

Ratnasabhpathi Vs. Venkatachalam

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Court : Chennai

Decided On : Feb-24-1891

Reported in : (1891)ILR14Mad271

Judge : Muttusami Ayyar and ;Parker, JJ.

Appellant : Ratnasabhpathi

Respondent : Venkatachalam

Judgement :

1. The subordinate Judge finds that the ground was originally part of the Public street, and as such the property of the Municipality, but he decided against the plaintiff on the ground that the defendant had been in possession for forty years and had thereby acquired a title by prescription. He found further that, though the rent deed was genuine, it was not shown to have been obtained under coercion; yet he held that it was a lease for more than one year, and was legally inoperative as it was not registered, It is urged on appeal that, upon the true construction of document A, the tenancy created by it was determinable at any moment at the option of the lessor, and that it was not therefore subject to compulsory registration.

2. In support of this contention reliance was placed on Apu Budgavda v. Narhari Annajee I.L.R. 3 Bom. 21, Jagjivandas Javherdas v. Narayan Hall L.R. 2 Ex. D. 355. On referring to those cases, we consider that the contention is well founded.

No doubt, the words 'enjoy the same at an annual rental of Rs. 4-6-5' and 'pay the rent in advance each year' might, if they stood alone, raise a presumption that the tenancy contemplated was, at all events, for more than one year, but the clause 'I shall give up possession of the land without raising an objection and without claiming any compensation when the Commissioners ask for the same' appear to us to rebut the presumption and to bring the case within the principle of the decisions mentioned above.

3. This being so, the rent deed cannot be treated as inoperative. We observe that rent was levied for two years under it, and these facts amount to a clear acknowledgment by defendant of the plaintiff's title within a short time before the suit.

4. As the land has also been found to be the property of the Municipality, we are of opinion that plaintiff is entitled to succeed.

5. The decrees of the Courts below must be reversed, and there must be a decree that plaintiff recover the ground site sued for, but with liberty to defendant to remove the structure thereon if any, within a month of the receipt of this decree in the lower Appellate Court.

6. The plaintiff is entitled to his costs throughout.

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