

## APPELLATE CIVIL.

*Before Mr. Justice Kindersley and Mr. Justice Forbes.*

TIRUMALA (PLAINTIFF), APPELLANT, v. LAKSHMI (SECOND DEFENDANT), RESPONDENT.\*

1880.  
December 17.

*Act III of 1877—Registration.*

Section 50 of the Registration Act III of 1877 does not operate so as to exclude, on the ground of their non-registration, instruments executed before Act XVI of 1864 (the first of the Registration Acts) came into operation.

THE plaintiff sued for possession of certain lands, alleging that the first defendant sold the same to him (plaintiff) for Rs. 400 under a registered document dated 21st January 1879.

The first defendant admitted the plaintiff's claim, but pleaded that the second defendant held the land under a lease for twenty years from September 1864.

The District Munsif in his judgment said:—"It is admitted that the second defendant enjoyed the land for a period of fifteen years, and that he has still to occupy it for five years more." Construing the lease as a mortgage, he declared the plaintiff entitled to redeem and decreed accordingly.

Against this decree the second defendant appealed on the ground that 'The decision is against law, inasmuch as the terms of the document executed by first defendant to second defendant clearly prove that it is a lease and not a mortgage.'

The District Judge in reversing the Munsif's decree made the following observations:—"The Lower Court manifestly erred in considering the conveyance to the second defendant to be in the nature of a deed of mortgage securing payment of a sum of money. The document really is a conveyance for a term of years in consideration of the grantor being excused payment of a debt due by him. Upon consideration the parties agreed that in lieu of payment of principal and interest the obligee should

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\* Second Appeal No. 489 of 1880 against the decree of J. H. Nelson, District Judge of Cuddapah, dated 31st January 1880, reversing the decree of the Court of the District Munsif of Prodtuttur, dated 2nd July 1879.

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occupy and enjoy certain lands for his own benefit for twenty years. In other words, the grantor sold to his creditor all his rights over the lands for a period of twenty years. It cannot be permitted to the grantor now to recede from his agreement and deprive the grantee of what was deliberately and definitively conveyed to him.

“The respondent contended that his registered deed of sale must prevail against the unregistered conveyance to the second defendant.

“After a careful consideration of the provisions of the earliest Registration Act (XVI of 1864), I am clearly of opinion that the suggestion has nothing in it, inasmuch as the lease deed was executed before that Act came into operation, and therefore under Sections 13 and 16 thereof could not be registered, and therefore is not now ‘*unregistered*’ within the meaning of Section 50, Explanation, of Act III of 1877.”

The plaintiff presented a second appeal to the High Court on the grounds—

(1.) That the document in question had been misconstrued.

It was a mortgage, and not a lease or conveyance for a term of years.

(2.) That the registered deed of sale under which the plaintiff claimed took priority as against the unregistered document given in favour of second defendant.

(3.) That the plaintiff was entitled to redeem.

Mr. *Gould* and N. R. *Narasimiah* for the Appellant.

Mr. *Handley* for the Respondent.

The Court (KINDERSLEY, J., and FORBES, J.) delivered the following

JUDGMENT:—The first defendant, finding himself indebted to the second defendant in the sum of Rupees 171, executed an instrument on the 11th September 1864 letting the land in suit to the second defendant for twenty years from the expiry of a lease formerly granted to one Nagaya.

On the 21st January 1879 the first defendant sold the same land to the plaintiff, who has brought this suit to eject the second defendant.

The question is whether by virtue of the Registration Act III of 1877, Section 50, the sale to the plaintiff, which was by an

instrument duly registered, should take effect against the second defendant's instrument of the 11th September 1864, which was not registered. The Act XVI of 1864 did not come into operation until the 1st of January 1865. It was therefore not in force when the deed in favour of the second defendant was executed. It might have been registered under Section 17 of that Act, but that was not compulsory. Having regard to the terms of Sections 17 and 50 of the Registration Act of 1877, we are of opinion that Section 50 does not operate so as to exclude, on the ground of their non-registration, instruments executed before Act XVI of 1864, which was the first of the present series, came into operation.

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We dismiss this second appeal with costs.

*Appeal dismissed.*

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### FULL BENCH.

*Before Sir Charles A. Turner, Kt., Chief Justice,  
Mr. Justice Innes, and Mr. Justice Forbes.*

SAKKAJI RÁU AND ANOTHER (HEIRS OF PLAINTIFF), APPELLANTS, v.  
LATCHMANA GAUNDAN (DEFENDANT), RESPONDENT.\*

*Mírásídárs—Right to dues—Enquiry—Custom.*

It can by no means be laid down as a uniform rule that Mírásídárs are entitled to dues from cultivators holding lands within the area of the mírásí estate under pattás from the Government. To avoid injustice, where the right is denied, there should be an enquiry whether by custom it prevails on the estate, or, if there are not sufficient instances on the estate to afford grounds for decision, on similar estates in the neighbourhood.

There has been no law depriving Mírásídárs of any privileges they may have customarily enjoyed. On the other hand, in the Regulations the intention of the Government is declared to respect the privileges of land-holders of all classes.

THIS was a hearing on review of the judgment of the High Court in Special Appeal No. 687 of 1875.

*O. Ramáchandra Ráu Sahib* for the Special Appellants.

*Mr. Handley* for the Special Respondent.

The facts and arguments fully appear in the following

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\* Special Appeal No. 687 of 1875 against the decree of M. Foord, District Judge of Chingleput, in Regular Appeal No. 109 of 1874, reversing the decree of the Court of the District Munsif of Chingleput in Original Suit No. 463 of 1872.