

INDIAN LAW REPORTS. [VOL. XXXVII.]
LETTERS PATENT APPEAL.

*Before Sir Lawrence H. Jenkins, K.C.I.E., Chief Justice, and
Mr. Justice Doss.*

1910
May 16.

PANCHANAN BOSE
v.
CHANDI CHARAN MISRA.*

*Lease—Unregistered Solehnama, admissibility in evidence of—Registration Act
(III of 1877) s. 17, cls. (d) and (h).*

A *solehnama*, by which no immediate interest in immoveable property is created, and whereby there has been no demise, does not amount to a 'lease' within the meaning of clause (d) of s. 17 of the Registration Act, and is merely an agreement to create a lease on a future day.

Such a document falls within clause (h) of s. 17 of the Indian Registration Act and is admissible in evidence without registration.

APPEAL by the plaintiffs, Panchanan Bose and others.

The suit was for declaration of the plaintiffs' right to a *patta* in a four-anna share in the lands described in the schedule of the plaint, for recovery of possession after declaration of title and partition by metes and bounds and for other incidental reliefs. The case of the plaintiffs was that, in a compromise petition in a title suit No. 350 of 1903, defendants Nos. 1 and 2 had agreed to settle with them two annas share of the *hasil* and *gora* lands of *mauza* Jamabuni by execution of a *patta* in their favour. In the title suit a decree was made in terms of the compromise-deed. The defendants having subsequently refused to fulfil the agreement, this suit was brought. The defendants Nos. 1 and 2 contended, *inter alia*, that the *solehnama* made in title suit No. 350 of 1903 was not admissible in evidence for want of registration. The Court of first instance upheld the contention of the defendants and dismissed the suit. On appeal, the Subordinate Judge confirmed the decision of the Munsif. The plaintiffs preferred a second appeal to the High

*Letters Patent Appeal No. 109 of 1909, in Appeal from Appellate Decree, No. 2853 of 1907.

Court, which was heard by Sharfuddin J., sitting singly. The judgments of the Courts below were again confirmed; hence this appeal under section 15 of the Charter.

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Babu Dwarkanath Mitra, for the appellants. The *solehnama* is admissible in evidence, I contend. In the first place, as the *solenamah* was incorporated in the decree of the previous suit No. 350 of 1903, it did not require registration, although it dealt with lands extraneous to the previous litigation of 1903. In the second place, even if it be assumed that the *solehnama* was not incorporated in the decree, as the agreement was to grant a *patta* which, when executed, would create a right, it did not require registration under section 17, clause (h) of the Registration Act: *Bindesri Naik v. Ganga Saran Sahu* (1) and *Pranal Anni v. Lakshmi Anni* (2). The decisions in *Birhadra Rath v. Kulpataru Panda* (3) and *Gurdeo Singh v. Chandrikah Singh* (4) are inconsistent with the decision of the Judicial Committee in *Pranal Anni's* case (2). The decision of the Judicial Committee lay down no such limitation as is supposed in the two Calcutta cases. The cases of *Raghubans Mani Singh v. Mahabir Singh* (5) and *Gobinda Chandra Pal v. Dwarka Nath Pal* (6) give a truer explanation of *Pranal Anni's* case (2). As has been held by Mitra J., the lands outside the suit may be regarded a consideration for the compromise. The inclusion of the lands outside the suit in the decree did not render the decree *ultra vires*: *Purna Chandra Sarkar v. Nil Madhub Nandi* (7). On the other point, I submit that the agreement in this case did not create any right to immovable property, but simply created a right to obtain a *patta*: *Pertap Chunder Ghose v. Mohendranath Purkait* (8), *Ambica Prosad Dass v. Galstann* (9), *Gupta Narain Das v. Bijoya Sundari Debya* (10),

(1) (1897) I. L. R. 20 All. 171;

L. R. 25 I. A. 9.

(2) (1899) I. L. R. 22 Mad. 508;

L. R. 26 I. A. 101.

(3) (1905) 1 C. L. J. 388.

(4) (1907) I. L. R. 36 Calc. 193.

(5) (1905) I. L. R. 28 All. 78.

(6) (1908) I. L. R. 35 Calc. 837.

(7) (1901) 5 C. W. N. 485.

(8) (1889) I. L. R. 17 Calc. 291;

L. R. 16 I. A. 233.

(9) (1909) 13 C. W. N. 326.

(10) (1897) 2 C. W. N. 603.

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Purmananddas Jivandas v. Dharsey Virji (1), *Burjorji Cursetji Panthaki v. Muncherji Kuverji* (2).

Babu Kshettramohan Sen, for the respondents. The *solehnama* was not included in the decree. The decree made reference only to the lands in suit and did not incorporate the other provisions. Even assuming that it was so incorporated, there would still be necessity for registration, as it purported to deal with lands outside the suit. I rely on the cases of *Birbhadra Rath* (3) and *Gurdeo Singh* (4). The Court has no jurisdiction under section 375 of the Code to pass a decree with regard to lands outside suit. The decision in *Pranal Anni's* case (5) is inconclusive on this question. On the other hand, the fact that their Lordships held that the *razinama* required registration rather helps my contention. With regard to the second point, I contend that the *solehnama* created the right to the land, and there remained only the formal exchange of *patta* and *kabuliyat*. *Ambica Prosad Dass's* case (6) is distinguishable, as there the agreements referred to a future time. I rely on *Syed Sujdar Reza v. Amzad Ali* (7).

Babu Dwarkanath Mitra, in reply. All the Courts have proceeded on the footing that the *solehnama* was incorporated in the decree and it is too late now to contend otherwise.

Cur. adv. vult.

JENKINS C.J. This case comes before us by way of second appeal, the suit being one by which the plaintiffs seek a declaration of their right to a *patta* in a four-anna share in the lands described in the schedule, for relief in respect of that four-anna share and for possession. The suit is based on a *solehnama* or agreement of compromise, by which the differences in a former suit, that is, suit No. 350 of 1903, were composed.

The defendants have objected to the plaintiff's claim on several grounds, but on appeal the only point discussed has been

(1) (1885) I. L. R. 10 Bom. 101.

(2) (1880) I. L. R. 5 Bom. 143.

(3) (1905) I C. L. J. 388.

(4) (1907) I. L. R. 36 Calc. 193.

(5) (1899) I. L. R. 22 Mad. 508.

(6) (1909) 13 C. W. N. 326.

(7) (1881) I. L. R. 7 Calc. 703.

whether or not the *solehnama* was admissible in evidence. The view that has found favour with the lower Courts and also with Mr. Justice Sharfuddin, before whom the case came by way of appeal in the first instance, has been that it was inadmissible, and it is from the judgment confirming the decree of the lower Appellate Court that the present appeal is preferred under clause 15 of the Letters Patent.

Before us it has been contended by the appellants that the lower courts and Mr. Justice Sharfuddin committed an error, in so far as they held that the document and its terms had not been proved; and it has been contended that there was no need for registration, *first*, because the terms were embodied in a decree or order of the Court; and, *secondly*, because the document did not actually amount to a lease, but merely created a right to obtain another document which, when executed, would create an interest in land.

The first of these points is one of considerable interest, and though two decisions of this Court in *Birbhadra Rath v. Kalpataru Panda* (1) and *Gurdeo Singh v. Chandrikah Singh* (2), are opposed to the appellants' contention, it certainly is worthy of consideration whether the view that prevailed in *Gobinda Chandra Pal v. Dwarka Nath Pal* (3) does not give a true exposition of the decision of their Lordships of the Privy Council in *Pranal Anni v. Lakshmi Anni* (4). In the view, however, that I take of this case, it is unnecessary to decide that point, because, in my opinion, the *solehnama* here does not amount to a lease within the meaning of clause (d) of section 17 of the Registration Act. On a fair reading of the document, I think that no immediate interest was created, there was no present demise, and the document was merely an agreement to create a lease on a future day, the terms of which were to be defined by documents to be thereafter executed. The case, therefore, seems to me to fall within clause (h) of section 17 of the Registration Act. This being so, I think the appellants have rightly contended before us that the document was

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admissible in evidence. The result of that view is that the decree of the lower Appellate Court cannot be sustained. We, therefore, set aside that decree and the plaintiffs undertaking to execute the requisite *kabuliyat*, we direct defendants Nos. 1 and 2 to execute a *patta* in respect of two annas share of the whole *mauza* in accordance with the terms of the *solehnama*, and that the plaintiffs do thereupon recover from the defendants possession of the property; liberty will be reserved to the plaintiffs to apply to us in case any difficulty arises in getting the *patta* executed or otherwise.

Defendants Nos. 1 and 2 will pay the plaintiff's costs throughout.

Doss J. I agree.

s. M.

Appeal allowed.

CRIMINAL REVISION.

Before Mr. Justice Harington and Mr. Justice Teunon.

ANU SHEIKH

v.

EMPEROR.*

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Magistrate, transfer of—Inquiry—Continuance of inquiry by another Magistrate without the examination of the witnesses de novo—Criminal Procedure Code (Act V of 1898) ss. 145, 350.

Section 350 of the Criminal Procedure Code applies to an inquiry under section 145.

Where a Magistrate, who has commenced such an inquiry, is transferred, and the District Magistrate has made over the case to another Magistrate, the latter has power, under section 350 of the Code, to proceed with it without examining the witnesses *de novo*.

MOTION.

A dispute having arisen between the petitioner, Anu Sheikh, the first party, and Jitu Sheikh and others, second party,

*Criminal Motion No. 625 of 1910, against the order of Nagendra Chandra Sen, Deputy Magistrate of Mynensingh, dated March 14, 1910.