

(1898) 08 MAD CK 0007
In the Madras High Court

Mayandi Chetti

APPELLANT

Vs

Mrs. Oliver, and Others

RESPONDENT

Date of Decision : 09-08-1898

Acts Referred:

Evidence Act, 1872 — Section 92

Citation : (1899) ILR (Mad) 261 : (1898) 8 MLJ 196

Judgement

1. The late Mr. Oliver, whom the respondents (defendants) represent, took in 1878 a lease of certain land vested in the temple represented by the appellant (plaintiff) under Exhibit A a registered instrument, the annual rent reserved thereunder being Rs. 106-4-0. In 1886 Mr. Oliver requested the then trustee of the temple to agree to a reduction of the rent to Rs. 50 per annum. The trustee agreed accordingly, but the agreement was not reduced to writing. From that time up to the institution of this suit in 1895, Rs. 50 only were paid and accepted as the rent payable per annum. The lower Courts in effect held that the respondents were not precluded by proviso 4 to Section 92 of the Evidence Act, from proving the agreement to modify the terms of the registered lease in so far as the amount of rent was concerned. In supporting the decision of the lower Courts, the learned vakil for the respondents contended, if we understood him correctly, that in cases like the present though no express oral agreement rescinding or modifying the terms of a written instrument could be proved, yet that an agreement to be implied from the acts and conduct of the parties could be proved and apart from the express agreement of 1886 between Mr. Oliver and the then trustee an agreement to take rent at only Rs. 50 might and ought to be inferred from the acceptance of rent at that rate for a period of about 10 years, the decree of the lower Courts

should be upheld. But we are unable to concur in the view that an unwritten agreement implied from the acts of the parties is not an oral agreement

within the meaning of the proviso since we are of opinion that the word "'oral'" therein is used in the sense of not committed to writing, and therefore

the Words "oral agreement" cover all unwritten agreements, whether come to by word of mouth or otherwise.

2. The decree of the lower Courts must, therefore, be modified by allowing the plaintiff's claim according to the rate due under the registered lease

(Exhibit A). In the circumstances of the case, we direct the parties to bear their own costs throughout.