

of the Indian Penal Code, and direct that he be set at liberty forthwith. In ordinary circumstances, we might have remanded the case for a fresh trial, but we consider that such a course would, in the present case, be unfair and contrary to settled practice, seeing that the appellant has been in a state of suspense over his sentence of death for more than a year.

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*Appeal allowed.*

Agent for the appellant : *R.S. Narula.*

Agent for the respondent : *P.A. Mehta.*

MANGAN LAL DEOSHI

v.

MOHAMMAD MOINUL HAQUE & OTHERS.

[SHRI HARILAL KANIA C.J., PATANJALI SASTRI  
 and DAS JJ.]

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*Indian Registration Act, 1908, s. 17 (1) (b) and (d), s. 17 (2)—“Lease”—Compromise decree creating under-lease between A and B on condition that A pays a sum of money to C—Whether compulsorily registrable—Agreement to lease not creating immediate interest in land—Whether “lease”.*

An agreement for a lease, which a lease is by the Indian Registration Act declared to include, must be a document which effects an actual demise and operates as a lease. It must create a present and immediate interest in land.

Where a litigation between two persons A and B who claimed to be tenants under C was settled by a compromise decree the effect of which was to create a perpetual underlease between A and B which was to take effect only on condition that A paid Rs. 8,000 to C within a fixed period :

*Held*, that such a contingent agreement was not “a lease” within cl. (d) of s. 17 (1) of the Indian Registration Act, and even though it was covered by cl. (b) of the said section it was exempt from registration under cl. (vi) of sub-s. (2) of s. 17.

*Hemanta Kumari Debi v. Midnapur Zamindari Co.* (I L.R. 47 Cal. 485 P.C.) relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 94 of 1949.

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*Mangan Lal*  
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Appeal from a judgment and decree of the High Court of Judicature at Patna in Appeal from Appellate Decree No. 97 of 1946 (Manohar Lall and Mukherji JJ.) dated 23rd December, 1947, confirming the judgment of the District Judge of Purulia in Appeal No. 159 of 1944.

*S. P. Sinha* (*P. K. Bose*, with him) for the appellant.

*N. C. Chatterjee* and *Panchanan Ghosh* (*Chandra Narayan Naik*, with them) for the respondent.

1950. December 1. The Judgment of the Court was delivered by

*Patanjali*  
*Sastri J.*

PATANJALI SASTRI J.—This appeal arises out of a suit brought by the respondent in the court of the Subordinate Judge, Dhanbad, for recovery of arrears of royalty and cess from the appellant and another alleged to be due under a compromise decree passed on the 6th March, 1923, in a previous suit between the predecessors in interest of the parties. The only plea which is material for the purpose of this appeal is that the compromise decree not having been registered was inadmissible in evidence. The courts below held that the document did not require registration and gave effect to its terms in decreeing the suit. The second defendant has preferred this appeal.

The facts are not now in dispute and may be briefly stated. On 11th March, 1921, one Kumar Krishna Prasad Singh (hereinafter referred to as Kumar) granted a permanent lease of the right to the underground coal in 5,800 bighas of land belonging to him to Shibsaran Singh and Sitaram Singh (hereinafter referred to as the Singhs) by a registered patta stipulating for a salami of Rs. 8,000 and royalty at the rate of 2a. per ton of coal raised subject to a minimum of Rs. 8,000 and for certain other cesses and interest. On 7th June, 1921, Kumar executed another permanent patta leasing the right to the coal in 500 bighas out of the 5,800 bighas referred to above to one Prayagji Ballavji Deoshi and his son Harakchand Deoshi (hereinafter referred to as the Deoshis). By this document

the Deoshis agreed inter alia to pay royalty at the rate of 2a. per ton on all classes of coal raised subject to a minimum of Rs. 750 a year. The Singhs feeling themselves aggrieved by the latter transaction brought a title suit (No. 1291 of 1921) in the Court of the Subordinate Judge of Dhanbad for a declaration of their title and for possession of the 500 bighas leased to the Deoshis under the aforesaid patta of 7th June, 1921. To that suit Kumar was made a party as defendant No. 3, the Deoshis being defendants 1 and 2. The suit was however compromised on 6th March, 1923, by all the parties and a decree based on the compromise was also passed on the same day. The interest of the Singhs was brought to sale in 1938 in execution of a decree obtained against them and was purchased by the plaintiff who instituted the present suit on 3rd October, 1942, claiming the royalty and cesses payable under the compromise decree for the period from Pous 1345 to Asadh 1349 B. S. from defendants 1 and 2 as the representatives of the Deoshis who entered into the compromise of March, 1923.

In order to appreciate the contentions of the parties, it is necessary to set out the relevant terms of the compromise decree which are as follows:—

“ The plaintiffs (the Singhs) within two months from this date shall pay Rs. 8,000 as salami to defendant No. 3 (Kumar). Otherwise all the terms of the compromise will stand cancelled and the plaintiffs shall not be competent to claim any right to or possession over the land covered by the patta dated 11th March, 1921... The patta which defendant No. 3 executed in favour of the plaintiffs in respect of 5,800 bighas of coal land in village Rahraband shall remain in force, and the plaintiffs will get a decree of declaration of their right and title to the 500 bighas of coal land in dispute but defendants 1 and 2 (the Deoshis) shall hold possession as tenants. Besides the terms mentioned below, defendants 1 and 2 shall remain bound by all the remaining terms under which they took settlement of the 500 bighas of coal land from defendant No. 3 under

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patta and Kabuliyat, and both the defendants 1 and 2 shall possess the same under the plaintiffs from generation to generation and all the terms of the said patta and Kabuliyat shall remain effective and in force between them. Both the defendants 1 and 2 shall remain bound to pay to the plaintiffs commission at the rate of 2a. 6p. per ton on all sorts of coal instead of 2a. a ton as stated before in the patta of 5,800 bighas of land settled with the plaintiffs...The plaintiffs shall pay to defendant No. 3 in future the minimum royalty of Rs. 6,000 instead of Rs. 8,000 as stipulated in the original patta of 11th March 1921 and commission at the rate of 1a. 9p. a ton in place of 2a. a ton as stipulated in the patta of March 21.....Unless the plaintiffs pay to the defendant No. 3 Rs. 8,000 within 2 months from this day they shall not be competent to take out execution of this decree, nor shall they be competent to take possession of the land in dispute. The defendants 1 and 2 within one month from the date of payment of Rs. 8,000 as aforesaid to defendant No. 3 shall execute a new Kabuliyat in favour of the plaintiff in respect of the modified terms stated above, *i.e.*, on the condition to pay commission at the rate of 2a. 6p. per ton...In the new patta which defendant No. 3 will execute in favour of the plaintiffs he shall embody the condition that the annual minimum royalty will be Rs. 6,000 instead of Rs. 8,000 and commission will be at the rate of 1a. 9p. per ton in place of 2a. per ton as mentioned in the aforesaid patta. If the defendant No. 3 does not execute the patta on the aforesaid modified terms in favour of the plaintiffs within the time aforesaid and both the defendants 1 and 2 also do not execute a kabuliyat on the aforesaid modified terms, then this very rafa nama shall be treated as the patta and kabuliyat, and the plaintiffs in accordance with the terms of the rafa nama shall pay to defendant No. 3, Rs. 6,000 only as minimum royalty and commission at the rate of 1a. 9p. per ton with respect to 5,800 bighas and shall continue to realise commission at the rate of 2a. 6p. per ton from defendants 1 and 2 who shall remain bound to pay the same."

The answer to the question whether this compromise decree requires registration depends on the legal effect of the changes in the *status quo ante* of the parties brought about by the document. A careful analysis reveals the following alterations :—

(1) In the lease to the Singhs, the rate of royalty or commission was reduced from 2a. per ton of coal raised to 1a. 9p. per ton and the minimum royalty was reduced from Rs. 8,000 to Rs. 6,000 while the area of coal land in their khas possession was reduced by 500 bighas.

(2) In the lease to the Deoshis the rate of royalty or commission was enhanced from 2a. per ton to 2a. 6p. per ton and this was made payable to the Singhs.

(3) The Singhs and the Deoshis were brought into a new legal relationship, the former accepting the latter as tenants holding the disputed 500 bighas under them in consideration of the latter agreeing to pay the enhanced royalty to the former.

(4) The whole arrangement was made conditional on the Singhs paying Rs. 8,000 to Kumar within 2 months from the date of the compromise, it being expressly provided that the Singhs were not to be entitled to execute the decree or to take possession of the disputed area of 500 bighas which evidently had not till then passed into their possession.

Now, sub-section (1) of section 17 of the Registration Act, enumerates five categories of documents of which registration is made compulsory which include “(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;”. Sub-section (2) however provided that “nothing in clauses (b) and (c) of sub-section (1) applies to ..... (vi) any decree or order of court.” It may be mentioned in passing that this clause was amended with affect from the 1st April, 1930, by the Transfer of Property (Amendment) Supplementary Act, 1929, so as to exclude from the scope of the exception compromise decrees comprising immovable property other than that which is the subject-matter of the suit. But

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the amendment cannot affect the document here in question which came into existence in 1923. Before the amendment, the clause was held to cover even compromise decrees comprising immovable property which was not the subject matter of the suit : [Vide *Hemanta Kumari Debi v. Midnapur Zamindari Co.* (1)]. That decision applies to the present case and obviates the objection that because the compromise in question covered also the remaining 5,300 bighas which were not the subject-matter of the title suit of 1921, it was outside the scope of the exception in sub-section (2), clause (vi).

The only question, therefore, is whether the compromise decree is a "lease" [which expression includes "an agreement to lease" by the definition in section 2 (7)] within the meaning of cl. (d) of sub-section (1). It is obvious that if the compromise decree falls within clause (d) of sub-section (1) it would not be protected under clause (vi) of sub-section (2) which excepts only documents falling under the categories (b) and (c) of sub-section (1). The High Court was of opinion that, on a proper construction of the terms of the compromise, it did not fall under clause (d). Manohar Lal J., who delivered the leading judgment, observed : "It was a tripartite agreement embodied in the decree of the court and was, therefore, exempt from registration. It will be observed also that so far as the defendants were concerned, their possession of the 500 bighas was not interfered with and they still remained in possession as the lessees, but instead of paying the royalty to the plaintiffs it was agreed between all the parties that the defendants would pay the royalty in future to Shibsaran and Sitaram. If the matter had stood there, the learned Advocate for the appellant could not have seriously contested the position, but he vehemently argued that when the agreement was not to pay the same amount of royalty or commission as previously agreed to but an altered amount of royalty and commission, the document should be held to fall within the mischief of section 17 (1) (d) of the

(1) 47 Cal. 485 : P.C.

Registration Act. The answer to this contention is, as I have stated just now, to be found in the Full Bench decision of this court:" [see *Charu Chandra Mitra's case* (1)]. It was there held that a mere alteration of the rent reserved does not make the transaction a new lease so as to bring it within clause (d) of sub-section (1).

We are unable to share this view. It oversimplifies the compromise transaction which, in our opinion, involves much more than a mere alteration of the royalties stipulated for in the previous pattas executed by Kumar. Nor can we accept the suggestion of Mr. Chatterjee for the respondents that the compromise operated as an assignment to the Singhs by Kumar of the latter's reversion under the "lease granted to the Deoshis and all that the latter did was to acknowledge the Singhs as their landlords and attorn to them. On this view it was said that the transaction would not fall under clause (d), although it would fall under clause (b) but then would be saved by the exception in clause (vi) of sub-section (2). The argument, however, overlooks that Kumar had leased the area of 5,800 bighas to the Singhs by his patta dated 11th March, 1921, and the compromise by providing that the Singhs should pay the reduced royalty of 1a. 9p. per ton in respect of the whole area preserved Kumar's reversion intact. He could not therefore be deemed to have assigned any part of his interest in 5,800 bighas as landlord to the Singhs who continue to hold the entire extent as tenants under him. What the compromise really did was, as stated already, to bring the Singhs and the Deoshis into a new legal relationship as under-lessee and under-lessee in respect of 500 bighas which were the subject-matter of the title suit; in other words, its legal effect was to create a perpetual under-lease between the Singhs and the Deoshis which would clearly fall under clause (d) but for the circumstance that it was to take effect only on condition that the Singhs paid Rs. 8,000 to Kumar within 2 months

(1) 9 P. L. J. 225.

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thereafter. As pointed out by the Judicial Committee in *Hemanta Kumar's case* (1) "An agreement for a lease, which a lease is by the statute declared to include, must, in their Lordships' opinion, be a document which effects an actual demise and operates as a lease.....The phrase which in the context where it occurs and in the statute in which it is found, must in their opinion relate to some document which creates a present and immediate interest in the land." The compromise decree expressly provides that unless the sum of Rs. 8,000 was paid within the stipulated time the Singhs were not to execute the decree or to take possession of the disputed property. Until the payment was made it was impossible to determine whether there would be any underlease or not. Such a contingent agreement is not within clause (d) and although it is covered by clause (b), is excepted by clause (vi) of sub-section (2). We therefore agree with the conclusion of the High Court though on different grounds and dismiss the appeal with costs.

*Appeal dismissed.*

Agent for the appellant: *P. K. Chatterjee.*

Agent for the respondent : *Sukumār Ghose.*

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 RAJA KAMALA RANJAN ROY

v.

BAIJNATH BAJORIA.

[SHRI HARILAL KANIA C. J., PATANJALI SASTRI  
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*Contract—Specific performance—Offer to purchase leasehold right—Stipulation that lessee should obtain consent of lessor—Lessor unreasonably refusing consent—Lessee, whether relieved of liability to assign—Suit for specific performance by purchaser—Maintainability—Lease deed—Covenant prohibiting assignment of lease without lessor's consent, "such consent, however, not to be unreasonably withheld in case of respectable person"—Meaning and effect of covenant.*

(1) 47 Cal. 485, at p. 494.