 years. The rent was to commence after the shops became ready, and were delivered into the possession of Motilal. Out of the amount of 2 lakhs, Rs. 11,001 were paid in cash on the day of the execution of the document, and the balance out of Rs. 25,000 was to be paid within three or four days. The remaining amount of Rs. 1,75,000 was to be paid at the rate of Rs. 20,000 per month when the building would be under construction. The amount of Rs. 2 lakhs was to be recouped by Motilal by taking the same out of the rents. The document was passed on January 15, 1920. A registered lease was passed in favour of Maneklal by Dhanlaxmi on January 22, 1920, a week after this agreement. It is urged by the learned Government Pleader that the document, Exhibit 417, is an agreement of lease, and falls within the definition of "lease" under section 2 (16) (b) of the Indian Stamp Act as a kabuliyat or other undertaking in writing to occupy or deliver rent for immoveable property, and reliance is placed on the case in *Reference under Stamp Act*, s. 46,⁽¹⁾ in support of the contention that an agreement of lease requires a stamp even though it was contemplated by the parties that a regular deed was to be effected afterwards. The proviso to Article 35 of the Indian Stamp Act lays down that "in any case

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⁽¹⁾ (1894) 17 Mad. 280.

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when an agreement to lease is stamped with the *ad valorem* stamp required for a lease, and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed one rupee." It is therefore contended that every agreement to lease must be stamped with an *ad valorem* stamp, and when a subsequent lease contemplated by the parties is actually effected, a stamp of one rupee would suffice. The question, therefore, in this reference is whether the document, Exhibit 417, is an agreement of lease within the meaning of section 2 (16) of the Indian Stamp Act. "Lease" is also defined in the Indian Registration Act, section 2 (7), as including a "counterpart, kabuliyat, an undertaking to cultivate or occupy, and an agreement to lease". Both under the Indian Stamp Act and the Indian Registration Act an agreement to lease is included in the word "lease." Though the Indian Stamp Act and the Indian Registration Act are not strictly *in pari materia*, it has been held in *Chandrashankar v. Bai Magan*,⁽¹⁾ that the two Acts may be read together, and that the definition in the Indian Stamp Act with regard to a composition deed might be accepted in considering the question under the Indian Registration Act. According to the decision of the Privy Council in *Hemanta Kumari Debi v. Midnapur Zamindari Company*,⁽²⁾ an agreement to lease must be a present demise. It must be a document which effects an actual demise or operates as a lease *in presenti*, and not an agreement that in certain contingencies a lease will be granted. So far as the Indian Registration Act is concerned, there is consensus of opinion in the different High Courts as reflected in the decisions in *Secretary of State v. Sir Mahomed Yusuf*,⁽³⁾ *Panchanan Bose v. Chandi Charan Misra*,⁽⁴⁾ and

⁽¹⁾ (1914) 38 Bom. 576, pp. 590, 591.

⁽²⁾ (1919) L. R. 4 C. I. A. 240.

⁽³⁾ (1919) 21 Bom. L. R. 1130.

⁽⁴⁾ (1910) 37 Cal. 808.

Swaminatha Mudaliar v. Ramaswami Mudaliar,⁽¹⁾ that an agreement to lease must be an actual demise. If this view accepted with regard to the Indian Registration Act can be applied in considering the question under the Indian Stamp Act, it must follow that an agreement to lease must amount to an actual demise and not an agreement that in certain contingencies a lease will be granted. In the present document there is no actual demise, but there is an agreement to lease the land under certain contingencies which may or may not happen. The first contingency was that Maneklal should secure a registered lease from Bai Dhanlaxmi with regard to 4,260 square yards. The second contingency was that Motilal should advance from time to time amounts to the extent of Rs. 2 lakhs to Maneklal. The third contingency, which though not contemplated in the document, must in the nature of things be inferred, was that the Municipality should give permission to construct the market which was proposed to be erected on the 4,260 square yards. If all these contingencies happened, then Motilal was to pay Rs. 455 per shop as rent for the shops that would be erected on the land, and the rent was to commence after the shops became ready and were delivered into the possession of Motilal. The number of shops to be built was not fixed under the agreement nor was the time fixed within which the shops were to be erected on the land. The document, Exhibit 417, is an agreement by Motilal to advance Rs. 2 lakhs in order to enable Maneklal, after securing a lease of the plot from Bai Dhanlaxmi, to build shops on the land, and there is a subsidiary agreement that if the shops were built and possession of the shops was delivered to Motilal, he was to pay Rs. 455 per shop per year as rent. The document is, therefore, a simple agreement and not an agreement to lease.

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Assuming that the document is an agreement to lease, the question would next arise whether the lease which includes agreement to lease falls under Article 35 (c) of the Indian Stamp Act "where the lease is granted for a fine or premium or for money advanced in addition to rent reserved." It is contended on behalf of the Collector that the Rs. 2 lakhs mentioned in the agreement is either a premium or money advanced in addition to rent reserved. We are of opinion that the amount of Rs. 2 lakhs was only a loan which was agreed to be paid by Motilal to Maneklal, and did not form part of the consideration of the lease. The amount was to be repaid out of the rents, and Motilal was to the extent of the advances a creditor of Maneklal, and was entitled to be recouped out of the rents which would become payable after the construction of the shops. The amount of Rs. 2 lakhs does not, in my opinion, constitute either a fine or premium or money advanced in addition to the rent. Article 35 (b) also does not apply because rent is mentioned as being payable. The question remains whether it is a lease which falls under clause (a) of Article 35 "where by such lease the rent is fixed and no premium is paid or delivered" and where the lease purports to be for a term in excess of three years. It does not appear that any rent is fixed under this agreement. What is fixed is a scale of rent per shop. The number of shops is not mentioned in the agreement, and the rent for the year for the premises to be let is not fixed, and though the rent is said to commence from the time the possession is handed over to Motilal, there is no certain period from which the rent is to run. We think that for the purpose of effecting an agreement of lease it is necessary that the premises to be let should be in existence. This view is supported by Woodfall on Landlord and Tenant at page 158, and Halsbury's Laws of England, Volume XVIII, page 369. At the

time of the agreement the lessor had no interest in the property to be let. The premises to be let were not in existence. In *Reference Under Stamp Act, s. 46*,⁽¹⁾ the lessor had interest in the property agreed to be leased and there was a present demise of existing property. In our opinion the agreement, Exhibit 417, is an agreement to advance Rs. 2 lakhs for building shops, and in the eventuality of Maneklal getting a registered lease from Bai Dhanlaxmi and building shops out of the money advanced by Motilal, there was a further agreement that Motilal was to take the shops in lease for 15 years after they became ready and were delivered into the possession of Motilal. We think that this document does not amount to an agreement to lease, but falls under a simple agreement, and must be stamped with a stamp of 8 annas.

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We, therefore, under section 61 (2) of the Indian Stamp Act record a declaration that with regard to Exhibit 416 the stamp duty payable was Rs. 10/8 plus a penalty of Rs. 105, and with regard to Exhibit 417 the stamp duty payable was 8 annas and the penalty Rs. 5. We make no order as to costs.

BAKER, J. :—I agree. The document in question, Exhibit 417, is passed by Motilal to Maneklal, and after stating that Maneklal has taken on rent from Bai Dhanlaxmi the property in question, the executant Motilal binds himself to take on rent all the shops to be constructed on the said land according to the first plan for a period of 15 years. After reciting the payment of Rs. 25,000 as earnest money, he undertakes to advance Rs. 1,75,000, that is, in all Rs. 2 lakhs for the construction of buildings on this land. Credit for this advance is to be given to him by Maneklal out of the rents. The rents are fixed at Rs. 455 per year for each shop. After the registration of Maneklal's lease Motilal is to execute

⁽¹⁾ (1894) 17 Mad. 280.

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a fair document in respect of the same as agreed. The first question is whether under Article 35 of Schedule I to the Indian Stamp Act this document constitutes a lease or agreement to lease. The Collector in his letter of reference has given his opinion that the document falls under Article 35 (c), that is, where the lease is granted for a fine or premium or for money advanced in addition to rent reserved. It has been contended by the learned Government Pleader that under section 105 of the Transfer of Property Act the transfer of a right to enjoy immovable property in consideration of a price paid or promised (which price is called the premium) is a lease, and that this advance of Rs. 2 lakhs made or to be made by Motilal constitutes the premium. But as a matter of fact this money advanced by Motilal is not a premium, because it is not a price paid to the lessor, but an advance which was to be repaid out of the rent payable as it accrued due. It is then contended that it is money advanced under Article 35 (c). But that clause speaks of money advanced in addition to rent reserved. This is not money advanced in addition to rent reserved. It is as a matter of fact a payment of rent in advance, and it forms part of the rent itself, and is not a separate payment. I am, therefore, of opinion that under no circumstances could this document fall under Article 35 (c). Obviously it cannot fall under Article 35 (b), which refers to a case where the lease is granted for a fine or premium, or for money advanced and where no rent is reserved. In the present case rent is reserved. It follows therefore that the only article under which this document could fall would be Article 35 (a), and as the lease purports to be for a term of 15 years it would fall under clause (iii) of Article 35 (a). There are, however, other considerations which have been put forward which lead me to agree with

the view that the document does not conform to the definition of a lease at all. In view of the ruling of the Privy Council in *Hemanta Kumari Debi v. Midnapur Zamindari Company*,⁽¹⁾ that there must be a present interest created in order to satisfy the definition of a lease under the Indian Registration Act (and there is no reason why, the definition in the two statutes being almost entirely the same, the same considerations should not apply here), it will appear that there is no present demise in this case. As a matter of fact the alleged lessor Maneklal did not obtain a lease from the owner Bai Dhanlaxmi until a week later than the execution of the document in question, and, therefore, at the date of Exhibit 417 he was not in possession of any interest in this land which was capable of being demised by him. I need not refer to the other cases which have already been quoted in the judgment of my learned colleague. Again, this document refers to buildings which have yet to be built. The learned Government Pleader has referred to a distinction between section 122 and section 105 of the Transfer of Property Act. Although there is no definition of immoveable property in the Transfer of Property Act, he has pointed out that in section 122, which refers to gifts, the word "existing" is used, and he argues that therefore immoveable property dealt with by section 105, which refers to leases, need not be in existence. There does not appear to be any ruling in this country directly on this point, although there are several English cases, but it has been laid down by Lord Halsbury at page 369 of Volume XVIII of his *Laws of England*, as well as at page 158 of *Woodfall's Landlord and Tenant*, 21st Edition, that in order to create a lease the existence of the premises to be leased is essential. We find, therefore, that in the present case not only were the premises purporting to be agreed

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⁽¹⁾ (1919) L. R. 46 L. A. 240. •

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to be leased not in existence, but the ostensible lessor had no interest in the property which was to be leased at the time of the agreement, and in these circumstances I agree that this document does not fulfil the conditions of an agreement to lease. If there could be no lease of the property at that time, the document could not amount to an agreement to lease, for the property was not in existence. I, therefore, concur in the order which has been made.

Order accordingly.

J. G. R.

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Before Sir Charles Fawcett, Kt., Acting Chief Justice, and Mr. Justice Murphy.

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SHRIMANT SAYAJI MAHARAJ GAIKWAR OF BARODA REPRESENTED BY THE SAR SUBHA OF THE BARODA STATE (ORIGINAL DEPENDANT NO. 1), APPELLANT v. MADHAVRAO RAGUNATHRAO DHAVALA AND OTHERS (ORIGINAL PLAINTIFF AND DEFENDANTS NOS. 2 TO 7), RESPONDENTS.*

Saranjam—Grant whether Inam or Saranjam—Jurisdiction of Civil Courts—Saranjam grant of Royal share of revenue—Grant by Saranjamdar of soil together with mirasi rights therein—Resumption and regrunt of Saranjam by British Government—Resumption operative on mirasi rights—Grantee takes the estate free from alienations by previous holders—Alienation of mirasi rights by the Saranjamdar in favour of stranger—Evidence of resumption—Indian Evidence Act (I of 1872), section 91—Civil Procedure Code (Act V of 1908), section 86—Indian Limitation Act (IX of 1908), sections 3, 13, and Article 142—Deduction of time taken up in obtaining certificate to sue from Government of India—Residence out of British India—Exclusion of time.

In the year 1728, Shahu Maharaj, the Raja of Satara, granted a village in British India to Pillaji Gaikwar under a Sanad under which the village was to be continued as Inam to Pillaji's family from generation to generation. The grant was of the royal share of the revenue. In 1863 the then Maharaja Khanderao Gaikwar granted the village to L; this grant was in terms a grant of the soil including the mirasi rights in the lands in suit. On L's death in 1879, he was succeeded by his son and grandson, M and R respectively. R left two widows; C being the senior widow, her name was entered as occupant of the lands, whereupon the Baroda State contested the entry and succeeded in 1904 in getting it removed and the name of the Gaikwar entered instead. In October 1905, C adopted the plaintiff. The Baroda State succeeded in recovering possession of the suit lands in 1906-07. On July 25, 1916, the plaintiff applied under section 86 of the Civil Procedure Code to the Government of

*Appeal No. 244 of 1925 from the original decree passed by V. G. Sane, Joint First Class Subordinate Judge at Poona, in Suit No. 593 of 1922.