

1870
August, 24.

Before Mr. Justice L. S. Jackson and Mr. Justice Mitter.

NARSING PORKAET (DEFENDANT) v. MUSSAMAT BEWAH
(PLAINTIFF) AND OTHERS (DEFENDANTS).*

Registration—Act XX of 1866, s. 48—Unregistered Deed of Immoveable Property—Possession—Priority.

Where possession of immoveable property has been given under an unregistered lease, a subsequent grantee of a registered lease cannot maintain a suit to evict the lessee in possession, on the ground of the priority of his deed under section 48, Act XX of 1866.

Baboo *Ambika Charan Banerjee* for appellant.

Baboo *Jadab Chandra Seal* for respondent.

THE facts of the case sufficiently appear in the judgment of the Court which was delivered by

JACKSON, J.—The judgment of the lower Appellate Court in this case is insufficient.

The plaintiff sued to recover possession of this land from the defendant, upon the strength of a potta granted by the widow, who was in the enjoyment of the estate of her late husband. The defendant alleged that he was in possession under a lease granted to him by the husband himself in his life-time.

That lease, it appears, was one which, under the provisions of the Registration Act, should have been registered, but it was not so registered. It was, notwithstanding, received in evidence by the Moonsiff. The Subordinate Judge, on appeal, thought that the Moonsiff was wrong in admitting this unregistered potta, but, agreeing with the Court below apparently in thinking that the plaintiff had made out his potta, gave judgment for him, allowing his cross-appeal, and dismissing the appeal of the defendant. It is alleged by the defendant that he not only had a lease of this kind, but that, in pursuance of the lease, possession had been made over to him and rent received by the land-lord. It was not, therefore necessary for him to be made to prove the execution. If the case made by him were true, the other facts would give him a sufficient title to invalidate the claim of the plaintiff.

It has been held in a judgment, to which I was a party, although the judgment was written by Mr. Justice Markby, in *Selam Sheikh v. Baidonath Ghatak* (1), that where possession has been given,—that is, where effect has been given to a document by the transfer of immoveable property,—the provisions of section 48, Act XX of 1866, will not apply; and therefore, if the lease to the defendant in this case be dealt with merely in the view of a parol verbal contract, the lease granted to the plaintiff subsequently, though registered, will not prevail.

We think, therefore, that the case must go back to the lower Appellate Court, in order that it may find upon the evidence whether the defendant had, in fact, got a potta from the husband of the widow, and whether, under that lease, the defendant had got into possession of the land and paid rent.

* Special Appeal, No. 262 of 1870, from a decree of the Subordinate Judge of Midnapore, dated the 8th December 1869, affirming a decree of the Moonsiff of that District, dated the 27th April 1869.

(1) 3 B. L. R., A. C., 312.