

**(1916) 04 MAD CK 0029**  
**In the Madras High Court**

Kotam Reddi Seetamma

APPELLANT

Vs

Vannelakanti Krishnaswami Rao

RESPONDENT

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**Date of Decision :** 18-04-1916

**Acts Referred:**

Evidence Act, 1872 — Section 91

**Citation :** (1916) 31 MLJ 240

**Hon'ble Judges :** Sadasiva Aiyar, J;Phillips, J

**Bench :** Full Bench

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**Judgement**

Sadasiva Aiyar, J.—The defendant is the appellant, the plaintiffs having obtained a decree in the lower courts for the specific performance of

an alleged contract made by the defendant in favour of the plaintiffs to grant a lease of the plaint lands for a term of 12 years.

2. I do not think that the plaintiff relies upon any oral agreement to give a lease of the plaint lands, independent of the "letter" (agreeing to give such a

lease) which was executed by the defendant. The written statement while admitting the genuineness of the letter, expressly states that the letter is

legally ineffective for want of registration.

3. Ordinarily, when the terms of a contract preceded by pro-positals, negotiations, conditional acceptances, counter proposals and so on, are

reduced finally to the form of a document, signed by one or both of the parties, the strong presumption is, not that there are two independent

contracts, (the first an oral contract and the second, the written contract), but that the written contract is the only final contract between the

parties, *Ridgway v. Wharton*. 1856 6 H.L.C. 238 As West, J. puts it in *Burjorji Cursetji Panthaki v. Muncherji* ILR (1880) B. 143 "when the

parties have agreed to commit their oral agreement to writing, a presumption was raised by the Roman Law and is raised by the Prussian Codes

and other modern laws, that the right or obligation is dependent on an execution of the instrument ; "" there is a presumption which reason at once

recognises, of the merely tentative character of an oral declaration, meant to be superseded by a written one."" When a contract is once re-duced

to writing, no other evidence can be given of its terms (Section 91 of the Evidence Act).

4. There may be rare cases in which the contract was completed some time before the creation of evidence of it in writing was thought desirable by

the parties and it is an arguable point whether that contract of the prior date may not be proved as an independent contract creating rights and

liabilities, though the writing of the later date is legally inadmissible in evidence or incapable of creating any rights or liabilities and whether such

writing cannot be used as evidence of the prior contract, though not as itself creating rights.

5. In *Rajh of Venkatagiri v. Narayana Reddi* ILR (1894) M. 456 a contract to lease was completed on 24th October 1889, the defendant having

finally agreed on that date to execute a lease of the plaint lands to the plaintiff. (It appears from the report that a written

6. Darkhast application and an order on that application had completed the contract on 24th October 1889). The plaintiff executed a kabuliat to

the defendant on 30th November 1889, that is, more than a month after the completion of the contract. The question was whether the Kabuliat of

30th November executed by the plaintiff can be admitted in evidence of the prior agreement of 24th October 1889. It was held that it was so

admissible. All the other observations in the judgments of the Full Bench in that case tending to lay down wider propositions of law than the narrow

one above mentioned have been explained away in the Full Bench decision in *Narayana Chetty v. Muthiah Servai* ILR (1910) . M. 63 s. c. 21

M.L.J. 44 and by my learned brother Napier, J. (Mr. Justice Ayling concurring) in the very recent case in *Morgan and Son Vs. N.P. Fernandez*, .

7. But in this case, as I understand the pleadings, no prior independent oral agreement is set up in the plaint or is admitted in the written statement.

8. As regards admissions in pleadings, if the plaint relies on a document and mentions its contents but does not disclose that through want of proper

stamp, through non-registration, through non-compliance with a statutory provision relating to attestation or through other similar defects, the

writing is inadmissible in evidence and if the defendant does not set up in his defence that the document is so inadmissible and on the other hand

admits the contents and the validity of the document, the court might possibly act upon the defendant's admission in the plaintiffs favour

notwithstanding that during the course of the trial the court finds that the document is inadmissible in evidence, through the existence of such defect

or defects. Even in such a case, if the legislative provision declaring such a document to be in-admissible in evidence or ineffectual for certain

purposes (or both) was based on reasons of public policy, I think that a Court ought to go behind the admissions in the pleadings and refuse to act

on the admitted facts in the plaintiff's favour. The very eminent Judge (West, J) whom I have already quoted says in *Burjorji Cursetji Panthaki v.*

*Muncherji Kuverji* ILR (1880) B. 143 "" If the document being pronounced absolutely invalid for some purpose on considerations of public policy,

it were sought to defeat the law through the effect usually given to an admission in pleading, such an attempt could not be allowed to succeed.

9. Mr. T.V. Venkatarama Aiyar quoted some English decisions, the decisions in *Muthukaruppa Kavundan v. Rama Pillai* (1886) 3 M.H.C.R. 158

*Chidambaram Chetty and Anr v. Karunalyalangapaly Thevar* (1867) 3 M.H.C.R. 342 *Subramania Aiyar v. Savitri Ammal* (1908) 19 M.L.J. 228

*Syed Reza Ali v. Bhikum Khan* (1867) 7 W.R. 331 some decisions from the Bombay unreported printed Judgments, a few other Indian cases and

two Burma cases *Mating Thau v. Maung Myat Thein* (1910) 11 I.C. 850 and *Rahimtolla v. Murray* (1910) 11 I.C.810 in support of his

contention that the court should act on an admission made in the pleadings, notwithstanding the inadmissibility in evidence of the document whose

contents are admitted in the pleadings. He went further and contended that even if the document is, through certain defects (such as absence of due

registration or attestation) declared by the Legislature to be incapable of affecting the property dealt with therein, the court should treat the rights to

property as affected on the admission of the contents of the document in the pleadings, just as if no such defects existed in the document which

rendered it ineffectual. In some of the cases quoted, it was held that by the admission of the contents of a document in the pleadings of one of the

parties to a suit, the opposite party was exonerated from producing and proving the document relied on by him and hence, even though the document was inadmissible in evidence, legal rights in favour of the latter could be established and a decree awarded on the contents of the document as admitted and that the court need not go into a question of admissibility which was not raised in issue, though during the trial, facts may have been brought out which show the document to be legally inadmissible in evidence. As regards the English cases, I am not prepared to introduce into our courts all the artificial technicalities as to the legal results of particular modes of advancing pleas on both sides which have been elaborated in English decisions, especially where learned judges wished to get over the provisions of Statutes (like the Statute of Frauds) which they did not like. "" Such rules "" (established by English cases) "" are to be applied with discretion in this country where a strict system of pleading is not followed."" When documents are made merely inadmissible in evidence by statutory law for the non-payment of proper stamp duty thereon, it may be a question whether public policy requires the admission in pleadings of their contents to be rejected by the courts, especially as the Stamp Act itself enacts that when a document is once admitted in evidence, though not properly stamped, the admission cannot be called in question after-wards in the suit, (see Section 36) and that criminal courts might ignore the Stamp Act, (section 33 Clause 2(a)). Most unstamped and insufficiently stamped documents could also be made admissible in evidence on the payment of the proper duty and a penalty. The courts, again, are not usually inclined to treat enactments relating to revenue as involving such large and grave principles of public policy as govern enactments relating to registration and attestation of documents. But where a document is not merely made inadmissible in evidence (wholly or for certain purposes as in the Registration Act, Section 49 Clause (c), but the Legislature has further enacted that a document not registered shall not affect any Immovable property comprised therein or that a transaction of a particular nature in respect of Immovable property comprised therein (generally or of a particular description) can be legally effected, only by a document complying with prescribed conditions as to attestation, registration etc., (sections 54, 59, 107 etc., of the Transfer of Property Act), such provisions must be deemed to have been enacted on grounds of

public policy and courts should not, in my opinion, be astute in creating loopholes for evading the plain intention of the legislature. I do not think it

would serve any useful purpose to deal in detail with all the decisions quoted by Mr. Venkatarama Aiyar. Most of them could be distinguished on

the ground that they make use of admissions in pleadings to get rid of only the disability relating to inadmissibility in evidence, imposed by Stamp

laws. A few others could be distinguished on the ground that the defendant without referring to the inadmissible and ineffectual document, admitted

the plaintiff's right to be given a decree for a portion of the reliefs claimed by him and the Court was entitled to give such a decree if there was

nothing to show that the admission was based on the defendant's acceptance of the validity of the document condemned by the Legislature. See

Subramania Aiyar v. (Savitri Ammal) (1908) 19 M.L.J. 228. As regards, however, the remaining few cases which could not be so distinguished

(for instance, the Burma case reported in Maung Thau v. Maung Myat Thein (1910) 11. I. O. 850. decided by a single learned judge who

absolutely ignored the public policy underlying Section 59 of the Transfer of Property Act), I need only say that I respectfully dissent from those

decisions. Mr. Venkatarama Aiyar went so far as to argue that even if the defendant expressly raised in his written statement the plea of the legal

ineffectuality and inadmissibility of a document relied on by the plaintiff and even if he denied in his written statement that the plaintiff was entitled

to any relief, the court could give to the plaintiff the relief which he could be legally entitled to if the document was legally effectual and admissible in

evidence, provided the defendant was honest (or foolish) enough to admit the genuineness of the defective document referred to in the plaint, I

emphatically dissent from that proposition of law. While Section 58 of the Evidence Act can be invoked where the documentary evidence about

the admitted facts is shut out by the provisions made in purely revenue laws, it cannot, in my opinion, be invoked to overrule the provisions of

non-revenue enactments nor can it be used to bind a party who has made an admission of the genuineness of a document when such admission is

accompanied by the legal plea that the contract and other facts mentioned in that document could not be relied upon by the opposite party owing

to the provisions of the statutory law relating to Registration, attestation &c. Some of the decisions which rely on Section 58 of the Evidence Act

have, in my opinion, ignored the proviso to Section 58 which is as follows:--""  
Provided that the courts may, in its discretion, re-quire the facts

admitted, to be proved otherwise than by such ad-missions."" I believe that by  
this proviso, it was intended that courts should in their discretion

ignore such admissions, not only when they are made collusively or fraudulently  
but also when they are accompanied by pleas of legal

inadmissibility in evidence of the admitted facts (such as the genuineness of a  
document and the nature of its contents) or the legal ineffectuality of

the tran-saction sought to be effected by the admitted document or where if the  
court acted on the admitted facts, it would be defeating the policy

and provisions of enactments based on public policy.

10. In the present case, the defendant while admitting the writing of the "" letter  
"" relied on by the plaintiff clearly raised the please see para. 1 of his

written statement) that it was invalid for want of registration and he further  
denied that the plaintiff was entitled to any of the reliefs, claimed in the

plaint (para. 5 of the written statement).

11. Mr. Venkatarama Aiyar argued that Ex. A. was only a proposal to give a lease  
and did not itself constitute the agreement to give a lease.

Having considered the pleadings and perused Ex. A. I have no doubt that Ex. A.  
was delivered by the defendant to the plaintiffs as the writing

which embodied the agreement then concluded between the parties. I am also  
not prepared to act upon Mr. Venkataramaier"s suggestion that

Narayanan Chetty v. Muthia Servai 1 should be referred for re-consideration by  
another Full Bench.

12. In the result, I would set aside the decisions of the lower courts and dismiss  
the plaintiff"s suit. The parties will under the circumstances bear

their respective costs in the two lower courts. The plaintiff must pay the  
appellant"s costs in this Court.

Phillips, J

13. I need add but little as I concur in the order proposed. The several cases  
cited in which a decree was given in accordance with the terms of a

document inadmissible in Evidence can mostly be explained by the fact that  
there was an admission of liability in the pleadings and a decree could

be given without reference to the document, which could not be admitted in  
evidence. To this extent I am prepared to accept those au-thorities,

but when, as in this case, no liability is admitted and the defendant merely admits execution and pleads that the document is invalid for want of registration, it would be impossible to frame a decree without reference to the document, but the document cannot be referred to, because it is inadmissible in evidence and consequently no decree could be framed. The further argument that there was a separate and prior oral agreement is untenable in view of the language of the plaint, in which no separate oral agreement is set out. Nor can Ex. A. be treated as a mere pro-posal, for there is no evidence that there was any subsequent acceptance and consequently there would be no cause of action. I accordingly think that the plaintiffs' suit should be dismissed and agree in the order as to costs.