

JAMMU AND KASHMIR HIGH COURT

Ishwar Dutt

Vs.

Sunder Singh

Second Revenue Appeal No. 12 of 1960

(J.N. Wazir, C.J. and S.M. Fazl Ali, J.)

13.12.1960

JUDGMENT

S.M. Fazl Ali, J.

1. This is a landlord's appeal in a suit brought by him for evicting the respondent under the provisions of the Jammu and Kashmir Tenancy Act.
2. The plaintiff sought to evict the tenant on the ground that he being fixed term tenant, he was liable to be evicted after the expiry of the term fixed in the lease. The main evidence produced by the plaintiff before the trial court was the deed of lease, but as the deed of lease was unregistered, the trial court held that it was inadmissible, and as there was no material to prove that the respondent was a fixed term tenant, the suit was dismissed. On appeal, a single judge of this court upheld the decision of the trial court.
3. The only point urged before us, was that both the courts below committed an error in ruling out the lease deed which though unregistered could still be used for a collateral purpose in order to prove the nature and character of the respondent's possession. We were referred to several authorities on the point, that although, there is no proviso to Section 49 of the State Act, as there is in the Act which is applicable in India, yet the fact that a document which is compulsorily registrable and is not registered is still admissible for a collateral purpose.
4. The only question for our consideration is as to whether the use which the appellant wants to make of the lease deed is a collateral purpose for which the document is admissible. It is well settled that even though a document which is compulsorily registrable under Section 17, clause (d) of the State Act is not registered, yet it can be used for a collateral purpose namely to prove the nature and character of the possession of a party concerned. But collateral purpose means only a purpose which is ancillary to the purpose of lease. Thus a deed of lease which is compulsorily registrable and is not registered cannot be used for the purpose of proving the actual terms of the lease or for enforcing a right which flows directly from the lease. It can be used for instance, in order to prove as to how the tenant was let into possession or as to whether the possession of a lessee was that of a tenant or adverse. But where a suit is filed to prove that

the tenant was a fixed term tenant deriving his status from the lease, because the lease was for a fixed term of two years, then the period of the lease, in our opinion, cannot be said to be a collateral purpose by any stretch of imagination. If the plaintiff was allowed to do this, then he will be using the terms of the lease itself in order to enforce his rights under the lease which is specifically prohibited by the provisions of Section 49 of the Registration Act. The learned judge has quoted a number of authorities in support of his view and we agree that the view taken by the learned judge is correct. In the case in *Mt. Nasiban v. Mohammad Sayed*¹, it was clearly held that an unregistered deed of lease cannot be used for the purpose of proving the period of lease, and Mr. Justice Vivian Bose observed as follows :

"But the only purpose for which the appellant wants to use it here is to prove her agreement - She sues for possession on the ground that the lease has terminated, and so wants to show the period for which the lease was granted. She also sues for the rent payable under it. Therefore the document is not receivable in evidence for these purposes'.

We fully agree with the observations made by Mr. Justice Vivian Bose in that case and we find that the facts of present case are very much similar to the facts of the case cited above. To the same effect is a decision reported in *Sobharam Mahto v. Raja Mohan*², where a division Bench of the Patna High Court has observed as follows :

"In the present case, although the learned District Judge says in his judgment that the Amalnama (Ext. 4) was admissible for explaining the nature of possession, but I find that he has based his finding about plaintiff's title on the Amalnama itself. He could not indirectly do that which the law prohibited him from doing. The plaintiffs, therefore, were not entitled to prove their title and their right to recover possession on the strength of the unregistered amalnama (Ext. 4). The use made of this document, which, the learned District Judge, describes as a collateral purpose was not in reality so, because he used it as evidence of the transaction itself which in law he could not do".

5. It is useless in our opinion to burden our judgment with authorities on this point, because, as to what a collateral purpose, is in a particular case, will obviously depend on the facts and circumstances of each case. In the present case, we are clearly of the opinion that the lease could not be proved for the purpose of showing that the respondent was a fixed term tenant and the period of lease was two years, because this would amount to proving the transaction itself. The learned counsel for the appellant, however, strenuously relied on a decision of the Bombay High Court reported in *Vishvanath Haibatrao v. Ranganath Dhondo*³, We have carefully gone through that case, and we find that the facts of that case are clearly distinguishable from the facts of the present case. In that case, there were a number of other circumstances which were sought to be proved by the tenant apart from the terms of the lease in order to prove his status. In the present case, however, the status of the tenant can be proved only and only by the terms of the lease and by no other

¹ AIR 1936 Nag 174

³ AIR 1942 Bom 268

² AIR 1957 Pat 278

evidence hence the decision relied upon by the counsel for the appellant, therefore, is of no assistance to the appellant.

6. It was lastly contended by Mr. Prakash that the lease itself does not fall within the description given in Section 17(g) of the State Registration Act. Section 17(g) of the State Registration Act runs thus :

"Leases of immoveable property for any term exceeding one year and reserving a yearly rent exceeding fifty rupees".

***** contended that as one of the terms of the lease was that the tenant would be evicted if he committed a breach of the terms he could be evicted before the period of the lease.

7. Mr. Prakash argued that in view of this recital it could not be said that the tenant was entitled to enjoy the property for a full term of two years. In support of his contention Mr. Prakash relied on a decision of the Allahabad court reported in *Khuda Bakhsh v. Sheo Din*⁴, It is true that there are certain observations which support the contention of the counsel for the appellant, but it appears that later on a Division Bench of the same High Court reported in *Munshi Lal v. Gopi Ballabh*⁵, took a different view and distinguished the aforementioned case. In the latter case, their Lordships of the Allahabad High court observed as follows :

"The "term" of a lease for purposes of registration must, however, be understood to mean the period for which the lessee is protected against dispossession at the will and pleasure of his lessor, or in other words the length of time for which lessee is entitled to continue in possession, provided he himself fulfils all the stipulated conditions. The leases before us are therefore, leases for a "term" of thirty years, they are also, in our opinion, leases "reserving a yearly rent". The District Judge has referred to certain reported cases such as *Khayali v. Hussain Bakhsh*⁶, The case of *Intazam Fatima v. Ali Bakhsh*⁷, was decided with express reference to the terms of the Registration Act (20 of 1866) which was in force when the lease then under consideration was registered. There does not seem to have been anything in the provisions of the leases discussed in any of those cases which bound the lessor to maintain the lessee's possession for a longer period than one year, if he did not see fit to do so, however scrupulously the lessee might have performed his part of the contract".

8. We fully agree with the observations made by their Lordships of the High Court in that case. The same view has been taken by their Lordships of the High Court in case reported in *Malooddee Noshyo v. Bullubee Kant Dhur*⁸, and in another or the same High Court reported in *Jamiruddin Saodagar v. Hazi Mal Gani Saodagar*⁹, In most cases, there is bound to be a recital involving a penalty for breach of the terms of contract, but this does not mean that the lessee is not entitled to enjoy the property for the full term of the lease, because it cannot be presumed that the lessee would always commit a breach of the terms of the lease. For

⁴ ILR 8 All 405

⁶ ILR 8 All 198, and ILR 8 All 405

⁸ 13 Suth WR 190

⁵ AIR 1914 All 120

⁷ 10 Ind Cas 314 (All)

⁹ 62 Cal LJ 201

these reasons, therefore, we are unable to accept the contention of Mr. Prakash which is accordingly overruled. We are, therefore, clearly of the view that the learned Judge was right in dismissing the suit of the plaintiff and in holding that the deed of lease was inadmissible to prove the period of lease so as to enforce his right to eject the tenant.

9. Before we close the judgment, we might mention that the learned Judge has relied on a Full Bench Decision of the Madras High Court reported in *Muruga Mudaliar v. Subba Reddiar*¹⁰, where their Lordships made the following observations :

"Section 49(c). of the Registration Act prohibits the use of an unregistered instrument in any legal proceeding in which such a document is sought to be relied on in support of a claim to enforce or maintain any right title or interest to or in immovable property".

It is not necessary for us to consider this decision in view of the interpretation given by us on Section 49 of the Registration Act, but we may point out that this case goes too far when it says that in no case can a document be relied upon in support of a claim to enforce or maintain any right. The Proviso to Section 49 appearing in the Act which is applicable to India clearly provides that an unregistered document can be received as evidence of a contract in a suit for Specific Performance or as evidence of part performance of a contract.

10. Perhaps, the attention of their Lordships was not drawn to these specific purposes, for which an unregistered document could be allowed to be used under the provisions of Section 49 of the Indian Registration Act.

11. For the reasons given above, the appeal is dismissed with costs.

Wazir, C.J.

12. I agree that the appeal be dismissed with costs.

Appeal dismissed.

¹⁰ AIR 1951 Mad 12