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Court : Allahabad

Decided On : Feb-02-1928

Reported in : AIR1928All313

Appellant : Mt. Parbati

Respondent : Sarup Singh

Judgement :

Sulaiman, J.

1. This is a defendant's appeal arising out of a suit brought by Sardar Sarup Singh for damages for breach of a contract. Some of the facts are admitted and others are clearly proved. There was undoubtedly a contract, oral at first, between Mt. Parbati on the one hand and Sardar Tara Singh, the father of the plaintiff, on the other, under which it was agreed between the parties that Mt. Parbati would grant a lease of certain house property for six years on a certain rent. The lease money was to be payable in instalments and nearly half of it was to be paid at the very beginning. On 17th March 1918, Mt. Parbati executed a receipt for a sum of Rs. 3,300, acknowledging that she had received that amount on account of lease money in respect of the houses and the shops for the period mentioned. It was a disputed point in the Court below whether on that date she had only received Rs. 2,950 or had received the whole of Rs. 3,300. On the next day, viz: 18th March 1918, Sardar Tara Singh executed a document called a thekanama which was

really a qubuliat or the counterpart of a lease under which he undertook to take the property on lease on the conditions mentioned above. This document was duly registered. The recital contained in this deed shows that only Rs. 2,950 had been paid under the receipt, dated 17th March 1918, and that the balance of Rs. 350 would be paid within a month. The case for the plaintiff was that this document was faired out from a draft which had been prepared long before that date and that was the explanation offered as regards the discrepancy between the recital of this deed and that of the receipt. On behalf of the defendant it was urged that as a matter of fact only Rs. 2,950 had been paid in cash and the balance of Rs. 350 remained outstanding, though a receipt was given for the whole amount and that it was on account of the failure to pay the balance that the defendant did not execute the patta. It was further pleaded that the claim was barred by the three years' rule of limitation.

2. The learned Subordinate Judge has held that the full amount of Rs. 3,300 had been paid when the receipt was executed and he has accepted the explanation offered by the plaintiff as to the discrepancy in the recital contained in the thekanama. He is further of opinion that the breach was committed by the defendant, particularly as the payment of Rs. 350 had been made, and even if it had not been made it is not shown that the time fixed for its payment was of the essence of the contract. He is further of opinion that the claim is not barred by limitation, but is saved by the provisions of Article 116, Lim. Act.

3. As regards the question of fact which was in dispute in this case, the evidence is all one sided. The plaintiff Sarup Singh has gone into the witness-box and he has also produced a witness Bali Ram. According to this oral evidence, the whole amount mentioned in the receipt was paid in cash before the receipt was obtained, and the discrepancy in the thekanama was due to the fact that it was faired out from a draft prepared Previously. The defendant has not gone into the witness-box and has produced no evidence to rebut it. Therefore, the evidence remains absolutely uncontradicted. The plaintiff's evidence further goes on to show that the draft of the thekanama had actually been dictated by Mt. Parbati herself, and that the thekanama was executed and registered in pursuance of the contract entered into by the parties, and that after the registration of the deed the original was given

to Mt. Parbati who kept it and accepted the same. This evidence has been believed by the Court below, and in the absence of any evidence to the contrary we are unable to take a different view of that evidence. We are thus in agreement with the learned Subordinate Judge that Rs. 350 had been paid. Even if it had not been paid in time, the time of its payment not being of the essence of the contract, there would be no breach committed on the part of the plaintiff so as to entitle the defendant to avoid the contract. The execution of the patta by Mt. Parbati was entirely a matter within her power, and if she wanted to perform her part of the contract, there could possibly be no obstacle in her way. Under these circumstances the breach was undoubtedly committed by the appellant.

4. The only question, and by no means an easy one, which remains for decision is whether the claim was barred by limitation. It is wholly unnecessary in this case to consider the question whether the transaction of lease can be validly completed by the execution and registration of a qabuliat without any registered patta. On this point there has been a conflict of opinion between this High Court and the other High Courts. We have not to consider the question whether any complete conveyance took place or not. We have only to consider whether there was a contract for the grant of a lease and whether that contract has been broken. That there was a contract and there has been a breach cannot now be disputed. The only question is whether the present suit can be described as a suit for compensation for breach of a contract in writing registered, within the meaning of Article 116, Lim. Act. The learned advocate for the appellant contends in the first place that the terms of the qabuliat do not show any undertaking on the part of Mt. Parbati, and, therefore, the document does not embody any complete contract which has been broken. It is obviously the document which was intended to be executed by the lessee, and the language is only in the first person. But there can be no doubt that it embodies all the terms of the lease and the conditions under which it was to be taken by the lessee and granted by the lessor. We are, therefore, unable to hold that the complete terms of the contract of lease are not embodied in this document.

5. The next contention is that it cannot be said to be a contract in writing, registered, when it is purely a unilateral instrument. It is contended that, unless

there is a mutual consent, there cannot be any agreement, and consequently there cannot be any contract and that, therefore, the present suit is not based on the breach of a contract in writing registered and, that the cause of action does not arise out of any registered contract. In support of this contention, reference has been made to the case of *Apaji v. Nilkantha* [1901] 3 Bom. L.R. 667, where the learned Chief Justice expressed the view that the words 'contract in writing' contemplate an agreement in writing signed by both the parties affected, thereby, and that an agreement signed only by one of the parties does not satisfy the requirements of the law unless the assent of the other party appears in any way from the agreement itself. If the article were to be taken in its strict literal sense, there might be considerable force in this interpretation. On the other hand the view which prevails in Madras and Calcutta is that there is no justification for introducing into the article words like 'executed by both parties' or 'executed by the person sued against': *Ambalavana Pandaram v. Vaguram* [1896] 19 Mad. 52, *Khotappa v. Vallur Zamindar* [1902] 25 Mad. 50, *Girish Chandra Das v. Kunja Behari Malo* [1908] 35 Cal. 683 and *Chellaphroo Chawdhari v. Banga Bhari Sen* [1916] 20 C.W.N. 408. It seems to us impossible to hold that the words like 'executed by both parties' are deemed to be understood in this article. In India, where a large number of documents are executed by only one party and not the other, and where indentures signed by both parties are not common, it would cause great hardship if we were to interpret this article as applicable only to cases where both parties have signed the same document. In that view the section would also become wholly inapplicable to cases of registered sale deeds, registered mortgage-deeds and registered bonds and agreements which are signed by only one party. We are also of opinion that there is no justification for limiting this article to the case where the registered document is signed by the defendant only. The article does not contain those words and there is no reason why those words should be interpolated. If there is a valid contract evidenced by a registered document which, though signed by only one party is complete because it has been accepted by the other, and breach of that contract has been committed, it seems to us that Article 116 would be equally applicable to such a case. The Madras and Calcutta cases cited above were cases where the registered contract was signed by only one party and two of those cases were actually cases of a registered

qabuliat without the patta. The Courts held that Article 116 was applicable. No case holding the contrary view has been cited before us. We have already pointed out that cases in which the question is whether the transaction of a lease is complete by the execution and registration of only the qabuliat are not cases which are directly in point.

6. In another case, viz., *Tricomdas Cooverji v. Gopinath Jiu Thakur* A.I.R. 1916 P.C. 182, their Lordships of the Privy Council had to consider whether a suit brought for recovery of rent under a registered qubuliat was governed by Article 116 or not. That was a case where a patta was executed though it is not quite clear from the judgment or the report whether that patta was registered. The qabuliat however, was undoubtedly registered and the suit was brought on the basis of that registered qabuliat. Their Lordships laid down that in view of a series of decisions, all one way, it must be held that Article 116 was applicable and that breach of contract in writing registered had been committed by non-payment of rent. That case may not be directly in point, but it does show that their Lordships took a liberal view of Article 116 and applied it although there was Article 110 which specially refers to suits for arrears of rent. Having regard to this state of the authorities, we are of opinion that the view taken by the learned Subordinate Judge that the claim was not barred by limitation but was governed by the six years rule of limitation as laid down in Article 116, was correct.

7. The result, therefore, is that this appeal is dismissed with costs.