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SATISH KUMAR

v.

ZARIF AHMED AND ORS.

FEBRUARY 20, 1997

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[K. RAMASWAMY AND S. SAGHIR AHMAD, JJ.]

*Rent and Eviction :*

*Transfer of Property Act, 1882/Registration Act, 1908/Stamp Act, 1899:*

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*Ss. 3 and 53-A/ss. 17(1)(d)/2(14)—Lease deed—Unregistered lease of immovable property for 11 months—Held, is admissible in evidence to consider the effect of immovable property contained therein or to receive as an evidence of any transaction vis-a-vis such property—Decree of ejection of tenant passed by trial court restored.*

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 383 of 1984.

From the Judgment and Order dated 21.10.82/9.8.83 of the Allahabad High Court in C.R. 3613 of 1978.

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Manoj Goel for R.P. Singh for the Appellant.

Shakil Ahmed Syed for the Respondents.

The following Order of the Court was delivered :

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This appeal by special leave arises from the judgment of the Allahabad High Court, made on October 2, 1982 and August 9, 1983 in Civil Revision No. 3613/78.

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The admitted position is that the appellant-landlord had entered into an agreement of lease with the respondent-tenant on August 30, 1969 for a period of 11 months for rent @ Rs. 220 per mensem. Notice of demand for arrears and also for termination of tenancy for non-payment was delivered to the respondent on April 8, 1972. Thereafter, the appellant filed suit on the small cause side for ejection of the respondent. The trial Court decreed the suit on May 19, 1977. The tenants then filed the revision in the

H High Court. The learned single Judge referred the following two questions

for decision by a Division Bench :

"1. Whether any term of a lease deed required under Section 107 of the Transfer of Property Act to be registered, could be pressed into service for a collateral purpose within the meaning of the provision to Section 49 of the India Registration Act?"

2: Whether, in the instant case the relationship of landlord and tenant, the rate of rent and the period for which the original lease has been granted could be looked into as a collateral purpose under the proviso to Section 49 of the Indian Registration Act?"

The Division Bench has answered the reference and held that the lease deed is inadmissible evidence can cannot be looked into and oral evidence in proof of the tenancy is also inadmissible. After the reference was answered, the learned single Judge, following the reference order, allowed the revision and set aside the decree of eviction. Thus, this appeal by special leave.

The only question that arises for consideration is : whether the unregistered lease deed is admissible in evidence Section 17(1)(d) of the Registration Act postulates Thus :

"(1) the following document shall be registered if the property to which it relates is situate in a district in which, and if it may 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 the Indian Registration Act, 1908 came or comes into force, namely ---

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

"Instrument" has been defined in Section 2(14) of the Indian Stamp Act, 1899 postulating that "(I)nstrument includes every document by which any right or liability is, or purports to be created, transferred, limited, extended extinguished or record.

Section 3 of the Transfer of Property Act, 1982 (for short the 'TP Act') also defines "instrument" to mean a non-testamentary instrument. Section 107 of the TP Act regulates how lease is to be made. The first part

- A thereof 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 a registered instrument. The second part thereof gives exception to the first part and provides that all other lease of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.
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- The question, therefore, that arises is : whether a lease of immovable property from month to month or for 11 months is a compulsorily registerable document, though it was reduced to writing as an instrument defined under Section 2(14) of the Stamp Act? A conjoint reading of the first part of Section 107 read with Section 17(1)(d) of the Registration Act. as extracted hereinbefore, does indicate that a lease of immovable property from year to year, on for any term exceeding one year or reserving a yearly rent should be made only by a registered instrument and all other instruments, thought reduced to writing and possession is delivered thereunder, are not compulsorily registerable instruments.
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Section 49 of the Registration Act prohibits receiving in evidence certain types of documents. It reads as under :

- E "No document required by Section 17 or by any provision of the Transfer of Property Act, 1882 to be registered shall --
- (a) affect any immovable property comprised therein, or
- (c) be received as evidence of any transaction affecting such property or conferring such power;
- F unless it has been registered :"

- The proviso is not applicable to the facts in this case and, therefore, it is not necessary to look into the exceptions engrafted vis-a-vis receipt of a documents comprising of three circumstances mentioned therein, namely, unregistered document used for enforcement of specific performance under the Specific Relief Act or used as an evidence or part performance of the contract under Section 53-A of the TP Act or using evidence for collateral transactions. The combined effect of all the provisions is that an unregistered lease deed executed from month to months, for a period not exceeding 11 months, though reduced to writing and possession is delivered thereunder to a tenant, is not a compulsorily registerable instrument and,
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therefore, the prohibition contained in Section 49 of the Registration Act is inapplicable. Therefore, the document is admissible in evidence to consider the effect of the immovable property contained therein or to receive as an evidence of any transaction vis-a-vis such property. A

The High Court, therefore, was not right in reaching the conclusion that an unregistered document is inadmissible in evidence and cannot be looked into for the purpose of effecting the rights as landlord and tenant created under the document. B

The appeal is accordingly allowed. The judgment of the High Court stands set aside and the decree of the trial court stands restored, but in the circumstances, without costs. C

R.P.

Appeal allowed.