

APPELLATE CIVIL.

Before Mr. Justice Innes and Mr. Justice Forbes.

VENKATĒSA (PLAINTIFF), APPELLANT *v.* SENGODA

(SECOND DEFENDANT), RESPONDENT.*

1879.
January 8.

Evidence Act, Sec. 91—Sodi Razināma.

The document called a *Sodi Razināma* (whereby a party relinquishes his right of occupancy of land in his possession to his landlord, and requests the latter to register the land in the name of another party to whom it has been sold) is not a document of the kind mentioned in Sec. 91 of the Evidence Act, and therefore does not exclude the Courts from basing their findings upon other evidence, should any such exist.

THE plaintiff brought this suit to recover possession of certain land from first defendant, under a registered deed of sale executed by him on the 22nd July 1876.

The first defendant did not appear.

The second defendant resisted the claim, stating that the property had been sold and put in his possession by the first defendant prior to the date of the sale to plaintiff, and the sale proceeds went to discharge a mortgage on the property; that the property had been since in possession of second defendant, and that the first defendant got the registry transferred to his (second defendant's) name.

The District Munsif dismissed the suit.

The Subordinate Judge confirmed the Munsif's decree.

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

That the plaintiff was entitled to possession under his registered deed of sale.

That the sale to the second defendant not having been registered, was of no effect.

T. Rāma Rau for the appellant.

A. Rāmachandráyyar for the respondent.

* Second Appeal No. 357 of 1878, against the decree of T. Ganapaty Áyyar, Subordinate Judge of Salem, dated 12th February 1877, confirming the decree of the District Munsif of Namikal, dated 9th August 1877.

1870.
January 8.

VENKATESA
P.
SENGODA.

The Court (INNES, J. and FORBES, J.) delivered the following
JUDGMENT.—The plaintiff sued to recover certain immoveable
property sold to him by a registered deed of sale, dated 22nd
July 1876, by first defendant.

First defendant was *ex-parte*.

Second defendant asserted that the first defendant had sold the same property to him on the 17th March 1875, and had placed him in possession, which he had held ever since. The District Munsif held that, at the date of the sale to plaintiff, first defendant had already parted with all rights in the land and had no title to convey to plaintiff, and that plaintiff and first defendant had in this transaction colluded to defraud second defendant, and he dismissed the suit. In appeal this decision was affirmed by the Subordinate Judge, as the sale to second defendant had been immediately followed by possession.

In second appeal it was urged that the second defendant's title depended upon a document called a Sodi Razināma which required to be registered, and that, as it was not registered, it could have no effect, and plaintiff's subsequent registered document would take effect against it.

The Sodi Razināma is a document whereby the first defendant relinquishes to the landlord the right of occupancy of the land, and requests the landlord to register the land in the name of the second defendant to whom he has sold it.

Assuming it to be a document which, to have any effect as between the parties to it (the first defendant and the landlord), should have been registered, it does not follow that the failure to register it can affect second defendant's title. It was quite competent to first defendant to pass his interest in the land to second defendant without executing this Sodi Razināma, the object of which is simply to inform the landlord of the outright transfer by first defendant of his interest in the land to second defendant, and to pray him to substitute the name of second defendant as pattā holder in the registry in place of his own. But if the Sodi Razināma required to be registered, it cannot now be received in evidence of the conveyance to second defendant (Section 49, Registration Act of 1871).

The Sodi Razināma is not a document of the kind mentioned in Section 91 of the Evidence Act, which would exclude oral

evidence of the transaction between first and second defendants, and it was quite competent therefore to the Courts below to base their findings upon other evidence if any such existed.

Now the Razināma is not the only evidence of the conveyance. There is the pattá standing in second defendant's name, there is second defendant's evidence, and there is the fact of three years' possession by him, on all of which the Courts might find as they have found, that there was a sale to second defendant in 1875 not by a writing but by oral agreement.

Such agreement followed by possession is not by the Registration Act deprived of its legal effect. At the date of the sale to plaintiff, therefore, first defendant was without title to sell and plaintiff took nothing by the registered sale. The second appeal should be dismissed with costs.

1879.
January 8.
VENKATESA
v.
SENGODA.

APPELLATE CIVIL.

Before Mr. Justice Innes and Mr. Justice Muttusāmi Ayyar.

PADMANABHA (DEFENDANT) APPELLANT, v. THANAKOTI
(PLAINTIFF) RESPONDENT.*

1879.
January 29.

PADMANABHA
v.
THANAKOTI.

Decree—Right of severance.

The right under a decree cannot be severed, so that the remedy against the person can remain in or pass to one, and the alternative remedy against the property pass to another.

PLAINTIFF brought this suit for the establishment of his right to a quarter share of a house and for arrears of rent. The District Munsif and the District Judge decreed in favor of the plaintiff, with modifications as to the amount of rent claimed.

The defendant preferred a second appeal.

V. Bhashyam Ayyangar for the Appellant.

Mr. Lascelles for Respondent.

The facts and arguments are fully set forth in the following

JUDGMENT:—In this suit plaintiff sought to establish his right of ownership in a quarter of a bungalow, of the remaining three-fourths of which the defendant was the owner, and (as the

* Second Appeal No. 527 of 1878, against the decree of F. Brandt, District Judge of Trichinopoly, dated 24th June 1878, amending the decree of the District Munsif of Trichinopoly, dated 10th April 1877.