

(1971) 01 KL CK 0013

In the High Court Of Kerala

Case No : Civil Revision Petition No. 1055 of 1970

Kadavannoor Illath Subramanian Nambudiri

APPELLANT

Vs

Kallu Veettil Present Karanavan Madhavan Nair and Others

RESPONDENT

Date of Decision : 11-01-1971

Acts Referred:

Evidence Act, 1872 — Section 92

Citation : AIR 1971 Ker 333

Hon'ble Judges : T.C. Raghavan, J

Bench : Single Bench

Advocate : K. Kuttikrishna Menon and A.P. Chandrasekharan, for the Appellant;

Final Decision : Allowed

Judgement

T.C. Raghavan, J.—The Munsif seems to think that the case is covered by the Division Bench ruling of this Court in Abdul Kadir Vs. Noor Mohammed Sait and Others, and proviso (4) to Section 92 of the Indian Evidence Act. I am afraid that both these conclusions are wrong.

2. The decision of this Court states in paragraph 4 that the coolicharth before the Division Bench was not registered, so that the case would not come within the exception to proviso (4). Proviso (4) contemplates three situations: (1) where a transaction has been reduced into writing though the law does not require it to be in writing, when evidence of any distinct subsequent oral agreement modifying or rescinding the transaction is admissible; (2) where a matter has been reduced into writing since the law requires it to be in writing, when no evidence can be given of any subsequent oral agreement rescinding or modifying the transaction; and (3) where the document has been registered whether or not registration is compulsory under the law. when also no evidence can be allowed to prove a subsequent oral agreement to rescind or modify the transaction. The Munsif has extracted a passage from the judgment of Lord Denman in the English decision of Goss v. Nugent, which applies only to the first of the three situations mentioned above: it does not apply to the second and the third

situations where the law requires the document to be in writing and it is in writing and where the document is, in fact, registered whether the law requires it to be registered or not. This is what is contained in the two exceptions to proviso (4) to Section 92. (The proviso provides for proving a distinct subsequent oral agreement to rescind or vary a written agreement; but the proviso itself contains two exceptions to the rule.) And as I have already stated the rule of Lord Denman applies only to the first category and not to the second and the third categories mentioned above. That is in a case where the law requires that a particular document has to be in writing and it is in writing, then a subsequent oral agreement to vary or rescind its provisions cannot be allowed; and in a case where a document has in fact, been registered, whether the law requires it to be registered or not then also a distinct subsequent oral agreement to rescind or vary it is not allowed. In other words, in a case where a document is not required to be in writing by the law. but the parties have chosen to reduce it to writing, then alone a distinct subsequent oral agreement to rescind it or vary it is allowed. The case before me falls under the third category, where the lease deed has been registered though the law does not require such a lease deed to be in writing or to be registered. Since the parties, by agreement had a written lease deed and got it registered too, it will come within the second exception to proviso (4). Mr. Kuttikrishna Menon. the counsel of the petitioner, points out that the lease deed in this case is a Kanom document, which is by law required to be in writing and also to be registered. If so. even the first exception to proviso (4) may apply to the case. This is not a case coming under the first category of the three categories mentioned by me to which alone Lord Denman's rule applies. In other words, proviso (4) to Section 92 of the Indian Evidence Act is not a mere statement of Lord Denman's rule; but the proviso contains that rule with two exceptions.

3. The Civil revision petition is consequently allowed and the order of the Munsif is set aside. No evidence will be allowed to prove a distinct subsequent oral agreement to rescind, vary or modify the terms of the lease deed. No costs.

4. The counsel of the respondents states that the respondents may be allowed to adduce evidence of discharge of rent. That does not fall within the scope of the issue now decided by the Munsif. That can arise only at the time of the trial of the other issues in the case.