

CALCUTTA HIGH COURT

Lalit Mohan Ghosh

Vs

Gopali Chuck Coal Company Ltd

(Lawrence H. Jenkins, K.C.I.E., C.J., Woodroof, Mookerjee, Carnduff and D. Chatterjee, JJ.)

05.09.1911

JUDGMENT

Lawrence H. Jenkins, K.C.I.E., C.J.,

1. The questions referred, for decision to the Full Bench have been framed as follows:

(i) Has the case of *Durga Prasad Singh v. Rajendra Narain Bagchi*¹ been correctly decided in so far as it determines that a document, though not amounting to a lease, requires registration if it be an agreement for reduction of rent under a previously existing registered lease?

(ii) Does a document which is not a lease, but which varies the amount of rent to be paid under an existing registered lease is also the incidents of such payments, namely, the date of payment and consequences of default of payment, require registration?

2. It is necessary to premise at the outset that the original lease in the case before the Court, dated the 25th July, 1890, and varied by a registered deed, dated the 22nd December, 1903, was compulsorily registrable under Section 107 of the Transfer of Property Act and Section 17(d) of the Indian Registration Act. The answers to the questions propounded consequently depend upon the constructions of these two sections. Section 107 of the Transfer of Property Act provides that a lease of immovable property from year to year or for any term exceeding one year, or reserving a yearly rent, can be made only by it registered instrument. The plain intent of the section is that all the essential incidents of a lease of this description must be embodied in one or more document duly registered. It is not necessary to attempt, on the present occasion, an exhaustive enumeration of all the essential incidents of such a lease: it is sufficient to hold that provisions about the amount of rent, the time of payment thereof, and the consequences of default, relate to the essential elements of the lease. This view receives support from the terms of Section 105 of the Transfer of Property Act, and is involved in the decision of the Judicial Committee in *Subramanian Chettiar v. Arunachalam Chettiar* (1902) I.L.R. 25 Mad. 603. The answers of the Full Bench to the questions referred are, therefore, its follows:

(i) The case of *Darga Prasad Singh v. Rajendra Naraim Bagchi* (1909) I.L.R. 37 Calc. 293 has been, for the reasons given here, correctly decided, in so Ear as it determines that

a document embodying an agreement for reduction of rent under a previously existing lease registered as required by Section 17(d) of the Indian Registration Act, requires registration.

(ii) A document, which varies the amount of rent to be paid under an existing lease registered as required by Section 17(d) of the Indian Registration Act, as also the incidents of such payments, namely, the date of payment and consequences of default of payment, requires registration.

3. The case will be returned to the Division Bench with this expression of opinion. The costs of the hearing before the Full Bench will, abide the result of the appeal.

Cases Referred.

1(1909) I.L.R. 37 Calc. 293