
(1919) 07 MAD CK 0009
In the Madras High Court

Hallingal Moosa Kutti

APPELLANT

Vs

The Secretary of State for India

RESPONDENT

Date of Decision : 22-07-1919

Acts Referred:

Registration Act, 1908 — Section 90(1)(d)

Citation : (1920) ILR (Mad) 65 : (1919) 37 MLJ 332

Judgement

1. Two questions of some importance have been agued before us in this case. By Exhibit A the 1st defendant took a lease of certain lands near a

Railway station from the Government. The lease was for three years and provided for a rent of Rs. 150 per annum. It contained a clause that the

defendant should not erect buildings on the land. Notwithstanding this undertaking he put up buildings on it. The suit is by the Secretary of State for

ejection. The defendant pleaded that as Exhibit A was not registered it was not admissible in evidence; and secondly that the provision restraining

the defendant from erecting buildings is obnoxious to Section 19 of Act I of 1900 of the Malabar Compensation for Tenants' Improvements Act.

Both these contentions were over-ruled by the Courts below. We think they are right.

2. It was argued for the appellant that the first question relating to registration is covered by *Munshilal v. The Notified Area of Baraut* ILR (1914)

All. 176. With all respect to the learned Judges we are unable to follow it. The learned Judges say that the words "other documents purporting to

be or to evidence grants or assignments by Government of land or of any interest in land" in Section 90 Clause (1)(d) of the Indian Registration

Act should be read ejusdem generis with the preceding words sanads and inam title deeds. We see no ground for applying this principle of

construction to the section. As was pointed out in *Angus v. Dalton* (1878) L.R. 4 Q.B. 166, we have first to ascertain from the language of the section the class of cases which were intended to be affected. If the intention is clear the occasion for the introduction of the *eiusdem generis* rule of interpretation would not arise. (See also the other cases collected at p. 546 of Maxwell on the Interpretation of Statutes), In the present case the object of the legislature in enacting Section 90 of the Registration Act seems to be to enumerate the class of documents executed by or on behalf of the Government which should not be affected by the previous sections relating to registration. In this view there is no ground for imputing to the legislature a restrictive scope of the operation of Clause (1)(d) of Section 90. Further even applying the principle we are not satisfied that a lease of land is not of the same character as a sanad. As the learned Government Pleader pointed out there are sanads by Government and Zamindars which grant property on favourable terms. Therefore the idea implied in a sanad is not that of a gift without reservation. For these reasons we are unable to agree with the Allahabad High Court that a lease is not within the sub-clause. A further argument of the learned counsel for the appellant requires a little more consideration. He contended, and in this also he is supported by *Munshi Lal v. The Notified Area of Baraut* ILR (1914) All. 176, that the words "grants or assignments by Government of land or of any interest in land" would exclude a lease. We are unable to accept this contention either. Turning to Section 17 of the Registration Act we find in Sub-clause 2(vii) the use of the word grant, and that word is used with reference to transfers and receipts enumerated in Clause 1(b) and 1(c) of Section 17. In that connection the word has the meaning of transfer and does not denote a gift. We are therefore of opinion that the words "grants or assignments of interest" in Section 90(1)(d) are comprehensive enough to include a lease. The document therefore is admissible in evidence.

3. The learned Judges of the Allahabad High Court got over the difficulty connected with the Crown Grants Act (XV of 1895) in a manner which we are unable to accept as sound. Section 2 of the Act refers to "grant or other transfer of land or of any interest therein." This language shows that the word grant, can be employed to denote a transfer of land. In the second place it is clear that all transfers of land of every description are

within the operation of the section. Mr. Menon's suggestion that the Act is confined to the transfer of prerogative rights possessed by the Crown

and not to ordinary incidents of a mercantile transaction in which the Crown may be engaged is opposed to the plain language of the statute. We

find nothing in *Dost Mahomed Khan v. The Bank of Upper India* (1906) 3 A.L.J. 129 to support this view.

4. On the second point, we feel no doubt that the wide language of Section 3 of the Crown Grants Act is conclusive. The Government have

specially armed themselves with powers which they have withheld from private parties presumably on the ground that they are not likely to misuse

them. It is clear to us that these contracts are not within the mischief of Section 19 of the Malabar Compensation for Tenants' Improvements Act.

5. We must for the above reasons confirm the decrees of the Courts below and dismiss the Second Appeal with costs. The appellant will have two

months to remove the buildings erected by him.