
(1894) 03 MAD CK 0001
In the Madras High Court

Rajah of Venkatagiri

APPELLANT

Vs

Narayana Reddi

RESPONDENT

Date of Decision : 06-03-1894

Acts Referred:

Registration Act, 1877 — Section 49

Citation : (1894) ILR (Mad) 456

Hon'ble Judges : Arthur J.H. Collins, C.J;Shephard, J;Muttusami Ayyar, J;Davies, J;Best, J

Bench : Full Bench

Judgement

1. In the course of the argument it was agreed that the only document as to which any question of registration arises is Exhibit VI, the kabuliat

signed by the plaintiff and given to the defendant.

2. The question is whether that document, although not registered, can be admitted in evidence in support of the plaintiffs claim. If the plaintiffs

action was founded on an alleged title in virtue of a lease granted by the defendant, and his case were that as lessee he had been unlawfully ejected

from the demised land, there can be no doubt that the document VI could not be admitted in evidence. The plaintiff would then be seeking to use it

as evidence of a transaction affecting Immovable property. But it is clear that that is not the case made in the plaint. The plaint sets out the

agreement for a lease of the village which was to run from fasli 1299 and last for five years: It is stated that certain things were done in pursuance of

the agreement, among other things, that the plaintiff was put in possession. Then it is charged that the defendant did not register the kabuliat and

improperly deprived the plaintiff of possession. The cause of action alleged is the failure on the part of the defendant to act up to the karar (i.e., the

agreement for a lease), and the improper resumption of the village.

3. It is clear that the plaintiff does not assert his title under the incomplete lease, and that he does complain of the breach of contract on the part of

the defendant in refusing to register the kabuliat and give him a cowle, and also in disturbing his possession. The act of the defendant in thus

disturbing the plaintiff's possession is merely a part of the defendant's conduct which the plaintiff complains of as a breach of the contract made

with him. It is not an essential part, for, if the plaintiff had never been in possession, he would have had his right of action.

4. Having regard to the language of Section 49 of the Registration Act, we think there is no doubt that the kabuliat, although not registered, is

admissible in evidence to prove the contract. We do not think it is necessary to refer to the cases cited except the case of *Hurjivan Virji v. Jamsetji*

Nowroji ILR 9 Bom. 63 as to which it has to be observed that although the plaint included a prayer for damages, the judgment makes no

reference to it. The decision cannot, therefore, be cited as an authority against the admissibility of a document in this case.

5. In our opinion the answer to the question referred should be that the document may be admitted to prove the contract and the damages

occasioned by the breach of it.

Judgment:

6. The undisputed facts in this case are that an offer made by the plaintiff to the Dewan of the defendant to take on lease the village of Valamaid

attached to the defendant's zamindari for a term of five years from the 1st July 1889 to the 30th June 1893 (fasli years 1299 to 1303) at a yearly

rental of Rs. 1,400 was accepted by the Dewan (Exhibit I) on the 24th October 1889. On the 30th of November following the plaintiff, as

directed, (Exhibit IV) executed and delivered to the defendant's agents the kabuliat (Exhibit VI), and an hypothecation bond for securing the first

year's rent (Exhibit VII), and was, on the same day, under previous orders of the Dewan (Exhibits J and R) put in possession of the village

(Exhibits G and L). Disputes subsequently arose between the plaintiff and the ryots of the village, the plaintiff complaining that the ryots were, at the

instigation of the village karnam, refractory (Exhibit XXI), and the ryots complaining that the plaintiff was oppressing them (Exhibits I and II), the

result of which was that the plaintiff's lease was cancelled by beat of tom-tom in the village. A few days previously, that is, on the 28th April 1890,

the plaintiff had given notice to the defendant (Exhibit O) calling on the defendant to have the plaintiff's kabuliat IV and its counterpart the cowle

(Exhibit V), which had been prepared on the 30th November, registered, to which demand, however, no attention was paid. Those documents

with Exhibit VII accordingly remain unregistered to this day--the cowle indeed never having been executed. The plaintiff now sues, by way of

damages, for the loss he had sustained and would sustain by the defendant's failure to comply on the contract of lease.

7. The defendant contended, in the lower Court, that the contract was not completed and was inoperative, as the lease had not been registered,

and that the plaintiff had forfeited the benefit of the lease by his misconduct. The District Judge found the contract was complete and that plaintiff

had not by any conduct on his part worked a forfeiture of the lease, and awarded plaintiff as damages for the breach of contract Rs. 3,470 as

against Rs. 4,000 claimed by him.

8. The defendant's appeal is really urged on but two grounds. It could not be contended on the facts as already set forth that the contract had not

been concluded, especially when plaintiff had actually been put into possession under it, and on the merits it could not be shown that plaintiff had

committed any act coming within the forfeiture clause of lease. He had acted within his rights in letting out fresh land for cultivation, which was in

substance the ryot's grievance against him. There was no proof that he unnecessarily harassed them.

9. The chief ground of appeal then is that it was by plaintiff's own default that the lease was not registered, and not being registered, evidence of its

terms was inadmissible, and the other ground is that the damage decreed were excessive and too remote.

10. The first of these points was not made an issue in the lower Court, and consequently was not argued there. The argument put forward here is

that the plaintiff could have registered the document G as embodying the terms of the lease, or he could have compelled the registration of the

kabuliat K by taking out process under Sections 36 to 39 of the Registration Act, and, by thus failing to get the lease registered, evidence to prove

its terms cannot be received according to Section 49 of the Act. The prohibition in Section 49 is that no document required to be registered (and, in this case, the lease being for five years, undoubtedly required to be registered) shall be received as evidence of any transaction affecting Immovable property. The real nature of this suit is for compensation for disturbing the plaintiff in his possession, and doing the necessary acts to entitle him to possession, such, for example, as not executing the counterpart of the lease and duly registering it; so that the nonregistration is itself part of the plaintiff's cause of action. It may be that to save himself he could have adopted one of the courses suggested to effect registration, but that would not absolve the defendant from his liability, because the defendant's was the primary liability. The plaintiff has done all that it lay on him to do. He had executed his muchilika and handed it to the defendant's agent. It was then left for the defendant to execute the counterpart and hand it to the plaintiff. The proper answer, however, to the argument advanced is that this is not a suit brought upon the kabuliat and cowle (Exhibits VI and V), which, it should be noticed, were not filed for plaintiff as part of his case but by defendant, but a suit upon a breach of an implied contract by the defendant to do that which it was necessary for him to do in order to give effect to the agreement he had entered into with the plaintiff. The other unregistered documents that have been put in showing the terms of the lease, have not been put in to enforce the lease, in which case they would not have been admissible as evidence as they would have been evidence of a transaction affecting Immovable property, but they must be deemed to have been put in simply as evidence of the character of the breach of agreement by the defendant, and as a basis for calculating the measure of damages, neither of which things can, in the least, affect the land lying in the village of Valamaid. The first objection must, therefore, be disallowed. We, however, thought it right to refer this point to a Full Bench, as it has never been directly raised and decided by this High Court. In regard to the other objection as to the damages decreed, there is no ground for holding that the District Judge is wrong either in his findings of fact or the principles he has adopted in assessing damages. He finds, on sufficient materials, that the plaintiff could have made on an average an annual net profit of Rs. 694 on his lease, and it is five times that amount for the five years term of the lease that he has rightly decreed to plaintiff. The

plaintiff was as clearly entitled to prospective as to past profits in a suit for damages.

11. The appeal accordingly fails, and it is dismissed with costs.