

Arumuga Mudaliar Vs. Muruga Mudaliyar (Died) and ors.

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SooperKanoon Citation : sooperkanoon.com/797612

Court : Chennai

Decided On : Nov-01-1949

Reported in : AIR1950Mad603

Judge : Raghava Rao, J.

Acts : [Registration Act, 1908](#) - Sections 17, 17(1) and 49

Appeal No. : A.A.O. No. 255 of 1946

Appellant : Arumuga Mudaliar

Respondent : Muruga Mudaliyar (Died) and ors.

Advocate for Def. : T.L. Venkatarama Iyer and ; M.C. Srinivasan, Advs.

Advocate for Pet/Ap. : K. Bhashyam and ; A. Srirangachariar, Advs.

Disposition : Appeal dismissed

Judgement :

Raghava Rao, J.

1. This appeal is against an order of remand by the lower appellate Court of a suit dismissed by the trial Court. The suit was for refund of a certain sum of money paid to the defendant by the plaintiffs under a contract by the defendant to lease certain lands to the plaintiffs, and for recovery of damages for breach of the

contract. The plaintiffs relied on Ex. A in proof of the lease; but the trial Court held it to be inadmissible in evidence for want of registration, and dismissed the suit as not therefore maintainable. On appeal the lower appellate Court has remanded the suit after reversing the view of the trial Court in regard to the admissibility in evidence of Ex. A.

2. Exhibit A runs in the following terms in the translation to be found in para. 9 of the judgment of the lower appellate Court which I prefer on the whole to the translation to be found in the record printed here :

'The band letter by Arumugha Mudali to Muruga Mudaliar and Palani Mudaliar dated 2nd April 1943 : Having settled with you the kuthagai of two items of land (Details of the lands are given in the document) for a period of four years, the sum of Rs. 710 has been received by me and this letter given.'

In fact for the words 'having settled with you the kuthagai' I should like to substitute 'having finished with you the talk about the lease' as being a more literal rendering of the corresponding words in the vernacular, as they have been explained to me by counsel.

3. It is contended for the appellant that the document falls within Clause (d) or Clause (b) or at any rate, within Clause (c) of Section 17(I), Registration Act, and that under Section 49 of the Act it cannot be received as evidence of any transaction affecting the immovable property comprised therein. It is urged that if it cannot be received as evidence of the contract, the breach of which is the gist of the action in the present case, no other evidence too can be given of such contract by reason of the bar of Section 91, Evidence Act.

4. The document obviously does not fall within Clause (d) or Clause (b) of Section 17(I), Registration Act. It is not, whether in substance or in form, itself a lease as defined by Section 2(7) of the Act. It is said that the document here is very much like the one in *Streeramulu Naidu v. Ramasami Mudaliar*, (1918) 33 M. L. J. 596 : A. I. R. 1918 Mad. 393 but that, in my opinion, is not the true position since here we do not have all the terms of the transaction recited as set forth in the plaint. Nor does the document purport or operate to create, declare, or assign, whether in

present or in future, any right, title or interest, whether vested or contingent, to or in immovable property. It does not bear to be the bargain by itself, the sole authentic repository of the terms and conditions of the bargain as then and there concluded. It only refers as a fact accomplished to the completion of the talk about the transaction of lease between the parties of which it does not, in fact, set forth all the terms agreed upon as detailed in the plaint, and it recites that the executant has received the rent of Rs. 710/- mentioned therein. It is suggested that the document declares the kind of right, title or interest contemplated by Clause (b) and stands therefore attracted to that clause. I cannot agree; for, we have to bear in mind the distinction drawn by the Privy Council in *Bageshwari Charan v. Jagannath* between a mere recital of a fact and something which in itself creates a title a distinction drawn in other words by West J. in *Sakharam Krishnaji v. Madan Krishnaji*, 5 Bom. 232, which is accepted by the Privy Council in *Bagheshwari Charan v. Jagannath* between a solemn declaration of will designed to bring about a change of jural relationship and a statement in the nature of an admission that such a change took place.

5. The instrument, in my opinion, rather attracts Clause (c) of Section 17(I) as being an acknowledgment of the receipt of consideration on account of the creation of the right, title or interest to or in the leasehold under a concluded agreement in the nature of a present demise. The document falling within Clause (c) need not itself effect the creation of right, title or interest which is in the contemplation of that clause. There is no language in that clause which compels the conclusion that the document must needs of itself effect the creation. In fact if that were the intention of the Legislature Clause (b) would render Clause (c) redundant. So far I am in agreement with the argument of the learned counsel for the appellant.

6. The question then is whether Ex. A is hit at by the bar of Section 49 as further contended by the learned counsel. That raises the question, what is the meaning of the words 'any transaction affecting such property' in Clause (c) of that section. The contract, in my opinion, is such a transaction, although as Section 54, T. P. Act, declares it does not of itself create an interest in the property. So much is clear from the ruling of a Full Bench of this Court reported in *Narayanan Chetty v.*

Muthia Servai, 35 Mad. 63 : 8 I. C. 520 and cannot be doubted or disputed.

7. In order to get over the trouble thus arising, the learned counsel for the respondents has made two submissions: (1) that Ex-A can be received as evidence of an anterior oral agreement of lease between the parties, valid nonetheless because it is oral, such as has been adumbrated in the plaint in the present case, and (2) that whatever the inadmissibility of an unregistered document affecting immovable property in proof of the contract to support the relief of specific performance in a suit for such relief--a difficulty which does not exist after the amendment of Section 49, Registration Act, by the addition of the proviso thereto in 1929--such a document can be received in proof of the contract in a suit like the present for refund of the advance and for damages for breach. Reliance has been placed for the respondents in support of both the submissions on a ruling of a Full Bench of this Court reported in *Rajah of Venkatagiri v. Narayana Reddi*, 17 Mad. 456 : 4 M. L. J. 198 and in support of the latter submission in particular on an expression of opinion to be found in a decision of the Privy Council reported in *M.E. Moolla Sons Ltd. v. Perin R. Burjorjee* to the effect that if the proceeding in connection with which the document is sought to be used as evidence does not in any respect affect immovable property as where damages and not specific performance is asked for, the document may well be accepted and acted upon.

8. With reference to the latter submission, I am of opinion that it does not strictly arise for consideration. The document with which I am concerned is not an unregistered document affecting immovable property but an unregistered document acknowledging the payment or receipt of consideration on account of the creation of a right, title or interest to or in immovable property. If the question arose with reference to 'an unregistered document affecting immovable property' I should find myself in some difficulty to decide it; for, although it seems to me that the submission of the learned counsel for the respondents might in such a case have to be held correct on a reading of the judgment of the Full Bench in *Rajah of Venkatagiri v. Narayana Reddi*, 17 Mad. 456 as it stands, there would then be the difficulty created by the explanation given of that judgment by the later Full Bench ruling in *Narayan Chetti v. Muthiah Servai*, 35 Mad. 63 : 8 I. C. 520 wherein it is said that the earlier Full Bench must be understood to have only ruled that a

Kabuliat signed by the lessee but inadmissible to prove the lease for want of registration was admissible to prove the karar or the agreement to lease which preceded it, and wherein it is further pointed out that there is no distinction on principle between a suit for specific performance and a suit for damages. The difficulty would stand further accentuated by the circumstance that a later decision of a Divisional Bench consisting of Sir John Wallis C. J. and Oldfield J. reported in *Streeramula Naidu v. Ramasami Mudaliar*, (1918) 33 M. L. J. 596 : A. I. R. 1918 Mad. 393 has accepted the law as laid down by *Narayan Chetti v. Muthiah Servai*, 35 Mad. 63 : 8 I. C. 520 giving the earlier Full Bench ruling only a restricted operation; and sitting as single Judge if the question arose for determination, I should deem it proper to hold myself bound in this state of authority to follow the ruling in *Streeramulu Naidu v. Ramaswami Mudaliar*, (1918) 33 M. L. J. 596 : A. I. R. 1918 Mad. 393, which has stood the field for the last about three decades and more. As against that difficulty, it has no doubt been pressed upon me by the learned counsel for the respondents that the view expressed by the Privy Council in *M.E. Moolla Sons Ltd. v. Perin R. Burjorjee* serves to rehabilitate in its wider operation *Rajah of Venkatagiri v. Narayana Reddi*, 17 Mad. 456 : 4 M. L. J. 198 which although not cited in the argument before the Privy Council or referred to in its judgment proceeds on the same line of reasoning as is employed in *Ulfatunnissa Elahijan Bibi v. Hosain Khan*, 9 Cal. 520 : 12 C. L. R. 209, one of the several cases cited before the Privy Council, It has also been pressed upon me that even an obiter dictum of the Privy Council is bound to be followed by Courts in India, and that in fact in the case in *M.E. Moolla Sons Ltd. v. Perin R. Burjorjee* the expression of view by their Lordships became necessary as part of their reasoning founded upon the considerations prima facie entering into the decision of the question whether the point of the inadmissibility of the document there in question for want of registration was to be allowed to be raised before their Lordships for the first time. As I have said, it is not necessary for me in this case to arrive at a definite decision upon the submission made to me by the learned counsel for the respondents, because the document with which this case is concerned is not an unregistered document affecting immovable property but an unregistered document acknowledging receipt or payment of consideration on account of the creation of right, title, or interest to or in immovable property.

9. The former submission of the learned counsel for the respondents must, however, in my opinion, be accepted, for, although it is true that in the view taken by me of the language of Clause (c) of Section 17(l) of the Act it is not necessary that the document in question should itself create a right, title or interest and it is sufficient for the bar of Section 49(c) to operate in respect of such document that on account of such creation of interest even though effected otherwise than by the document in question the document acknowledges the receipt or payment of any consideration, the fact remains that what is sought to be done in the present case, if the argument of the learned counsel for the respondents is accepted, is not to receive the document as evidence of any transaction affecting immovable property comprised therein but only to receive it in evidence for the collateral purpose of deciding on its terms that an anterior contract of lease had come into existence between the parties before the document in question itself came into being. The admissibility of such a document in evidence for such a collateral purpose stands supported by a long catena of authority in Courts in India originating in the ruling of the Privy Council in *Varada Pillai v. Jeevaratnammal*, 43 Mad. 244 : A. I. R. 1919 P. C. 44 to which it is hardly necessary to refer in detail in this connection.

10. That being the true view to take of the question arising in this civil miscellaneous appeal in regard to the admissibility of Ex.-A, it follows that the order of remand must be held to have been rightly made, and this appeal should be dismissed with costs. No leave.