
(1894) 02 MAD CK 0014
In the Madras High Court

Seetharama Raju

APPELLANT

Vs

Bayanna Pantulu

RESPONDENT

Date of Decision : 27-02-1894

Acts Referred:

Registration Act, 1877 — Section 17
Transfer of Property Act, 1882 — Section 107

Citation : (1894) ILR (Mad) 275

Hon'ble Judges : Arthur J.H. Collins, C.J; Davies, J

Bench : Division Bench

Judgement

1. The defendant owned some land called Burripollem Agraharam, which, in 1875, he exchanged for the plaint land situated in the village of Thandrangi. In 1888 a re-exchange of these same lands was made between the defendant and the plaintiff, but the defendant then took upon lease for one year the Thandrangi lands, the ownership of which he had parted with in the re-exchange, and executed a cowle to the plaintiff, agreeing to give the land up if so required at the end of his year's lease, which expired on the 31st March 1889. Defendant having failed either to take a fresh lease of the land or to vacate it, this suit was brought for the recovery of its possession, together with the mesne profits for the two years for which the defendant had held over. The lower Court decreed for the plaintiff as prayed.

2. Defendant appeals on several grounds, his chief contention being that he was not willing to make the re-exchange, and that the cowle he executed, admitting his tenancy of the plaint land for one year only, was obtained from him by the undue influence of the plaintiff" and his servants and he is, therefore, not bound by it. He further contends that it is not admissible in evidence, not being registered. The lease being set at sought on these grounds, he contends that he is entitled to retain possession of the plaint land, because he had been in adverse possession of it for more than twelve years in 1888 even should the exchange of 1875 be found not to have been operative.

3. There are two grounds on which it is urged that the cowle is inadmissible for want of registration. The first is that the document must be treated as evidencing the re-exchange of the lands, and as such it creates a title in land of Rs. 100 in value; But we cannot accept this view of the document, which is nothing more than it purports to be, namely, a lease for one year. The reference to the exchange is merely a recital therein as to how the plaintiff obtained his title as landlord from the defendant. The actual exchange of the lands is not effected by this document. The second objection is that, although the lease is only for a year, yet as it creates an interest in land of Es, 100 and more in value, the amount of the rent being Rs. 206-4-0, it requires to be registered u/s 17 of the Registration Act. But Section 107 of the Transfer of Property Act disposes of this objection. After laying down that leases of Immovable property from year to year or for any term exceeding one year or reserving a yearly rent can be made only by a registered instrument it provides that "all other leases of Immovable property may be made either by an instrument or by oral agreement." Section 4 of that Act declares that this Section 107 shall be read as supplemental to the Registration Act. It follows that the lease in this case did not require to be registered.

4. As to the allegation of "undue influence" which the defendant urges as voiding his execution of the cowle, he certainly has adduced evidence showing that pressure was brought to bear upon him. It is highly probable too that it was not with his full and free consent that he gave way to the wishes of the plaintiff, a powerful landholder, in whose employ he also was at the time. A contract made under such pressure is, however, not void, but only voidable. Had the defendant done nothing beyond executing the lease deed, we should probably have found him entitled to relief on this score. But instead of attempting to repudiate it by not acting up to it or by other means, we find the defendant not only paid the rent due under it for the whole year, but he also received and kept the rents of the Burripollem land. All this indicates so complete an acquiescence in the arrangements that had been made subsequent thereto, that we are unable to declare that the defendant is not now bound by them for want of his consent. A great deal of argument was expended both in this and in the lower Court as to whether the defendant was or was not estopped u/s 116 of the Evidence Act from denying the plaintiff's title. It was contended on the strength of the decision in *Lall Mahomed v. Kallanus* ILR 11 Cal. 519 that that section applies only to cases in which the tenants had been put into possession of the tenancy by the person to whom they, have attorned and not to a case such as this, in which the tenant was previously in possession. We are, however, not called upon to decide the question, which is one not altogether free from difficulty, for we find that as a fact the defendant became the tenant of the plaintiff under the document. So that even if the defendant were allowed to dispute the plaintiff's title, it would be found against him as a matter of fact that the plaintiff was his landlord.

5. Another objection taken to the suit that it was not brought in the name of the

Maharajah of Vizianagram, but of his agent, is frivolous, for we find the plaint is actually signed by the Maharajah. The appeal accordingly fails and it is dismissed with costs.