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placed on the record, and the defendants were ordered to pay to the plaintiffs Rs. 7,000 with interest and costs of suit. The High Court decree simply dismissed the suit with costs in both Courts. The proper course now will be to discharge the decree of the High Court; to order the defendants to pay the costs of appeal in that Court; to vary the decree of the first Court by substituting the sum of Rs. 9,000 for Rs. 7,000; and in other respects to affirm that decree. Their Lordships will humbly advise Her Majesty in accordance with this opinion. The respondents must pay the costs of this appeal.

Appeal allowed.

Solicitors for the appellants: Messrs. *Wrentmore & Swinhoe.*

Solicitor for the respondents: Mr. *J. F. Watkins.*

C. B.

APPELLATE CIVIL.

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June 16.

Before Mr. Justice Ghose and Mr. Justice Gordon.

SATYESH CHUNDER SIRCAR AND ANOTHER, MINOR, BY HIS MOTHER MATANGINI DEBI (DEFENDANTS) *v.* DHUNPUL SINGH (PLAINTIFF).*

Lease—Subsequent written agreement to abate rent—Variation of lease—Transfer of Property Act (IV of 1882), section 107—Evidence Act (I of 1872), section 92—Registration Act (III of 1877), sections 17 and 18.

In the year 1879 the plaintiff granted a lease of certain lands to the father of the defendants. In May 1889 he agreed in writing to allow the defendants an abatement of rent to the extent of Rs. 100 per annum. This agreement was not registered, but was stated in the plaint in a previous suit brought by the plaintiff. He subsequently brought a suit against the defendants for the recovery of the entire amount of the original rent.

Held, that the defendants could rely on the agreement, and that section 92 of the Evidence Act (I of 1872) did not apply to it.

Held, also, that the agreement did not operate as a lease, but was merely a variation of the lease, and that, therefore, registration was not necessary.

Held, therefore, varying the order of the District Judge, that the decree for the entire amount of the original rent must be set aside, and a decree made for the amount of rent due at the reduced rate.

* Appeal from Original Decree No. 344 of 1894, against the decree of J. Whitmore, Esq., District Judge of Beerbhoom, dated the 18th of August 1894.

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THE plaintiff sued the defendants for rent due under a *putni* lease executed in the year 1879, at the rate of Rs. 1,501 per annum. The defendants pleaded that in May 1889 the plaintiff had agreed in writing to reduce their rent to Rs. 1,401 per annum, and that he had himself referred to this agreement in his plaint in a previous suit. The plaintiff's case, as to this agreement, was that the defendants procured it from him by fraud and misrepresentation, and that it was inoperative by reason of the fact that it was never registered. The lower Court found against the plaintiff on the question of fraud, but held that the agreement required registration in order to become operative; and the District Judge therefore made a decree in favour of the plaintiff for the whole amount claimed by him.

The defendants appealed.

Dr. *Rash Behari Ghose* and Babu *Karuna Sindhu Mukerji* for the appellants.—The defendants are entitled to rely on the written agreement by the plaintiff to accept a reduced rent. It does not constitute a new lease; it is merely a release, by the landlord, of part of the rent payable under the lease. At the time the lease was granted, namely in 1879, no lease was required to be in writing; although, if a lease was written, it had to be registered. The lower Court should not have held registration of this agreement to be essential, but should have allowed the defendants to rely on the plaintiff's admission of the agreement without producing it, as was done by the High Court of Madras; *Chedambaram Chetty* v. *Karunalyavalangapuly Taver* (1). The agreement having been admitted by the plaintiff in his former plaint, effect should be given to it; *Dinonath Mookerjee* v. *Debnath Mullick* (2); and that without requiring the defendants to produce it, for the agreement is properly admissible in evidence; *Burjorji Cursetji Panthaki* v. *Muncherji Kuverji* (3). Again, section 92 of the Evidence Act does not affect the case. We are not seeking to vary the terms of a written agreement by an oral agreement, and that is all that section 92 deals with; but we are relying on the plaintiff's own statement. He admits all that we have to prove; and therefore the agreement is admissible under section 65 of the Evidence Act. Since this agreement contained

(1) 3 Mad. H. C., 342. (2) 14 W. R., 429.
(3) I. L. R., 5 Bom., 143.

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a portion only of the terms upon which the new lease or settlement was to be granted, it was neither a lease nor an agreement for a lease within the meaning of the Registration Act, and consequently was admissible in evidence without having been registered, *Luchmissur Singh* v. *Dakho* (1). [GHOSE, J.—Section 92 of the Evidence Act alone is no answer to your case. But how if it is read with section 107 of the Transfer of Property Act?] Still it does not affect the case. The agreement to reduce the rent does not amount to the creation of a new lease, nor to a surrender, by operation of law, of the old one. It is simply a release of portion of the rent; and rent is not land or an interest in land.

Babu *Srinath Dass* (with him Babu *Saroda Churn Mitter* and Babu *Pramathanath Sen*) for the respondent.—It is true the plaintiff agreed to reduce the rent; but he is not bound for all time; he is at liberty to change his mind. The question is, whether he had by any act of his legally bound himself to this reduction. His case is that, if the agreement is binding, it creates a new lease, which, being made after the Transfer of Property Act came into force, must be registered. He sues on the old contract, and must do so: he cannot sue on the new agreement, because it is not registered. The original contract has not been rescinded; all that the plaintiff has done is to accept a lower rent for a time as a favour to the defendants.

Dr. *Rash Behari Ghose* in reply.

The judgment of the Court (GHOSE and GORDON, JJ.) was as follows:—

This appeal arises out of a suit for rent. It appears that the defendants' father obtained a *putni* lease from the plaintiff, on the 26th Assin 1286 at a *jama* of Rs. 1,501. The plaintiff, however, states in his plaint that subsequently the defendants, upon a false representation that the gross rental of the property had decreased, obtained a letter from him, the plaintiff, reducing the *jama* by Rs. 100 a year, on the 18th Jeyt 1296, corresponding to the 31st May 1889; but that they did not execute a fresh *kabuliyat* agreeing to pay the reduced *jama*. The plaintiff adds that the said letter, granting an abatement of the *jama*, was obtained by fraud and

(1) I. L. R., 7 Calc., 708.

without any consideration; and that, being an unregistered document, it is inoperative according to law. He accordingly claims rent from 1297 to 1300, at the full rate, namely Rs. 1,501, *plus* cesses, &c.

The defence of the defendants is that the abatement of rent by Rs. 100 a year was not obtained by any misrepresentation of facts; but that there were good grounds for such abatement being allowed, and that the letter of the 18th Jeyt 1296 did not in law require registration.

The Court below has held that the letter in question is evidence of a substituted contract, and that it required registration; and that, because it was not registered, it is not operative in law. The District Judge has accordingly given the plaintiff a decree at the full rate of Rs. 1,501 a year from a certain point of time mentioned in his judgment, the time when he has held the defendants had notice that the plaintiff meant to adhere to the original rate of rent as contained in the *putni pottah* of 1286.

Against this decree the defendants have appealed to this Court.

It appears to us that if the fact of the abatement was a matter in issue between the parties, and the success of the case set up by the defendants depended upon the production and proof of the letter of the 18th Jeyt 1296, then no doubt the question whether it required registration would arise; but it seems to be clear that there was no such issue between the parties in the Court below. That an abatement was actually made in the *jama*, and the letter in question given, the plaintiff admits in the plaint; and we find upon a reference to his plaint in a previous suit between the parties, bearing date the 13th September 1890, that he admitted there also in distinct terms that he had granted an abatement of rent to the defendants, to the extent of Rs. 100 a year, from the year 1296, and that from that year the defendants were bound to pay to the plaintiff rent at the rate of Rs. 1,401 a year. Indeed, the fact of the abatement having been allowed to the defendants was conceded on all hands; and it was not therefore essential for the success of the defendants' case that they should have produced the letter granting the abatement and to have proved the same. No doubt, if this letter was all the evidence in support of the position, that abatement to the extent of Rs. 100

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a year had been allowed by the plaintiff, then no doubt the defendants could not succeed in their defence unless they produced and proved the letter itself, and then no doubt also the question of registration would be important. But that is not the case here.

The plaintiff, as has already been mentioned, sought to avoid the effect of the abatement that he had allowed by alleging that it had been obtained by the defendants by means of fraud and upon misrepresentation of facts, and that it was without any consideration. Both these points were found against the plaintiff by the Court below; and no contention has been raised before us on that score by the learned vakil for the respondent; and we think, we may therefore take it that there was no misrepresentation at all on the part of the defendants when they obtained the abatement of rent, and that there was good and valid consideration for such abatement. The learned vakil for the respondent has, however, referred us to section 92 of the Evidence Act, and to section 107 of the Transfer of Property Act, and has contended that the original lease of the year 1286 could not be varied by any oral agreement, and that the agreement on the part of the plaintiff to allow an abatement of rent must be regarded as a lease within the meaning of section 105 of the Transfer of Property Act, and as such, requiring to be reduced to writing and to be registered.

With regard to the contention based upon section 92 of the Evidence Act, all that we need say is, that the defendants do not in this case seek to prove any oral agreement between the parties. The agreement that had been come to is admitted by the plaintiff himself, and, therefore, it seems to be obvious that section 92 of the Evidence Act does not operate as a bar to the plea raised by the defendants.

Then as regards the contention based upon section 107 of the Transfer of Property Act, it seems to us that it has no application to the present case; for the agreement allowing the abatement does not operate as a lease. No doubt it purports to vary to some extent one of the terms of the lease; but that is all. It seems to us, therefore, that it was not absolutely necessary that the agreement should have been reduced to writing or registered.

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The view that we adopt in this case finds support from the several cases referred to us in the course of the argument, namely, the cases of *Burjorji Cursetji Panthaki* v. *Muncherji Kuverji* (1), *Chedambaram Chetty* v. *Karunalyavalangapuly Taver* (2), *Dinonath Mookerjee* v. *Debnath Mullick* (3), and *Luchmissur Singh* v. *Dakho* (4). In the last mentioned case it was held that a *dowl* containing only a portion of the terms upon which a new lease or settlement was to be granted was not a lease or an agreement for a lease within the meaning of the Registration Act.

Certain other points have been discussed before us by the learned vakil for the appellant; but we do not think it necessary to express any opinion upon them.

The result is, that the decree of the Court below, so far as it holds that the plaintiff is entitled to recover rent at the rate of Rs. 1,501 a year, as mentioned in the original *putni* lease of the year 1286, should be set aside. The decree will be at the reduced rate.

Under the circumstances of the case, we direct that each party do bear his own costs.

H. W. *Appeal allowed.*

Before Mr. Justice Trevelyan and Mr. Justice Beverley.

DAKESHUR PERSHAD NARAIN SINGH (DEFENDANT) *v.* REWAT MEHTON AND OTHERS (PLAINTIFFS.)*

1896 *July* 2.

Guardian—Guardian ad litem—Guardians and Wards Act (VIII of 1890), section 53—Civil Procedure Code, section 443, as amended by section 53 of Act VIII of 1890.

Section 53 of Act VIII of 1890, amending the Code of Civil Procedure, expressly requires the appointment of a guardian *ad litem*, whether or not a guardian is appointed under Act VIII of 1890.

In a suit against a minor, the summons was attempted to be served on his guardian appointed under Act VIII of 1890, but no guardian *ad litem* was

* Appeal from Original Decree No. 51 of 1895, against the decree of Babu Upendra Chandra Mullick, Subordinate Judge of Patna, dated the 20th of November 1894.

(1) I. L. R., 5 Bom., 143. (2) 3 Mad. H. C., 342.
(3) 14 W. R., 429. (4) I. L. R., 7 Calc., 708.