

Maharaja Chintamani Saran Sah Deo

Vs

Jogeshwar Sikhar and Others

Civil Appeal No. 1927 of 1975

(R. M. Sahai, K. Jagannatha Shetty JJ)

24.07.1990

JUDGMENT

K. JAGANNATHA SHETTY, J. –

The question raised in the appeal is whether a registered kabuliyat' signed by lessee and accepted by the lessor but not signed by the latter is sufficient to constitute a 'registered lease' as required under Section 6 sub-section (1) (a) (ii) of the Bihar Land Reforms Act, 1950. The said section is in these terms :

"6. Certain other lands in 'khas' possession of intermediaries to be retained by them on payment on rent as 'raiyaates' having occupancy rights. - (1) On and from the date of vesting all lands used for agricultural and horticultural purposes, which were in 'khas' possession of an intermediary on the date of such vesting, including -

#(a)(i) * * *##

(ii) landlord's privileged lands let out under a registered lease for a term exceeding one year or under a lease, written or oral, for a period of one year or less, referred to in Section 43 of the Chota Nagpur Tenancy Act, 1908 (Ben Act 6 of 1908)"

2. The respondents are admittedly in possession of the disputed lands under a registered kabuliyat (Ex. 12) and also as occupants. Their case is that the lands were vested in the State under the Bihar Land Reforms Act, 1950 ("the Act") and not saved by Section 6 sub-section (1) (a) (ii) thereof. The appellant's case is otherwise. He says that he is the owner of the lands and his rights remain unaffected, and the lands are saved under Section 6 sub-section (1) (a) (ii). He filed a suit against the respondents for possession on the ground that the lands are saved from vesting. The suit was dismissed by the Special Subordinate Judge, but on appeal, the appellant succeeded before the Additional Judicial Commissioner. The High Court, however, in the second appeal has reversed the judgment of the Additional Judicial Commissioner and confirmed the decree of the Subordinate judge.

3. Hence this appeal by special leave.

4. It is not in dispute that there was a registered kabuliyat in favour of the respondents. The case of the appellant is that in re of agricultural lands, the lease need not be signed by the lessor and lessee. Section 107 of the Transfer of Property Act which provides for such requirement is not attracted to agricultural lease in view of Section 117 of the said Act. Kabuliyat is a well accepted mode of

execution of agricultural lease, and if it is registered, it must be regarded as a registered lease. Reference is made to Section 2 (7) of the Registration Act, 1908 which defines 'lease' to include a counterpart kabuliyat, an undertaking to cultivate or occupy, and an agreement to lease. Section 43 and 44 of the Chota Nagpur Tenancy Act, 1908 are also relied upon.

5. We do not think that these provisions are relevant for construing the meaning to be expression 'registered lease' under Section 6 sub-section (1) (a) (ii) of the Act. The Indian Registration Act has nothing to do with the mode of creating a lease. It only provides for registration of certain documents if executed. If Section 2 (7) of the Registration Act is to be the guiding factor for determining the requirements of registered lease, then even an undertaking to lease or an agreement to lease, if registered would fall within the concept of 'registered lease' under Section 6, sub-section (1) (a) (ii). Apparently, that could not have been the intention of the legislature. There is no provision in the Act which defines the term 'lease'. We have to ascertain the object with which the legislature incorporated the expression 'registered lease' in Section 6 sub-section (1) (a) (ii) of the Act. Apparently, it was to avoid mischief by depriving tenants of their legitimate right of occupancy. The legislature when they have used the term 'registered lease' seems to have intended that it should be such a lease to which lessor and lessee are both parties and signatories. That is also the view taken by the High Court and it appears to be reasonable. We concur with the view taken by the High Court.

6. Moreover, the decision of the High Court has held the field till now regulation the rights of ever so many parties under the Act. It is but proper that we should allow it to prevail.

7. We therefore, dismiss the appeal, but without an order as to costs.

8. Before parting with the case we would record our appreciation for the useful assistance rendered by Mr. L. R. Singh, Advocate, amicus curiae.

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