

Narayanan Chetty and anr. Vs. Muthiah Servai and ors.

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Court : Chennai

Decided On : Nov-03-1910

Reported in : (1912)ILR35Mad63

Judge : Arnold White, C.J., ;Krishnaswami Ayyar and ;Ayling, JJ.

Appellant : Narayanan Chetty and anr.

Respondent : Muthiah Servai and ors.

Judgement :

1. Opinion.--We answer the question referred in the negative. It is immaterial whether possession has passed or not in accordance with the agreement. It is clear that the decision of the Full Bench in Rajah of Venkatagiri v. Narayana Reddi I.L.R. (1894) Mad. 456 does not cover the point. As is explained in the order of reference what was held in Rajah of Venkatagiri v. Narayana Reddi I.L.R. (1894) Mad. 456 was 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. The decision in Konduri Srinivasa Charyulu v. Gotteemukkala Venkatardju (1907) 17 Mad. 218 would seem to have proceeded upon a misapprehension of the Full Bench case. The learned Judges who decided it assumed that the Full Bench case was a suit for damages for the breach of an agreement in writing to let which was unregistered though compulsorily, registrable. They held and in our opinion rightly that there was no distinction between a suit for specific performance of such an agreement and one for

damages for the breach of it The learned Judges merely applied, as we venture to think, erroneously the decision of the Full Bench to the case before them. They did not discuss the provisions of the Registration Act. Mr. Justice Boddam who was a party to this decision took the opposite view in Venkata Narasimha v. Seshayya Second Appeal No. 525 of 1903 (unreported) sitting with Mr. Justice Sankaran-Nair. The judgment of Subramania Ayyar and Miller, JJ., in Subbarayudu v. Narasimha Row Second Appeal No. 973 of 1904 (unreported) is open to the same observation as the decision in Konduri Srinivasa Charyulu v. Gotteemukkala Venkataraju (1907) 17 Mad. 218. Our attention was invited to the judgment of the learned Chief Justice, and Mr. Justice Miller in Bangirayya v. Jagannitha Raju Second Appeal No. 979 of 1904 (unreported) The document in that case was not an agreement to lease. There the instrument recited a request by the executant and an agreement by the other party to give certain lands to her and an actual grant by the same, and contained a promise to manage the lands and enjoy them subject to certain terms. The operative part of the instrument was held to require registration. The question was whether for want of registration it was admissible to prove the recital. The learned Judges held that the document was admissible to prove the recital, i.e., the admission by the plaintiff of the existence of an agreement to give some lands to the plaintiff which itself was not in writing or at all events did not require registration. But there are certain observations in their judgment which have been pressed upon us. After referring to Rajah of Venkatagiri v. Narayana Reddi I.L.R. (1801) Mad. 456 and Konduru Srinivasa Charyulu v. Gotteemukkaia Venkataraju (1907) 17 M.L. 218 the learned Judges observe 'that an agreement to lease immoveable property is not actually a transaction affecting land unless in cases where by the agreement itself a right in the land is created' and that 'on that ground it may be held that evidence can be given of such an agreement by means of an unregistered document which is compulsorily registrable.' We do not think this can be regarded as an adjudication on the question which has been referred to us. The decision in Satyendra Nath Bose v. Anil Chandra Ghose 14 C.W.N. 65 is that of a single Judge sitting on the Original Side. He simply followed the decision in Konduri Srinivasa Charyulu v. Gotteemukkaia Venkataraju (1907) 17 M.L. 218. As regards the suggestion made in that case that a lease is the sale of a limited interest and that an agreement to

lease stands on the same footing as an agreement to sell pro tanto, the learned Judge would seem to have overlooked the fact that the legal incidents of the two transactions are entirely different. An agreement to lease is expressly included in the definition of lease in the Registration Act while it cannot be suggested that an agreement to sell falls within any definition of sale. Clause (h) of Section 17 excludes an agreement to sell from the class of compulsorily registrable documents and Section 54 of the Transfer of Property Act provides that a contract to sell does not create an interest in the property. It is true that an agreement to lease may likewise not create an interest in immovable property though Clause (h) of Section 17 has no application to it, and there is no statutory provision in India which says so. But Mr. S. Srinivasi Ayyangar has in his able argument drawn our attention to the provisions of Section 40 of the Transfer of Property Act and Section 91 of the Trusts Act. The first of these provisions speaks of an obligation arising out of a contract and annexed to the ownership of immovable property but not amounting to an interest therein or easement thereon being enforceable against a transferee with notice or a gratuitous transferee of the property affected thereby. This shows that a contract to sell or an agreement to lease immovable property is a transaction which affects the property. In fact, the illustration to that section puts the case of an agreement to sell being enforceable against the transferee with notice, as he has taken property affected by the previous contract to sell it, Section 91 of the Trusts Act puts the same case of a person acquiring property with notice that another person has entered into an existing contract affecting that property of which specific performance could be enforced and consequently becoming liable to hold the property for the benefit of the other. When therefore Section 49 of the Registration Act declares that a document compulsorily registrable but remaining unregistered shall not be 'received in evidence of a transaction affecting such property' or, as put by the Calcutta High Court [See *Uifatunnissa Elahijan Bibi v. Hossin Khan* I.L.R. (1833) Cal. 520 'of a transaction so far as it affects such property' it would seem that the legislature meant to indicate that the instrument should not be received in evidence even where the transaction sought to be proved did not amount to a transfer of interest in immovable property but only created an obligation to transfer the property.

2. Section 49 consists of two parts. It provides first 'that no document required by Section 17 to be registered shall affect any immoveable property comprised therein, etc.' The second part of the section says that such a document 'shall not be received as evidence of any transaction affecting such property,' i.e, as we take it, the immoveable property comprised therein. As regards immoveable property other than that comprised in the instrument or a transaction in respect thereof, the section contains no prohibition against the admissibility of the instrument, We must assume that the two parts of the section deal with different subjects. [See Wilson, J., in the Order of Reference to the Full Bench in Ulfatunnissa Elahijan Bibi v. Hosain Khan I.L.R. (1883) Cal. 520. The first part apparently presupposes that the document itself is the transaction or the mode in which it is carried out, The second part of the section seems to relate to cases where the document itself is not the transaction but is only a record of a transaction or being itself a transaction contains a reference to or a recital of another transaction which affects the immoveable property comprised therein. Even in the last case the document may be inadmissible to prove the other transaction provided it affects the immoveable property comprised therein. As the Registration Act deals only with written instruments it may be doubted whether the transaction referred to in Section 49 can be merely oral. It is unnecessary to define the exact scope of this clause as to inadmissibility for proving a transaction affecting such property. It is enough for the purpose of this reference to say that a contract to lease immoveable property which is compulsorily registrable under Section 17, clause [d] affects the immoveable property. [See Green, J, in Raju Balu v. Krishnarav Ramchandra I.L.R. (1878) Bom 273] and cannot if unregistered affect the property or be received in evidence to prove the contract. Suits for specific performance of a contract to sell were referred to in the course of the argument as suits affecting property. That is no doubt true as the relief asked for is the conveyance of property. The doctrine of *Us pendens* has been held to apply to a transfer of immoveable property pending a suit for specific performance. *Turner v. Weight* (sic) 49 E.R. 252, *Hadley v. The London Bank of Scotland* (1865) 46 E.R. 62, *Pranjivan Govardhan Das v. Bajju* (sic) I.L.R. 4 Bom. 34, *Mati Lal Pal v. Preo Nath Mitra* (sic) I.L.R. 4 Bom. 34. If a transaction like a contract to sell or lease immoveable property does not affect if it is difficult to see how a suit to enforce the

transaction can be regarded as affecting it A contract to sell immoveable property in writing, though it may affect the property without passing an interest in it, is exempted from registration by Clause (h) [now Clause (2) (v)] of Section 17 of the Registration Act. But an agreement in writing to let falling within clause id) of Section 17 is not. It cannot be therefore received in evidence of the transaction which affects the immoveable property comprised therein.

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