

(1944) 01 MAD CK 0024
In the Madras High Court

E.S. Kasim Marakkayar and Others

APPELLANT

Vs

P.R.M.K. Muhammad Abdul Rahiman Marakkayar

RESPONDENT

Date of Decision : 25-01-1944

Acts Referred:

Registration Act, 1908 — Section 17, 17(2)

Citation : AIR 1944 Mad 273 : (1944) ILR (Mad) 543 : (1944) 57 LW 165

Hon'ble Judges : Leach, C.J

Bench : Division Bench

Judgement

Leach, C.J.—The question in this appeal is, whether a compromise decree which operates as a lease requires registration.

2. In O.S. No. 25 of 1929 of the Court of the Subordinate Judge of Ramnad 21 fishermen sued for a declaration that they were entitled by custom

to a right of fishing and to use certain parts of the foreshore at Mantapam for the purposes of drying, curing, storing and selling the fish caught,

beaching and storing their fishing canoes and boats, and hauling and drying their fishing nets. They also asked for an injunction restraining the

defendant from interfering with these operations. The suit was compromised and on 17th November 1930, a decree was passed in the terms

agreed upon. There is no doubt that the decree was intended to operate as a lease. The word ""lease"" was used in the decree itself and the

payments which the plaintiff's were to make to the defendant were referred to as ""rent."" The plaintiffs were to enjoy the rights claimed by them for

a period of 21 years, whereupon the full enjoyment of the foreshore was to revert to the defendant. The plaintiffs were to pay in the aggregate Rs.

7500 per annum, based on a rate of Rs. 250 per boat per year. The names of the boatmen and the numbers of the boats possessed by them

respectively were set out in the schedule. Paragraph 4 of the decree stated that at the expiry of the lease the defendant should take over the huts

and buildings at their then value; but if he did not do this, the plaintiff should remove them within a period of one month at their own expense.

Paragraph 6 stated:

That in respect of their shares together with interest due by the Sammatties who have committed default in payment of rent as per the terms of the

above razinamah and as such lost their leasehold right, the defendant shall realise the same by issue of precept through Court against their persons

and properties immovable and moveable.

By virtue of this provision the decree-holder filed E.P. No. 30 of 1940 against the appellants, who were plaintiffs 2, 4, 10, 11 and 14 respectively

in O.S. No. 25 of 1929, to recover the rent payable by them. They raised the objection that the decree could not be enforced as it had not been

registered. The Subordinate Judge upheld the contention. In doing so he relied on the decisions in Sachindra Mohan Ghose Vs. Ramjash

Agarwalla, , Nazar Ali Vs. Indra Kumar Sutar and Others, and Atul Krishna Bose and Others Vs. Zahed Mondal and Others, . On appeal the

District Judge considered that the case was governed by the judgment of this Court in 33 Mad. 1024 and consequently held that the fact that the

decree had not been registered did not render it unenforceable. This appeal is from the decision of the District Judge. It has been placed before a

Pull Bench as it involves the consideration of the question whether 33 Mad. 1024 must be considered to have been overruled by the Privy Council

in Hemanta Kumari. Debi v. Midnapore Zamindari Co. AIR 1919 P.C. 79.

3. Before discussing the cases referred to, we will examine the relevant portions of Section 17, Registration Act. Sub-section (1) requires the

registration of (a) instruments of gift of immovable property; (b) other non-testamentary instruments which purport or operate to create, declare,

assign, limit or extinguish, whether in present or in future, a right, title or interest, whether vested or contingent, of the value of one hundred rupees

and upwards to or in immovable property; (c) non-testamentary instruments which acknowledge the receipt or payment of consideration on

account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; (d) leases of immovable property from

year to year or for any term exceeding one year, or reserving a yearly rent; and (e) non-testamentary instruments, transferring or assigning a decree or order of a Court or an award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, a right, title, or interest, whether vested or contingent, of the value of one hundred rupees and upwards to or in immovable property. Sub-section (2) (vi) states that nothing in cls; (b) and (c) of Sub-section (1) applies to a decree or order of a Court, except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding. Clause (vi) was amended by the Transfer of Property (Amendment) Supplementary Act, 1929. Before the amendment this clause merely provided that nothing in Clauses (b) and (c) of Sub-section (1) should apply to ""any decree or order of a Court and any award."" An award is not now exempt from registration.

4. In *Natesan Chetti v. Vengu Nachiar* ('09) 33 Mad. 102, a Bench of this Court held that decrees and orders were outside the scope of Sub-section (1) of Section 3, Registration Act of 1877 and it mattered not whether they related to leases. The Court went so far as to hold that pleadings were also outside the sub-section. The facts in *Hemanta Kumari. Debi v. Midnapore Zamindari Co.* AIR 1919 P.C. 79 were these. In the year 1895 the appellant instituted two suits with the object of recovering possession of plots of land which had been diluviated owing to the encroachment of the river Padma and had then subsequently re-appeared. One suit, No. 72 of 1895, was against the Government. The other suit, No. 73 of 1895, was against the firm of Watson & Co. The parties to suit No. 73 of 1895 entered into a compromise by which the defendants agreed to recognise the plaintiff's ownership of the land and in consideration of that recognition she agreed to give the defendants a permanent lease of the land of which they were in occupation and further agreed that if she succeeded in her suit against the Secretary of State she would grant to them a permanent lease of the land with which that suit was concerned. The suit against the Government succeeded and the respondents, who were transferees of the rights of Watson & Co., sued for specific performance of the agreement for a permanent lease of the land which the

Government had held. The defendant contended that the suit was not maintainable by reason of the fact that the compromise decree in suit No. 73 of 1895 had not been registered. In delivering the judgment of the Board, Lord Buckmaster observed that if the document in question could be regarded as a lease within the meaning of the definition given by the Act, it could not be received in evidence. But it did not operate as an agreement to lease (which is included in the definition of "lease") and therefore it did not require registration. Having expressed the opinion that the decree in that case did not fall within Clause (d) of Sub-section (1) their Lordships went on to hold that it fell within the exemption from registration granted by Sub-section (2) (vi).

5. The High Courts of Calcutta, Patna and Lahore have all held that a decree or order which operates as a lease requires registration and in one case the Calcutta High Court has expressed the opinion that this question was put beyond doubt by the decision of the Privy Council in *Hemanta*

Kumari. Debi v. Midnapore Zamindari Co. ("19) 6 AIR 1919 P.C. 79. The Calcutta cases are *Rajani Kanta Banerjee and Others Vs. Raj*

Kumari Dasi and Another, , Nazar Ali Vs. Indra Kumar Sutar and Others, and Atul Krishna Bose and Others Vs. Zahed Mondal and Others, .

The first of these cases was a suit between the purchaser and the seller of ryoti land. It was settled by a solenama under which the vendor took a

permanent tenancy from the vendee and continued in possession. Subsequently the buyer sued to recover possession. He averred that the

solenama could not be given effect to as it had not been registered. It was held that as the solenama created a lease of immovable property it could

not be admitted in evidence as it had not been registered. Rankin C.J., with whom Mitter J. agreed, said:

The first question therefore is whether that solenama requires registration as being a lease. There can be no doubt that the intention of it was to

operate as the grant of a tenancy to take effect at once and in my judgment there is no escape from the conclusion that it was a lease. That being

so, there is no escape from the further conclusion that it is not exempt as being an order or a decree of the Court, from the requirement of

registration, because that requirement is only foregone on the face of Section 17, Registration Act, in cases coming within Clauses (b) and (c) of

Sub-section (1) of Section 17. This was clearly held by the Privy Council in the judgment delivered by Lord Buckmaster in the case in Hemanta

Kumari. Debi v. Midnapore Zamindari Co. AIR 1919 P.C. 79.

The second Calcutta case had also reference to an unregistered decree based on a solenama. The Court pointed out that the decree did not

declare any rights, but merely super-added to the contract between the parties the command of a Judge. It did not take the rights of the parties any

further than the contract itself. The Patna cases are: Jagdish Chandra Deo Dhabal Deb Vs. Biseswar Lal Agarwalla and Others, and Raja Jagdish

Chandra Deo Dhadal Deb Vs. Biseswar Lal Agarwalla and Others, and the Lahore cases : Attar Chand Kapur and Sons v. Chandulal AIR 1929

Lah. 291 and Firm Jhinda Ram Fateh Chand v. Mahnai AIR 1938 Lah. 685.

6. With respect we agree with the opinion expressed by Rankin C.J. in Rajani Kanta Banerjee and Others Vs. Raj Kumari Dasi and Another, that

the question is settled by the judgment of the Privy Council in Hemanta Kumari. Debi v. Midnapore Zamindari Co. AIR 1919 P.C. 79 which

means that Natesan Chetti v. Vengu Nachiar (1909) 33 Mad. 102 can no longer be followed in such a case as this. But without the aid of the

judgment in Hemanta Kumari. Debi v. Midnapore Zamindari Co. AIR 1919 P.C. 79 we should have felt no difficulty in accepting the argument for

the appellants. Sub-section (2) of Section 17, Registration Act, only exempts decrees and orders which fall within Clauses (b) and (c) of Sub-

section (1). The clause which relates to leases is Clause (d). A lease is, of course, a non-testamentary instrument which operates to create a right in

immovable property; but inasmuch as leases are dealt with separately in a later clause the rules of construction of statutes preclude the respondent

calling in aid Clause (b).

7. For these reasons we hold that the appeal is well founded and must be allowed. Whether another remedy is open to the respondent is quite a

different question. As they have succeeded the appellants must be given their costs throughout.