APPELLATE CIVIL

Before Daya Krishan Mahajan, J.

GITA RAM,—*Appellant.*

versus

SADHU SINGH,—*Respondent.*

Regular Second Appeal No. 1228 of 1960

March 8, 1967.

Registration Act (XVI of 1908)—S. 17(1)(d)—Document not creating lease in presenti but noticing an existing lease—Whether requires compulsory registration—Alteration in quantum of rent—Whether tantamounts to creating a new lease—"Lease"—Document of—Whether must create relationship of lessor and lessee—Compromise arrived at in a suit creating tenancy—Whether requires registration.

Held, that it is only that document which creates a lease *in presenti* which would come within section 17(I)(d) of the Indian Registration Act. A document which merely notices an existing lease and leaves it to go on but only enhances the rent would not fall within the ambit of the section and will not require compulsory registration.

Held, that mere alteration of the quantum of rent in lease would not be tantamount to creating a new lease.

Held, that in order to constitute a document a lease, it must by its own force create the relationship of landlord and tenant. If a document does not create such a relationship, it cannot be said to be a "lease".

Held, that a compromise arrived at in a suit which does not create a tenancy but merely recognises the existing relationship of landlord and tenant and enhances the rent to be paid in the future does not require registration.

Second Appeal from the decree of the Court of Shri Pritam Singh Pattar, Additional District Judge, Karnal, dated the 4th day of May, 1960, affirming with

costs that of Shri Shamsher Singh Kanwar, Extra Sub-Judge, IV Class, Karnal, dated the 8th June, 1959, granting the plaintiff a decree with costs, for the recovery of Rs. 27 as rent for three years from the defendants.

J. K. SHARMA, ADVOCATE, for the Appellant.

G. C. MITTAL, AND M. S. JAIN, ADVOCATES, for the Respondent.

JUDGMENT

Mahajan, J.—This order will dispose of Regular Second Appeal No. 1228 of 1960 and Regular Second Appeal No 456 of 1962. The facts leading to these second appeals may now be stated.

In the year 1954, Sadhu Singh, who is the appellant in R.S.A. 456 of 1962, brought a suit for possession and for rent at the rate of rupees four per annum for a period of six months, i.e., for rupees two for the property in dispute. It is no doubt true that in the suit the defendant, Gita Ram, took the plea that he was not the tenant of Sadhu Singh, but the plea was not taken to its logical consequences because the suit was settled by a compromise. The compromise is exhibit p. 1 and the relevant part is as follows:—

> "I shall continue to pay rent for the site of the house in dispute to the plaintiff at the rate of Rs. 9 per annum, and so long as the rent is paid, I or my descendants shall be entitled to occupy the property and shall not be liable to eviction. In case of default of payment of rent, the plaintiff shall be entitled to occupy the property and shall not be liable to eviction. In case of default of payment of rent, the plaintiff shall be entitled to get me evicted. and, in that event, we shall not be entitled to any interest or right to the building material (*malba*). I and my descendants shall not be entitled to sell the *malba* or rent out the house to any person."

Thereafter, Sadhu Singh made the following statement:—

> "I have heard the statement of the defendant. I agree and accept it as correct. The suit may be dismissed in terms of that statement."

In terms of these statements, the decree was passed and the suit was dismissed. Sadhu Singh then brought a suit for rent from 30th December, 1954 to 30th December, 1957, against Gita Ram at the rate of rupees nine per annum. In this suit the defendant again denied the relationship of landlord and tenant and also denied his liability to pay rent. The plaintiff pleaded the compromise Exhibit P. 1 to prove the existence of that relationship. This suit was decreed and the compromise Exhibit P. 1 was held to be admissible in evidence and the objection that it required registration was rejected. An appeal against this decision made to the Additional District Judge also failed. Against this decision, Regular Second Appeal No. 1228 of 1960 was filed in this Court and will be disposed of by this order.

For the recovery of rent from 30th December, 1957 to 30th December, 1960, another suit was filed by Sadhu Singh accompanied with the prayer for ejectment of the tenant. The same defences that were raised in the earlier suit were again setup. The trial Court decreed the suit rejecting all the defences. On appeal by Gita Ram, the lower Appellate Court has reversed the decision of the trial Court and dismissed the suit. The principal ground on which the learned District Judge has proceeded is that the compromise Exhibit P. 1 required registration. In the opinion of the learned District Judge, this compromise creates a lease of the property in dispute in favour of Gita Ram.

The only question on the determination of which the fate of these appeals hinges is whether the document Exhibit P. 1 creates a lease or not. It is not disputed, and indeed it could not be, that if the document exhibit P. 1 creates a lease, registration under section 17(1)(b) is necessary; and, even if it is incorporated in the terms of a decree, the requirement of registration will not be obviated by reason of the provisions of section 17(2) (vi) because this saving clause only saves those documents which require registration under section 17(1)(b) and (c). The principal question that requires determination is whether the document Exhibit P. 1 creates a lease *in presenti*. Before proceeding to determine this matter, it will be proper to set out the relevant provisions of the Registration Act, 1908. Section 2. clause 7 of the Act defines lease as follows:—
Section 17(1) is as follows: —

> "lease" includes a counterpart, *kabuliyat*, an undertaking to cultivate or occupy, and an agreement to lease."

"17(1). The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877 or this Act came or comes into force, namely:—

* * *

(b) other non-testamentary instruments which purport or operates to create, declare, assign, limit or extinguish, whether in present or in future any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) leases of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent;

* * * * *"

Sub-section 2 of section 17 of the Act runs as follows:—

* * * * *"

(vi) any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding;

* * * * *"

Section 105 of the Transfer of Property Act, 1882, defines lease as follows:—

"105. A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express

or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor or by the transferee, who accepts the transfer on such terms.

* * * * *"

The combined reading of the definition of lease in both the provisions discloses that in order that a document is a lease it must by its own force create the relationship of landlord and tenant. If the document does not create such a relationship, it cannot be said to be a lease. In this connection, reference may usefully be made to the observations of the Privy Council in *Hemanta Kumari Devi* v. *Midnapur Zamindari Co.* (1) *Trivenibai and another* v. *Shrimati Lilabai* (2). Their Lordships of the Supreme Court in *Triveni Bai's* case have held that all the instruments which under the inclusive definition of section 2(7) (Registration Act) are treated as leases satisfy the test of *immediate and present demise* in respect of the immovable property covered by them.

So far as the present case is concerned, it will be obvious from the narrative of facts already set out that in a dispute as to whether the relationship of the plaintiff and the defendant was that of landlord and tenant, the plaintiff all the time asserted that the defendant was a tenant and the compromise was entered into. The compromise does not say that by reason of the compromise the relationship has come into being. The compromise accepts the assertion of the landlord and tenant at the time *vis-a-vis* each other as landlord and tenant at the time it was being entered into. Therefore, I am unable to accept the contention of Mr. Sharma that the compromise itself created the relationship. It merely recognised the existing relationship; and with regard to that relationship, it clarified certain matters namely, that from the date of the compromise the rent was to be rupees nine per annum. In other words, the rent was raised from rupees four to rupees nine and the tenant was to hold on to his tenancy so long as he paid the rent. It is well known that in Punjab. before the application of the Transfer of Property Act, there could be oral leases. There is no evidence on the record

(1) A.I.R. 1919 P.C. 79.

(2) A.I.R. 1959 S.C. 620.

that the lease prior to the compromise was of a different kind from that recognised in the compromise. Therefore, it is idle to suggest that the compromise has created a new lease. In this situation, Mr. Sharma pressed the argument that as there was a change in the rent that fact by itself would create a new lease and, for that purpose, has based himself on the decision of the Lahore High Court in *Attar Chand Kapur and Sons* v. *Chandu Lal and others* (3) and also on the decision of the Full Bench of the Madras High court in *F. S. Kasim Marakkayar and others* v. *P. R. M. K. Muhammad Abdul Rahiman Marakkayar* (4). The only other case which *prima facie* supports Mr. Sharma is *Pannalal Rudra and another* v. *Birendra alias Bireswar Sana* (5).

On the other hand, Mr. Gokal Chand Mittal, who appears for the plaintiff, has relied on a large number of decisions and principally on *Ananta Lal* v. *Bibhuti Bhusan* (6). The view of the Patna High Court is also shared by the Calcutta High Court in *Benoy Krishna Bhoumik* v. *Biseswar Sanyal* (7), by the Bombay High Court in *Ramrao Nilkanth Nadkarni and others* v. *Shrimant Puranand Sarswati Swami* (8), and also by the Allahabad High Court in *Mirza Mohammad Hasan* v. *Budhu* (9).

At this stage it will be appropriate to examine the various decisions cited at the bar. So far as the Lahore decision is concerned, it was closely examined by their Lordships of the Patna High Court in *Ananta Lal v. Bibhuti Bhusan* (6), and at page 341 of the report this is what Manohar Lall, J., who spoke for the Court, observed:—

> "*Attar Chand Kapur* v. *Chandu Lal* (3) was the next case relied on by Mr. Mazumdar. But in that case it appears from the judgment that in a previous suit which was brought by the lessor to recover arrears of rent at the rate of Rs. 512 per mensem the parties entered into an oral compromise. By the compromise the rent payable under

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(3) I.L.R. 10 Lahore 685.
(4) A.I.R. 1944 Mad. 273.
(5) A.I.R. 1960 Cal. 201.
(6) A.I.R. 1944 Patna293=I.L.R. 23 Patna' 334.
(7) I.L.R, 1948(1) Cal. 520.
(8) A.I.R. 1940 Bom. 281.
(9) A.I.R. 1938 All. 32.

the lease was varied and the lessor promised to allow the lessee to use a certain door. There was thus a material variation in the terms of the lease. Moreover the terms of the compromise were not incorporated either in the order or in the decree. The court merely made a memorandum of the new promise made by the lessee, and not of the promise made by the lessor. In these circumsances it was obvious that the terms of the original lease were not proved to have been varied in the manner required by law. The original lease being registered its terms could only be varied by another document in writing registered unless the new promise was embodied in an order or decree of the court. Here there was no decree or order of the court, so the question which falls to be considered here did not arise for determination in the Lahore case. But Mr. Mazumdar places reliance upon the remarks, which are obviously in the nature of *obiter*, in the course of the judgment. "Be that as it may, the next point is that the compromise varied the terms of the registered lease with regard to the rate of rent and that this variation amounted to a fresh lease which required registration even if it was duly recorded, because a lease is compulsorily registerable under clause (d), subsection (1), section 17, Registration Act, clause (6), subsection (2), section 17 is not applicable to leases"; and reference was made to the case of *Bhaga Mower* v. *Ram Lakhan Misser* (10) which I have noticed already. In that judgment the decision of this Court in *Charu Chandra* v. *Shambhu Nath* (11), was stated to be distinguished, but the grounds of distinction were not stated in the judgment. For these reasons I am unable to hold that this case is of any assistance to Mr. Mazumdar."

I see no reason to take a different view of the Lahore decision.

The Full Bench decision of the Madras High Court in *F. S. Kasim Marakkayar and others* v. *P.R.M.K. Muhammad Abdul Rahiman Marakkayar* (4), presents no difficulty. It proceeds on the basis that the compromise-decree in that case was intended to operate as a lease, and the only controversy that fell for determination before the Full Bench was whether clause (vi), sub-section (2), section 17

(10) (1917) 27 Cal. L.J. 107.

(11) (1918) 3 Pat. L.J. 255 (F.B.).

of the Registration Act would save it from compulsory registration or not. The Full Bench held that clause (vi) of sub-section (2) of section 17 of the Registration Act would not save such a compromise-decree from registration in view of the opening words of sub-section (2) of section 17 which only saved documents falling under section 17(1) (b) and (c), and not leases.

So far as *Pannalal Rudra and another* v. *Birnedra alias Bireswar Sana.* (5) is concerned, here again, the compromise by its own force created the lease. The plaintiff who was the respondent before the High Court had filed a title-suit for a declaration that he was the owner of certain land. That suit he settled with the defendant who was the appellant before the High Court and in that compromise the plaintiff accepted the position that he would henceforth be a tenant and gave up his right of ownership. Therefore, it is abundantly clear that by reason of the compromise a tenancy was created. It has not been disputed that if the compromise itself creates a tenancy, the compromise is compulsorily registrable; but if it does not, I fail to see how it would require compulsory registration.

Mr. Sharma has also relied on the following decisions: *Rajani Kanta Banerjee and others* v. *Raj Kumari Dasi and another,* (12) *Smt. Kamini Das* v. *Hari Pada Dutt* (13) *Nagendra Chandra Nag* v. *Purna Chandra Gupta and others* (14). *Nazar Ali* v. *Indra Kumar Sutar and others* (15). *Atul Krishna Bose and others* v. *Zahed Mondal and others* (16). *Jagdish Chandra Deo Dhalbal Deo* v. *Biseswar Lal Agarwalla and others* (17) and *Sachindra Mohan Ghose* v. *Ramjash Agarwala* (18). I have gone through these decisions with the learned counsel. The facts of each one of these cases are different and in each one of them it was found as a fact that the compromise itself created the lease except in *Smt. Kamini Das* v. *Hari Pada Dutt* (13), which proceeded on the basis that the earlier lease being under a registered document, any variation in the terms of that lease could only be made by a registered document and, therefore, a variation of a registered lease by an unregistered document would be inadmissible in evidence even if incorporated in a compromise-decree.

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(12) A.I.R. 1927 Cal. 913.
(13) A.I.R. 1939 Cal. 416.
(14) A.I.R. 1935 Cal. 261.
(15) A.I.R. 1929 Cal. 462.
(16) A.I.R. 1941 Cal. 102.
(17) A.I.R. 1941 Patna 536.
(18) A.I.R. 1932 Patna 97.

The entire case-law has been ably discussed in *Ananta Lal* v. *Bibhuti Bhusan* (6), where in it was held that "each case must be decided on its own facts by construing the particular document in question and the main test will be whether the document evidences a present demise". On the disputed question, namely, whether change in the rate of rent creates a new lease it was observed as follows in *Benoy Krishna Bhoumik* v. *Biseswar Sanyal* (7):—

> "A *solenama* which recognises a pre-existing tenancy and varies the rent but maintains the status of the tenant does not create a present demise. It becomes registerable under section 17, sub-section (1), Clause (b) and not clause (d) of that section of the Indian Registration Act. But when a decree is passed in terms of the *solenama*, such decree is exempted from registration by the provisions of section 17, sub-section (2) clause (vi) where, as in the present case, they have application, and is admissible in evidence."

Kania, J., as he then was, in *Ramrao Nilkanth Nadkarni and others* v. *Shrimant Purnanand Saraswati Swami,* (supra) while dealing with a similar problem, observed as follows:—

> "Where there is a variation in the terms of the lease about the rent, the document containing those terms does not require registration as a new lease."

It will be of some significance to mention that Mulla in his commentary on the Registration Act, while dealing with the decisions which have already been cited, does not cast any doubt on their correctness. The learned author, wherever he has doubted the correctness of any decision, has indicated so in his various commentaries. It also appears to me that the rule laid down by the authorities that mere alteration of the quantum of rent in lease would not be tantamount to creating a new lease, is the correct rule.

The learned District Judge in R.S.A. 456 of 1962 has clearly gone wrong because he did not keep in view the distinction as to which document will require registration under section 17(1)(d). It is only that document which creates a lease *in presenti* which would come within the clause. A document which merely notices an existing lease and leaves it to go on, but only enhances the rent would not fall within the ambit of section 17(1)(d). After examining the matter in its true perspective, I am clearly of the view that the trial Court was right

in holding that the compromise did not require registration and was, therefore, admissible in evidence; whereas, the lower appellate Court has gone wrong on that matter. In this view of the matter, the net result would be that Regular Second Appeal No. 1228 of 1960, will fail whereas Regular Second Appeal No. 456 of 1962 will succeed. I accordingly dismiss Regular Second Appeal 1228 of 1960 and allow Regular Second Appeal No. 456 of 1962, set aside the judgment and decree of the lower appellate Court and restore that of the trial Court. In view of the difficult nature of the question involved, I would make no order as to costs in both the appeals.

K.S.K.

APPELLATE CIVIL

Before Daya Krishan Mahajan and R. S. Narula, JJ.

STATE OF PUNJAB,—*Appellant.*

versus

GIANI BIR SINGH AND ANOTHER,—*Respondents.*

Regular First Appeal No. 219 of 1961.

March 13, 1967.

Transfer of Property Act (IV of 1882)—S. 53—Suit for declaration that the gift was non est *and in the alternative that it had been made fraudulently and dishonestly to defeat and delay the creditors—Whether maintainable—Such suit—Whether can be filed by one creditor only—Withdrawal of objection to mutation on the basis of gift deed—Whether amounts to acceptance of validity of the gift by the creditor and debars him from filing the suit.*

Held, that the right to attach particular property is a right as to that property within the meaning of those words in section 42 of the Specific Relief Act, 1877. A decree can be passed in favour of the plaintiff in a suit in which he challenges the gift made by a debtor in favour of his wife as *non est* and in the alternative that it had been made fraudulently and dishonestly with intent to defeat and delay his creditors. In any case, two alternative claims were made by the plaintiff and it is well known that in law, a plaintiff can, not only make alternative claims in the suit but also inconsistent claims in the suit and the relief is to be granted in accordance with the claim that he is able to make out.