Before Mr. Justice Ainslie and Mr. Justice White.

RAM DOOLARY KOOER (PLAINTIFF) *v.* THACOOR ROY (DEFENDANT).* 1878 *June* 3.

Registration—Act VIII of 1871, *ss.* 17, 49—*Computation of Value of Interest created in Immoveable Property—Principal Sum—Interest.*

A deed purporting to secure the sum of Rs. 95 advanced on certain properties, giving the lender possession for a fixed period at a yearly rent of Rs. 8-12, Rs. 6-12 out of such rent being retainable by the lessee as interest on the sum advanced, does not require registration.

THIS was a suit brought by one Ram Doolary Kooer, as mother and guardian of her infant son, to recover possession of a certain piece of land, which she alleged she had leased to the defendant, under a verbal settlement, at a rent of 8 rupees 12 annas yearly, from the years 1279 to 1283; and that, on the expiration of that term, although a notice to quit had been served on the defendant, he had refused to give up possession.

The defendant stated that, on the expiration of the lease, the plaintiff borrowed from him the sum of 95 rupees, and as security for such advance had granted to him a zurpeshgi lease of the property in question dated 23rd September 1876, under which it was agreed that the defendant should hold possession of the land for four years certain, and should continue in possession until such time as the loan remained unpaid, paying a rent of 8 rupees 12 annas yearly, in the following manner, *viz.*, Rs. 2 to be paid into the Collector's treasury as Government revenue, the remaining Rs. 6-12 to be held by the defendant in satisfaction of the interest accruing on the 95 rupees advanced.

The Court of first instance held, that the zurpeshgi lease relied on by the defendant was not genuine, and gave the plaintiff a decree. The lower Appellate Court reversed the decision of the Munsif, on the ground that the zurpeshgi lease had been proved; it not being necessary in the present suit to consider how far the

* Special Appeal, No. 1994 of 1877, against a decree of A. V. Palmer, Esq., Judge of Zilla Shahabad, dated the 15th August 1877, reversing the decree of Baboo Lall Gopal Sen, Second Munsif of Arrah, dated the 7th April 1877.

1878

RAM DOOLARY KOOER v. THACOOR ROY.

document was binding on the minor, as he would have ample opportunity of disputing it when he came of age.

The plaintiff appealed to the High Court.

Baboo *Pran Nath Pundit* for the appellant.—The zurpeshgi deed set up by the defendant not being registered, is inadmissible in evidence under ss. 17 and 49 of Act VIII of 1871. For although the principal sum mentioned in the deed amounts only to 95 rupees, yet, if the interest amounting to Rs. 6-12 be added thereto, the value of the "interest in immoveable property" passed by the deed will amount to more than 100 rupees, and registration is therefore necessary; see *Darshan Singh* v. *Hanwanta* (1). Further, there being no express directions in the Registration Act of 1871 as to the manner in which the value of a property should be computed, the case of *Moro Vithal* v. *Tukaram Valad Malharji* (2) does not apply, as that case was subject to the Registration Act of 1864, and by that Act a provision was made with reference to the stamp law for the purpose of determining the value of an interest in land created and transfered when that Act was in force. The Registration Act of 1871 has no such provision.

Baboo *Doorga Persad* for the respondent.—The deed does not require registration. In determining the value of the interest created in the present deed, the Courts will not go beyond the amount stated in the instrument itself. Now Rs. 95 is the value determined by the deed of September 1876—*Rohinee Debia* v. *Shib Chunder Chatterjee* (3). The zurpeshgi lease must, following the case of *Ishan Chander* v. *Sooja Bebee* (4), be considered as a mortgage of the property in question to secure the sum of 95 rupees only, and as such does not require registration.

Judgments were delivered by

AINSLIE, J.—The plaintiff in the present case sued for the recovery of possession of certain property on the allegation that

(1) I. L. R., 1 All., 274.
(2) 5 Bom. H. C. Rep., A. C. J., 92.
(3) 15 W. R., 558.
(4) 15 W. R., 331.

she had made a verbal settlement with the defendant; and that the term of the settlement having expired, she had given him notice to quit, but that he refused to do so, and was holding on without any right whatever.

The defendant in answer put forward a document dated the 23rd of September 1876, which is called a zurpeshgi lease.

The first Court found that the document was not genuine.

The lower Appellate Court reversed that finding, and came to the conclusion that the document was actually executed by the plaintiff. The Judge says that, in the present case, it is not necessary to consider how far the document may be binding upon the minor, as he will have an opportunity of challenging it when he comes of age.

In this view we think that the Judge was right. If the plaintiff came into Court on behalf of the minor intending to raise the question of the binding effect of that document on the estate of the minor, she should have done so distinctly in her written statement. She ignored the existence of the document altogether, and it was only when it was put forward as an answer to the case set up by her that she wished to change the nature of her suit and raise the question as to the binding effect of the deed on the minor's estate.

The only question that remains is whether this document is inadmissible in evidence on the ground that it has not been registered, and that registration was compulsory.

This is an instrument by which possession of certain property was handed over by the plaintiff to the defendant as security for 95 rupees lent to her. It states that the lessee shall pay what is called a rent of 8 rupees 12 annas every year in this way, *viz.*, that 2 rupees shall be paid into the Collector's treasury as the Government revenue of the property, and the remaining 6 rupees odd annas shall be kept by the lessee in satisfaction of the interest accruing on the 95 rupees advanced by him. It also states that the lessee is to have the whole of the profits in satisfaction of the interest. No condition whatever is made for the payment of the principal out of the usufruct. The document also recites that the defendant is to hold the property for four

1878

RAM DOOLARY KOOER v. THACOOR ROY.

years certain, and that he is to continue in possession on the same terms so long as the money should not be paid.

It is contended that the interest ought to be added to the principal, and that if it is so added, the value of the interest in immoveable property passed by the instrument amounts to more than a hundred rupees, and that registration was therefore necessary. The case cited in support of this view is the case of *Darshan Singh* v. *Hanwanta* (1).

That is a case in which the suit was founded on a bond for 99 rupees with interest for three months at the rate of 2 rupees per mensem, making a total of 105 rupees, which, as the Court says, was the least amount that could be recovered under the instrument. It was accordingly held there that the value of the property was over a hundred rupees.

Now if the deed in the present case be looked at in the same way, it is quite clear that the amount claimed in any suit which could be brought on this bond could not exceed 95 rupees, as the interest is to be paid as it accrues from the profits. Therefore, if the same test as is applied by the Allahabad High Court be applied to the present case, it would appear that this bond did not require registration. There is a case decided by this Court—*Rohinee Debia* v. *Shib Chunder Chatterjee* (2)—which shows that where the question is whether the market-value or the expressed value is to be taken to determine the necessity of registration, the Courts will not go beyond the value entered by the parties themselves in any particular instrument.

There is another case—*Ishan Chunder* v. *Sooja Bebee* (3)—which is more directly in point. In that case it appears that the instrument sued on, though in form a zurpeshgi lease for six years, was held to be a mortgage to secure repayment of the sum of 99 rupees, and the Court decided that as such mortgage it created an interest of a value less than 100 rupees.

There is a case cited by the appellant—*Moro Vithal* v. *Tukaram Valad Malharji* (4). Under the Registration Act of 1864 a provision was made with reference to the stamp

(1) I. L. R., 1 All., 274.
(2) 15 W. R., 558.
(3) 15 W. R., 331.
(4) 5 Bom. H. C. Rep., A. C. J., 29.

law for the purpose of determining the value of an interest created or transferred by an instrument. In the later Acts that provision has been omitted. If we are to look at the Stamp Act in the present case, we should have to hold that only the principal sum ought to be taken into account. The Bombay case was cited to show that we ought to be guided by the provisions of the Stamp Act. In that case the question was whether a lease for six months certain and to continue on for an indefinite period was an instrument of lease for a period of more than one year, and as such one requiring registration. The Court held that though, according to the Stamp Act, it would require to be stamped as a lease for more than one year, yet, for the purposes of the Registration Act, it must be taken to be an instrument of which registration was not compulsory. The Court took the fixed term of six months as determining the question of the necessity of registration, or, in other words, they determined that a favorable construction should be put on the Registration Act in any case of doubt in order to give effect to the instrument. If we are to apply that rule to the present case, I think that we ought to hold that the words of the Act construed favorably to the validity of the instrument show that the value of the property must be taken to be that which the parties themselves agreed upon.

Under these circumstances I think that the interest passed under this instrument ought to be valued, for the purpose of determining the necessity of registration, at 95 rupees, and therefore the Judge was not wrong in taking it into consideration as evidence in the case.

In this view I would dismiss the appeal with costs.

WHITE, J.—I am of the same opinion on the merits of the appeal. I wish to say a word about the question raised on the Registration Act. The Registration Act makes registration compulsory where the interest in immoveable property, which is the subject of a conveyance, is of the value of a hundred rupees or upwards.

In the present case the interest, which was acquired by the defendant under the usufructuary mortgage, was a right to

1878

RAM DOOLARY KOOER v. THACOOR ROY.

hold this land for four years rent-free, so far as the mortgagor was concerned; and on the expiration of that period, if the 95 rupees, which was advanced at the time of the mortgage, was not repaid, then to continue to hold the land on the same terms until the 95 rupees was repaid; the holding of the land by the defendant rent-free being treated as equivalent to and in lieu of the payment by the mortgagor of interest upon the 95 rupees.

The legislature has laid down no rule in the Registration Act to guide us in coming to a conclusion as how an interest of this sort in land is to be valued, or how such an interest is to be estimated in money. Looking to the natural sense of the language used by the Registration Act, I should say that the value of the interest in the present case is what the possession of the property rent-free for four years is worth to the defendant. The parties have fixed the amount of rent which will thus come into the pocket of the defendant under the instrument at Rs. 6-12 per annum. The entire value thereof of four years' possession would be Rs. 27, and the document would not require to be registered. On the principle recognized in the Bombay case cited by my brother Ainslie, I think the contingent circumstance that the defendant may continue to hold the land for more than four years, unless the 95 rupees is then paid off, ought not to be taken into account in deciding what is the value of the interest for the purpose of registration. I feel some difficulty in treating the 95 rupees as the value of the interest in the land in this case, when the Registration Act has laid down no rule on the subject, but left the Court to ascertain that value as best it may. If we are at liberty to look at the Stamp Act, and apply the rule there given for fixing the value of a usufructuary mortgage when possession is taken, there would be reason for holding 95 rupees to be the value of the interest created by the present document. But I am not sure that we may look at the Stamp Act in solving the question before us. Whatever doubt I may have as to the mode of estimating the value of the defendant's interest in the property in dispute, I have no doubt that, in the present case, the value of the property is below a hundred rupees, and that the instrument, therefore, is one of which the registration is optional.

I therefore concur in the conclusion arrived at by my brother Ainslie on this question as well as on the other questions raised by the appeal (1).

1878

RAM DOOLARY KOOER v. THACOOR ROY.

Appeal dismissed.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice McDonell.

HURROGOBIND RAHA AND OTHERS (PLAINTIFFS) *v.* RAMRUTNO DEY AND ANOTHER (DEFENDANTS).*

1878
June 28.

Chakeran Lands—Ejectment—Occupancy Rights.

A distinct refusal by a tenant to perform services incidental to his holding renders him liable to ejectment.

Semble.—No rights of occupancy accrue in lands held under a service tenure.

THIS was a suit for resumption and khas possession of certain lands, and for the removal of a house situated thereon. The plaint alleged that the ancestors of the defendants had held the said lands from the plaintiffs on the condition of performing certain specified services on the occasions of marriage, funerals, puja, parba, and other ceremonies in the plaintiffs' family. That the present suit was brought on the refusal of the defendants to continue the performance of these services. The defendants denied that the lands in dispute were held under a service tenure; and further alleged that, having been in possession of the lands for upwards of twelve years, they had acquired a right of occupancy. It was also asserted that the defendants paid rent to the plaintiffs for the said lands. The Court of first instance found that the defendants had rendered service to the plaintiffs and also paid rent; but held that as the plaintiffs had made no mention of the payment of rent in their plaint, but sued only on the allegation that the land was held on a service tenure, the suit must be

(1) See also *Narasayya Chetti* v. *Guruvappa Chetti*, I. L. R., 1 Mad. (which will probably be published next month).

* Special Appeal, No. 1279 of 1877, against the decree of Baboo G. Chowdry, First Subordinate Judge of Zilla Chittagong, dated the 24th of March 1877, affirming the decree of Baboo Nil Madhub Mookerjee Roy Bahadur, Munsif of Futtickchary, dated the 24th of June 1876.