
(1916) 04 MAD CK 0022
In the Madras High Court

Kotamreddi Seetamma

APPELLANT

Vs

Vannelakanti Krishnaswamy Row and Another

RESPONDENT

Date of Decision : 18-04-1916

Acts Referred:

Citation : 35 Ind. Cas. 18

Hon'ble Judges : Sadasiva Aiyar, J;Philips, J

Bench : Division Bench

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 plaint 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 proposals, 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

Ridgioay v. Wharton (1857) 6 H.L.C. 238 : 257 L.J. Ch. 46 : 4 Jur. (N.S.) 143 : 5 W.R. 804 : E.R. 1287 29 As West, J., puts it Burjorji Gursetji

Panthaki v. Muncherji Kuverji 5 B.p 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is a presumption, which reason at once recognizes of the merely tentative character of an oral declaration, meant to be superseded by a written one." When a contract is once reduced 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 sometime 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 *Rajah of Venkatagiri v. Narayana Reddi* 17 M.P 456 : M.L.J. 198 a contract to lease was completed on 24th October 1889, the defendant having finally agreed on that date to execute a lease of the plaintiff lands to the plaintiff, (it appears from the report that a written 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 *Narayanan Chetty v. Muthiah Servai* 8 Ind. Cas. 520 : 35 M.P 63 : 21 M.L.J. 44 : 9 M.L.T. 142 and by my learned brother Napier, J. (Mr. Justice Ayling concurring), in the very recent case in *Morgan v. Fernandez* 33 Ind. Cas. 439 : 30 M.L.J. 519 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.

6. As regards admissions in pleadings, if the plaintiff 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 plaintiff's 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 inadmissible 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 Fanthaki v. Muncherji Kuverji* 5 B.p 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.

7. Mr. T.V. Venkatarama Aiyar quoted some English decisions, the decisions in *Muttukaruppa Kaundan v. Rama Pillai* 3 M.H.C.R. 158; *Chedambaram Chetty v. Karunalyavalangapully Taver* 3 M.H.C.R. 342; *Subramaniam Aiyar v. Savitri Ammal* 3 Ind. Cas. 321 : 19 M.L.J. 228 : 4 M.L.T. 354; *Syud Reza Ali v. Bhikun Khan* 7 W.R. 334 some decisions from the Bombay Unreported Printed Judgments, a few other Indian cases and two Burma cases *Maung Kan v. Maung Myat Thaing* 11 Ind. Cas. 850 : 4 Bur. L.T. 182 and *Rahimtolla v. Murray* 11 Ind. Cas. 810 : 4 Bur. L.T. 171 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 farther and contended that, 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 documents 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 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 baa 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 afterwards in the suit (see last paragraph of Section 35) 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 further enacts 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 (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 high grounds, of, public

policy and Courts should not, in my opinion, be astute in creating loopholes for evading the plain intentions 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 Subrahmania Aiyar v. Savitri Ammal 3 Ind. Cas. 321 : 19 M.L.J. 228 : 4 M.L.T. 354. As regards, however, the remaining few

cases which could not be so distinguished for instance, the Burma case reported as Maung Kan v. Maung Myat Thaing 11 Ind. Cas. 850 : 4 Bur.

L.T. 182 decided by a single learned Judge who absolutely ignores the public policy underlying Section 59 of the Transfer of Property Act, I need

only say that I respectfully dissent from that decision. Mr. Venkataramier went so far as to argue that even if the defendant expressly raised in his

written statement the plea of the legal ineffectually 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 whatever, 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 the 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 or attestation, etc. 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 Court may, in its discretion, require the facts admitted to be proved otherwise than by such admission."" I believe that by the 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 transaction 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.

8. In the present case, the defendant, while admitting the writing of the ""letter"" relied on by the plaintiff, clearly raised the plea (see paragraph 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 (paragraph 5 of the written statement).

9. Mr. Venkataramier argued that Exhibit 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 Exhibit A, I have no doubt that Exhibit A was delivered by the defendant to the plaintiffs on the mutual understanding that it was to be the writing which embodied the agreement then concluded between the parties. I am also not prepared to act upon

Mr. Venkataramier's suggestion that the soundness of the decision in *Narayanan Chetty v. Muthiah Servai* 8 Ind. Cas. 520 : 21 M.L.J. 44 : 9

M.L.T. 142 should be referred for consideration to another Pull Bench.

10. In the result, I would set aside the decision of the lower Court and dismiss the plaintiffs' suit. The parties will, under the circumstances, bear their respective costs in the lower Courts. The plaintiffs must pay the appellants' costs in this suit.

Phillips, J.

11. I need add but little and 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 authorities 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 Exhibit A be treated as a mere proposal, for there is no evidence that there was any subsequent acceptance and consequently there would be no cause of action. I accordingly think that plaintiffs' suit should be dismissed and agree in the order as to costs.