
(1910) 02 MAD CK 0051
In the Madras High Court

G. Bangarayya Garu

APPELLANT

Vs

P. Jagannatha Raju Garu and Others

RESPONDENT

Date of Decision : 10-02-1910

Acts Referred:

Citation : 5 Ind. Cas. 615

Hon'ble Judges : Arnold White, C.J; Miller, J

Bench : Division Bench

Judgement

1. The plaintiff sues to recover arrears of a maintenance allowance of Rs. 300 per annum granted to her by an instrument dated the 21st December

1871. The defendants allege that by an agreement of 1877 she is as from its date occupying certain land in satisfaction of the allowance granted.

This the plaintiff denies. She admits the occupation but alleges that the land which she occupies is her own inherited from her husband.

2. Three questions are raised:

(1) Whether the agreement of 1871 was without consideration:

(2) Whether the alleged agreement of 1877 can be proved;

(3) Whether the suit is barred by limitation.

3. On the 1st question, the District Judge says that the point was not seriously argued before him and we think there is no doubt that there is

sufficient consideration to support the agreement of 1871.

4. As to the second question, Exhibit XVII is produced on behalf of the defendants to prove the agreement of the 10th April 1877. It is an

instrument executed by the plaintiff in which she sets forth the grant of 1871, recites that she has received from the grantors certain immovable

property, the profits of which estimated at Rs. 300 per annum she will enjoy as long as the grantors choose to leave her in possession of the land,

and she undertakes not to mortgage the land. It is alleged by the defendants, that there exists a corresponding deed of conveyance of the land, but

that is not produced, and the genuineness of Exhibit XVII, and in fact the whole transaction, is denied by the plaintiff. Exhibit XVII is not registered

and it is contended that it requires registration to give it validity.

5. We are of opinion that this contention is right, the instrument purports, if not to declare rights in the land, at any rate to "limit" the right of the

occupant of the land and so is compulsorily registrable u/s 17 of the Registration Act.

6. The question then arises whether it can be admitted in evidence in this suit. On the one hand it is contended that it can be admitted to show that

the plaintiff surrendered her right to receive the allowance of Rs. 300 per annum, and on the other that the only transaction in proof of which it can

possibly be used as evidence is a transaction affecting immovable property. Before proceeding to, discuss this question -we may state our reasons

for holding that the suit is not barred by limitation as found by the District Judge.

7. For this purpose we assume that lie has correctly applied Article 131 of Schedule II of the Limitation Act, and that if the suit to establish the

plaintiff's right is barred, the suit for arrears accruing due under the recurring right is also barred.

8. The District Judge finds that no payment was made to the plaintiff since the year 1877, that the plaintiff demanded payment in 1882, and again

subsequently (he does not state when) and that the defendant did not comply with either demand Their conduct is, he says, tantamount to a refusal

to permit the plaintiff to enjoy her right.

9. Now this conduct is certainly not that "express repudiation of the claim" which according to Candy, J., is required to set limitation running in

such a case as this vide Raoji v. Bala 15 B. 135 and the District Judge does not state any circumstances here which should except this case from

the general rule that mere non-compliance is not equivalent to a repudiation of the claim. We do not say that there may not be cases in which non-

compliance coupled with other circumstances may be sufficient evidence of a refusal, but here the District Judge does not find the existence of

other circumstances. He says, no doubt, that the demand was repeated but it is impossible to say that non-compliance with two demands, amounts

by, itself to a repudiation of the claim in respect of which the demands are made. A debtor who leaves the demands of his creditors unnoticed does

not thereby as a rule intend to deny the right of his creditors to the money demanded. And in the present case the defendants do not, it seems to

us, even now repudiate the claim. Their case is that in 1877 the plaintiff was permitted to take possession of certain land from which it was

calculated she would be able annually to realise after payment of expenses of cultivation the amount of Rs. 300 due to her under the agreement of

1871. They do not say that the land was made over to her for her life or for ever in satisfaction of her claim, but only that so long as they permitted

her to remain enjoyment of the land (the permission being revocable at any time) she would not be entitled to demand a money payment. In other

words their case is only that they gave her temporarily the means of paying herself, or, as Mr. Ranga Chariar put it, they substituted one method of

payment for another.

10. In 1888 they set up the agreement of 1871, as estopping the plaintiff from claiming the right to recover certain land from them (vide Exhibit D),

but they did not deny that she was entitled to the annual payment. There, seem, therefore, to be circumstances indicating that the defendants have

not hitherto refused to the plaintiff the enjoyment of her right, though by non-payment they may have deprived her of that enjoyment for a time, and

the finding of the District Judge to the contrary does not rest upon evidence sufficient to support it.

11. To return then to the question whether the defendants are entitled to prove the alleged agreement of 1877.

12. It is desirable to set out here so much of the document as is necessary to explain our views of its contents. After reciting the agreement or

"patta" of 1871, under which the annuity is claimed in the present suit, it continues ""I desired that you should give me some immovable property

because you live, in 3 villages, and are women and boys and; it would be difficult to get money when I should require it for expenses. So you

agreed to it and gave me inam lands, topes and house sites (described in detail)...which are lands yielding a sist of Rs. 400 per annum. So I shall

henceforth manage the said lands and enjoy subject to the terms of the above mentioned patta, the Rs. 300 being the nett sist after allowing for expenses.

13. Now the effect of. the cases decided on the provisions of Section 49 of the Registration Act is, as it is put in *Ulfatunissa alias Elahijan Bibi v.*

Hosain Khan 9 C. 520 : 12 Cri.L.R. 20, that an unregistered document which is compulsorily registrable can be used to prove a transaction which

affects land so far as the transaction, does not affect land. If there is a part of the transaction separable from other parts which does not affect land,

that part can be proved with the aid of the unregistered instrument.

14. Such are cases in which the transaction is a partition of movable property as well as immovables, or a loan to be repaid and secured on a

mortgage of land; such also is the case in *Krishnama Chariar v. Rukmani Ammal* 15 M.L.J. 370, where the promises, which it was sought to

enforce, were, though comprised in a release affecting immovable property, held to be independent of the release and merely covenants affecting

movable property. The case in *Rajah of Venkatagiri v. Narayana Reddi* 17 M. 456 and *Srinivasa Charlu v. Venkataraju* 17 M.L.J. 218, which

follows it, are nearer to the present case. In the Full Bench case an unregistered muchilika was allowed to be proved, as evidence of an agreement

to give a lease, and in the later case the agreement to give the lease was itself admitted as evidence in support of a claim for specific performance

of it. Now though an agreement to give a lease is a lease for the purposes of the Registration Act, it is not actually a transaction affecting land

unless in cases whereby the agreement itself a right in the land is created; an agreement which contains only a promise to create nr right in land at a

future time cannot be said to "affect" land; and 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.

15. In the present case the document recites, that is, contains an admission by the plaintiff of the existence of an agreement to give land to the

plaintiff because she found it difficult to get money as she wanted it. That agreement is not a transaction affecting land, and it is a part of the

transaction recited by Exhibit XVII which is separable from that part which consists in the transfer following on the agreement. As evidence of the

plaintiff's admission of the agreement then Exhibit XVII may, in our opinion, be admitted, provided, of course, that the document is genuine a question which we cannot decide in Second Appeal.

16. If then the defendants prove this agreement, they can prove further the actual occupation of the land and they can prove that the land so occupied is their land, and that by its occupation the plaintiff has paid herself all that is due to her from them and is not entitled to recover anything in this suit. Vide Kattika Bapanamma v. Kattika Kistnamma 30 M. 231 : 17 M.L.J. 30.

17. These questions have yet to be determined by the District Judge. Their decision involves the decision of the 4th and 5th issues in the suit, but those issues are not very accurately expressed. It will be better, we think, to frame fresh issues for decision.

18. The District Judge will be asked to return findings on the following issues:

(1) Whether by the occupation by the plaintiff of the immovable property described in paragraph 2 of the written statement of the 1st and 2nd

defendants, the claim of the plaintiff has been discharged wholly or in part?

(2) If in part only to what extent and to what amount is plaintiff still entitled?

19. The findings should be submitted in six weeks, and seven days will be allowed for objections.

20. Fresh evidence may be taken.

21. The District Judge found that by the occupation of immovable property plaintiff's claim had been wholly satisfied.

22. This Second Appeal coming on for final hearing after the return of the finding of the lower appellate Court, the Court delivered the following.

JUDGMENT

23. On the findings which we accept the Second Appeal is dismissed with costs.