

Before Sir Barnes Peacock, Kt., Chief Justice, and Mr. Justice Mitter.

1868
June 10.

RADHIKA PRASAD CHUNDER v. RAMSUNDAR KUR.*

Act X of 1859—Amulnama—Covenant to Renew—Registration.

A., a zemindar entered into negotiations with Government, for settlement of certain lands. Pending the settlement, A. sublet to B., and granted him an amulnama for one year, and covenanted therein that whatever term of settlement he might obtain from Government, he would grant to B. a pottah for the corresponding term. The negotiations with A. were broken off, and Government settled with C. on condition that he should abide by the above amulnama. *Held*, C. was bound by the covenant to renew; the amulnama did not require to be registered.

GOVERNMENT having resumed certain lands proceeded to settle them with Kumar Narayan and Gajendra Narayan, zemindars, who, before completion of the negotiations, with the Collector's consent, sublet the lands to plaintiffs and other ryots, giving them amulnamas, or possessory orders, for the term of one year. The amulnamas contained a covenant that leases should be granted thereafter, at a rate to be fixed, for the term of any settlement which might be made between the zemindars and Government. Eventually, negotiations for settlement between these zemindars and Government were broken off, and Government gave the lands in farm to the defendants, on the terms that their settlement was to be subject to the amulnamas granted to the plaintiffs by Kumar and Gajendra.

The plaintiffs now sued, under Act X. of 1859, for a pottah, at Rs. 1-3 per beegah, for 309 beegahs or thereabouts, lying within boundaries specified. The material part of the amulnama on which they relied was as follows:

“In accordance with the permission, and by the orders of the Board and Collector, I have, at your request, given you this amulnama, for lands lying within the boundaries described below, for the year 1274, B. S. (1867-68), for a term of one year at one rupee a beegah, for (say) 270 beegahs; and whatever may be the term of settlement I may myself obtain from Government, I will, after measurement of the lands, and

* Special Appeal, No. 3327 of 1867, from a decree of the Judge of Midnapore, affirming a decree of the Deputy Collector of that district.

1863

RADHIKA
PRASAD
CHUNDERv.
RAMSUNDAE
KUE.

“settlement of the proper rate, give you a pottah for the corresponding term.”

The defendants in their kubooleut merely covenanted “to abide by the amulnamas” as above set forth.

The first Court decreed for the plaintiffs. In the lower appellate Court the defendants urged, that they were only bound to respect the possession for one year given by the amulnamas, and were not bound by the covenant of renewal. They also showed that they had had a *bond fide* offer of Rs. 1-4 per beegah, for the land, which, they said, was more than 309 beegahs. The Judge, on appeal, found against the defendants on the first point, but decreed that plaintiffs should pay Rs. 1-4 per beegah for the land

In special appeal the same points were urged, with the further argument, that if the amulnama in its terms was good for more than one year’s possession, it was void from want of registration.

Baboo *Kali Prasanna Dutt, Bhawanicharan Dutt, and Bama-charan Banerjee* for appellants.

Baboo *A kutoh Dhur* for respondents.

The judgment of the High Court was delivered by

PEACOCK, C. J.—It appears to us that the decision of the Judge ought to be affirmed. The Judge finds that the Collector at first allowed *Phnar Narayan* and *Gajendra Narayan*, the zemindars, to settle the lands with the ryots. That was upon the expectation that those zemindars would settle with the Government. It turned out that the zemindars refused to accept the Government terms of settlement, and, consequently, the lands were settled with the defendants. By the terms of the kubooleut executed by the defendants, their settlement with Government was to be subject to the amulnamas entered into by the former zemindars, which were to be subsequently produced to the Collector, and which were, in fact, afterwards produced and registered by him. The terms of the amulnama with the plaintiffs were that they were to hold for one year, and to have a renewal from the zemindars for the period for which the Government should settle with them, either at that time or after-

wards, upon a renewal of the settlement with Government. It appears to us that the Government was bound by the terms of the amulnama, they having authorized the former zemindars to settle with ryots, and that the defendants who settled with the Government took that settlement subject to the settlement with the ryots which had been made by the former zemindars.

1868
 RADHIKA
 PRASAD
 CHUNDER
 v.
 RAMSUNBAR
 KUR.

The amulnama with the plaintiffs, not creating an interest beyond one year, was not liable to be registered under the Registration Act in consequence of the agreement for renewal. The effect of the settlement with the plaintiffs was to put them into the position of ryots for one year with a right of renewal; and we think that the plaintiffs had a right to sue in the Collector's Court for a potta according to the terms of the settlement with them.

An objection was made in the fifth ground of appeal as to the quantity of the land. The plaintiffs claim a pottah for certain lands describing them by boundaries, alleging them to contain 309 beegahs. Those boundaries include all the lands in the amulnama, except those for which a pottah has already been granted by the defendants to two other ryots, who obtained a right under the amulnama. The plaintiffs are entitled to a pottah for the lands specified in their plaint, and included in the boundaries mentioned therein whether the actual dimensions of those lands are 309 beegahs or not. The plaintiffs treat them as containing 309 beegahs. The defendants do not contend that they contain more or less. The only object in fixing the quantity is with reference to the amount of rent which will be payable. The lands to be actually included in the pottah will be defined by the boundaries, and not by the dimensions. The rent will be at the rate of one rupee four annas a beegah, which, for the purpose of ascertaining the amount of rent payable, will, until actual measurement, be assumed to contain 309 beegahs.

The appellants to pay to the respondents the costs of this appeal.