

1868.  
July 1.

*Referred Case.*

MORO VITHAL.....Plaintiff.  
TUKA'RA'M valad MALHA'RJI *et al.* .....Defendants.

Bhádékhat—Registration—Lease—Counterpart of a Lease—Act XX.  
of 1866, Sec. 17.

*Held* that a *bhádékhat* is an agreement between a lessee and a lessor in the nature of a counterpart of a lease, and that an instrument of this character must, for the purposes of the Registration Act, be treated as a lease.

*Held* also that a provision in the *bhádékhat* that the lessee might after six months remain in occupation at a monthly rent, till the lessor called upon him to vacate, did not extend the term for which the lease was granted, as at the conclusion of that term the lessee would be only a monthly tenant of the lessor.

CASE referred for the decision of the High Court, by Bháskar Dímodhar, Judge of the Small Cause Court at Ahmednagar, under Act XI. of 1865, Sec. 22 :—

“In the above suit the plaintiff seeks to recover from the defendants the sum of Rs. 13, under an unregistered *bhádékhat* (agreement to pay rent), which was passed to him by them on Vaishákh Vadya 7th, Shake 1789, corresponding with 25th May 1867.

“The defendants stated in the *bhádékhat* that they agreed to pay a rent of Rs. 5 a month for a room, and *otá* (veranda in front of the room) hired from the plaintiff; that the room and *otá* had been hired for a period of six months, but that the defendants would pay rent at the same rate for *any* period in excess thereof for which the plaintiff might allow them the use of the room and *otá*.

“The plaintiff states that the defendants had the use of the room and *otá* for seven months and a half; that they have paid rent for the five months; and that the rent for two months and a half is still due.

“The defendant has not appeared, and the Court has to pass an *ex parte* judgment. The case is a very simple one, but there are two questions of law on which I beg to be favoured with the decision of Her Majesty's High Court of Judicature.

“The questions are—(1) Whether or not a *bhādekhat* should, under the Registration Act, No. XX. of 1866, be regarded as a *lease*; and (2) whether a lease of immoveable property for an *indefinite* period should be regarded as a lease for a term exceeding one year, and as such requiring to be registered under Sec. 17 of Act No. XX. of 1866.

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“A *bhādekhat* is passed by a person to whom property is let, to the person who lets the property, and the person signing it agrees to occupy and pay rent for the property on the conditions therein stated. This document remains with the person who lets the property. The latter does not pass any document to the other party binding himself to fulfil his part of the contract.

“In Sec. 2 of Act No. XX. of 1866, it is stated that a ‘Lease includes a counterpart, a *kabulāyat*, an undertaking to cultivate or occupy, and an agreement to lease.’ These words appear to me to be intended to include documents of the nature of *bhādekhate*, which contain an agreement, by the person to whom property is let, to occupy and pay rent for the property on certain conditions.

“By Sec. 3 of Schedule A of the Stamp Act, No. X. of 1862, any ‘agreement, or minute or memorandum for a lease, or of the terms and conditions on which any land, house, or other real property is let, held, or occupied,’ is made liable to the same stamp as for a lease of the same property on the same terms and conditions. A *bhādekhat* is, therefore, subject to the same stamp duty as a lease, whether or not it be treated as a lease or a counterpart of a lease. Under the Registration Act, however, the necessity for registering a *bhādekhat* would arise only in the event of its being regarded as a lease, under the definition of that term above quoted. It is, therefore, important to decide this question authoritatively.

“With respect to the second question, it may be observed that a lease for an undefined period cannot strictly be called a lease for a term exceeding one year; though, if it pleased the parties concerned, it would admit of the property leased being held on the terms of the lease for any number of

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years. In the Stamp Act, No. X. of 1862, there is a special provision (Schedule A, Sec. 41) making a lease for an indefinite term liable to the same stamp duty as a lease for a period exceeding one year; but there is no corresponding provision in the Registration Act, and I am, therefore, of opinion that a lease for an undefined period should not be treated as one requiring to be registered under Sec. 17 of Act No. XX. of 1866. I, however, consider that an unregistered lease for an undefined period would cease to have any effect after the expiration of one year, and that no claim to rent for any period in excess of one year can be supported by such a lease.

“In the case to which this reference relates, the *bhādehhat*, though purporting to be one for six months, contains a provision which virtually makes it one for an undefined period. As, however, the contract therein made terminated before the expiration of a year, I would use it as evidence, and allow the plaintiff's claim, in the event of the opinion above expressed being concurred in by the Honorable the Judges of the High Court.”

PER CURIAM (NEWTON and TUCKER, JJ.):—We concur with the Judge of the Ahmednagar Court of Small Causes that the instrument submitted for our consideration, namely, a *bhādehhat*, is an agreement between a lessee and a lessor in the nature of a counterpart of a lease, and that an instrument of this character must, for the purposes of the Registration Act, be treated as a lease.

We are, further, of opinion that as this particular instrument does not bind the lessor to continue the lessee in occupation for a longer period than six months, it must be held to be a lease for that term only, and consequently does not require to be registered under Sec. 17 of Act XX. of 1866. The provision, that the lessee may remain in occupation at a monthly rent till the lessor calls upon him to vacate, does not, in our opinion, extend the term for which the lease was granted, as at the conclusion of that term the lessee would be a mere monthly tenant of the lessor, and have no larger lease.