

Beni Prasad vs Mahraj Din on 8 November, 1950

Equivalent citations: AIR1951ALL622, AIR 1951 ALLAHABAD 622

JUDGMENT

1. These two third appeals are directed against two decisions of our learned brother Desai J. They arise out of two suits instituted by Beni Prasad, applt. in the Court of the Asst. Collector, first class, Partabgarh, for a -declaration and possession under Sections 63 and 180, U. P. Tenancy Act. The claims were founded on a heritable and transferable lease of certain plots in villages Gopalpur and Raina Satkhera granted by the landlord Bhaya Suraj Prasad Singh on 2-1-1942, to Beni Prasad. Shortly before the execution of the perpetual lease, the landlord had on 14-12-1941, let out two of the plots covered by the perpetual lease, namely, Plots Nos. 117 and 118 in Gopalpur to Maharaj Din, deft., resp. in Appeal No. 6 of 1949 and the other Plot No. 2 in Raina Satkhera to Sita Ram, deft, in the suit which gives rise to Appeal No. 7. Sita Ram has since died and is represented by Ganga Din and Moti Lal, respondents.

2. The sole question which falls for determination in these two cases is whether the pattas of Maharaj Din and Sita Bam are valid and operative against the pltf. The annual rent reserved in both of them was less than Rs. 100 and though the pattas were granted after half the Fasli year was over, the grantees agreed to pay rent for the whole agricultural year, that is to say from 1-7-1941. Under Section 56, U. P. Tenancy Act, a lease for a period exceeding one year or from year to year has to be made by a registered instrument only. The expression 'registered' not only means registered under any Act for the time being in force for the registration of documents but includes attested under the provisions of Section 57 of the Act. In cases of leases of tenancy lands which are required by law to be made by a registered instrument, Section 57 provides that if they stipulate for the payment of annual rental not exceeding Rs. 100, the parties thereto may in lieu of registration have it 'attested' by a revenue Court or a revenue officer not inferior in rank to a qanungo or such other person as the Provincial Govt. may appoint. The defendants' pattas were attested on 13-3-1942, that is to say about three months after their execution and over two months after the grant of the pltf's. perpetual lease and the latter, therefore, maintained that they will not confer any rights on the defts. and could not prejudicially affect him. In this connection it has to be observed that the pltf. is an under-proprietor. He was held to possess that status by the civil Court to which an issue on that question was referred under Section 286, U. P. Tenancy Act and the finding which was upheld by the Courts below is not questioned. The defts', tenancy rights could, therefore, co-exist with the pltf's under-proprietary rights in the same plots. It was insisted, however, that if the two pattas did not begin to be operative till the date of their registration, the defts. could not acquire any tenancy rights thereunder. The argument was repelled by the Courts below and the pltf's suit, therefore, failed. Beni Prasad came up in second appeal to this Court, but here also he met with the same fate. Desai J. who heard the appeal upheld the appellate decision of the learned Civil Judge, Partabgarh. He found firstly that the principle of Section 47, Registration Act applied and rendered the pattas effective from the date of their execution. He also held that since the rent under the pattas became payable from the commencement of 1349F, the attestation though subsequent to the permanent lease had the effect of validating the documents retrospectively from 1st July 1349F which was the

date from which the parties agreed that the rent would become payable. The applt. challenges the correctness of these grounds of decision. It is argued on his behalf that where transfers are required by law to be made by a registered instrument, they can run only from their date of registration in the absence of any provision making them effective from the date of their execution. A tenancy, it was said, comes into being only when the rent becomes payable by the tenant to the landlord and since the contract to pay rent can create liability only if and when it is registered or attested, the tenancy must necessarily date from that time. We think that this line of argument is fallacious and that even if it could have had a semblance of plausibility at one time, it is wholly untenable now in view of the definition of the word 'registered' which, as stated above expressly includes attestation. It seems to us that the case reported in *Banwari Lal v. Khubi Ram*, 37 ALL. 59 : (A. I. R. (1) 1914 ALL. 371) applies to these appeals and contains a complete answer to the pltf's contention. The facts of that case were almost similar. There certain occupancy tenants had executed a sub-lease for five years in favour of the pltfs. on 21-11-1910 and the document was registered on the same date. Prior thereto the lessors had already executed a sub-lease of a portion of the same land in favour of the defts. on 15-11-1910. The earlier patta, however, was not attested till 7-12-1910. Section 97 of the then Tenancy Act (II [2] of 1901) permitted leases for a term not exceeding ten years where-under the annual rent payable did not exceed Rs. 100 to be attested before a qanungo instead of being registered. Sub-section (3) of Section 97 of that Act provided that "Such instrument shall thereupon be as valid as if it had been registered under the law for the time being in force for the registration of assurances."

It was urged on behalf of the pltf. that it was only Section 47, Registration Act, which gave retrospective effect to documents registered some time after their execution and since the advantage of that section was not expressly made available to oases of attested documents, the mere fact that they thereupon became valid under Sub-section (3) of Section 97, Tenancy Act, did not operate to convey an interest in and from an earlier point of time. *Chamier and Piggott JJ.* repelled the argument and held that where a lease had been attested by a revenue Court or officer under Section. 97, Agra Tenancy Act, 1901, the attestation must relate back to the date of the execution of the document. Some difficulty was felt in coming to that conclusion because the word 'registered' was not defined in the Tenancy Act and the definition thereof in Section 4 (35), General Clauses Act, only confined the scope of the word to "registered in British India under the law for the time being in force for the registration of assurances." The framers of the present Act apparently desired to steer themselves clear of the kind of controversy raised in *Banwari Lal's* case, (37 ALL. 59 : A. I. R. (1) 1914 ALL. 371) and it was with that object that they introduced the definition of the word 'registered' in Section 3 (17), U. P. Tenancy Act and made it to include 'attestation' under the provisions of Section 57.

3. The learned counsel for the applt. cited some English cases to support his contention but we think it unnecessary to refer to them because the rule there laid down has no application in India. The matter here is governed by the Indian law of registration and the U. P. Tenancy Act and is not left to be dealt with as it is in England by the delivery of the deed. We respectfully agree with the rule laid down in *Banwari Lal's* case, (37 ALL. 59 : A. I. R. (1) 1914 ALL. 371) and hold that the attestation of the two pattas on 13-3-1942 operated from the date of their execution, namely, 14-12-1941. The pltf. could not, therefore, be granted the reliefs which he prays for.

4. We dismiss the appeals with costs.