

# CALCUTTA HIGH COURT

Panchanan Bose

Vs

Chandi Charan Misra

(Lawrence H Jenkins, C.J. Doss, J.)

16.05.1910

## JUDGMENT

### **Lawrence H. Jenkins, C.J.**

1. 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.

2. The defendants have objected to the plaintiff's claim on several grounds, but on appeal the only point discussed has been regarding (sic) not the solehnama was admissible in evidence. The field (sic) that has found favour with the lower Courts and also (sic) 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.

3. 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.

4. The first of these points is one of considerable interest, and though two decisions of this Court in *Birbhadra Rath v. Kalpataru Panda*<sup>1</sup> and *Gurdeo Singh v. Chandrikah Singh*<sup>2</sup> 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*<sup>3</sup> does not give a true exposition of the decision of their Lordships of the Privy Council in *Pranal Anni v. Lakshmi Anni*<sup>4</sup> 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 admissible in evidence. The result of that view (SIC) decree of the lower Appellate Court cannot be sustained.(SIC) 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.

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

**Doss J.**

6. I agree.

Cases Referred.

1(1005) 1 C.L.J. 388

2(1907) I.L.R. 36 Cal. 193

3(1908) I.L.R. 35 Calc. 837

4(1899) I.L.R. 22 Mad. 508