

Magistrate is required to act under this section are frequently such that action must be taken immediately upon oral information, and the circumstances which are on record in this case up to the 18th September would satisfy us, if this were necessary, that, on the 26th October, when the Magistrate passed his order, there may still have been danger of such a breach of the peace as the Magistrate says he was informed by Police and Magisterial authorities was to be apprehended immediately. We do not think the order too extensive. In effect it requires petitioner to abstain from interference with the mutt and the property appertaining to it—an order which is an order to abstain from a “certain act” within the meaning of the section.

As the order is one properly passed under Section 518, we are of opinion that it is not revisable, and we dismiss the petition.

Ordered accordingly.

NOTES.

[The change in the wording of the Cr. P. C. of 1892 on this point was considered in (1895) 19 Mad. 18=5 M. L. J. 249. See also (1895) 18 Mad. 402.]

[358] APPELLATE CIVIL.

The 9th September, 1881.

PRESENT :

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND
MR. JUSTICE INNES.

Venkatachellam Chetti.....(Plaintiff) *versus* Audian.....(Defendant).*

Patta for one fasli to remain in force until another is granted, rent reserved being over 50 rupees—Registration Act of 1877, Section 17, Clauses—Exemption by local Government.

Leases for a term not exceeding five years, with a rent reserved not exceeding 50 rupees, being exempted by the local Government from registration.

Held that a patta for one fasli to remain in force until another patta is granted, with a rent reserved of 110 rupees, did not fall within the exemption.

Held also that such a patta was a lease for a term exceeding one year and not a lease for a year, and therefore subject to the general provision of clause (d), Section 17, of the Indian Registration Act, 1877.

IN this case plaintiff sued to recover Rs. 49-15-11, after deducting Rs. 60-2-4 relinquished, being arrears of melvaram due for Fasli 1287 (1878), from defendant as tenant of certain lands, alleging tender of a patta for that fasli and refusal by the defendant to accept it.

The defendant denied the tender and contended that the patta should have been registered before tender.

* Referred Case 10 of 1881, stated by T. A. Kristnasami Ayyar, District Munsiff of Shivaganga.

The Munsif stated the case under Section 617 of the *Civil Procedure Code* for the opinion of the High Court, holding that the patta need not be registered as it was a lease for less than five years, and that, if registration was necessary, it was unnecessary before tender.

The questions referred were—

- (i) Whether a patta for a term of less than five years, the rent reserved being above 50 rupees, should be registered;
- (ii) If so, whether it ought to be registered before acceptance on the part of the tenant.

A. *Ramachandrayyar* for Plaintiff.

V. *Bashyam Ayyangar* for Defendant.

The arguments appear in the **Judgment** of the Court (TURNER, C.J., and INNES, J.) which was delivered by

[359] **Turner, C.J.**—Looking to the language of the *Registration Acts*, the term 'patta' appears to be included in the term 'lease.' Act III of 1877, Section 17, Clause (d), makes the registration compulsory of all leases from year to year, or for a term exceeding one year, subject to the exemption a local Government is empowered to declare in certain cases.

The Government of this Presidency has exercised the power, and exempted leases in which there is a concurrence of two conditions—a term not exceeding five years and a rent reserved not exceeding 50 rupees. These two conditions do not in this case concur, and therefore we are unable to assent to the Munsif's opinion that it is within the special exemption. But is it subject to the general provision? It is argued that it is not a lease from year to year, but a lease for a year—the fasli for which it was granted. The words "this to remain in force until another patta is granted" express, however, an intention to create or regulate the terms of a tenancy beyond the year and from year to year.

In *Apu Budgawda v. Narhari Annajee* (I.L.R. 3 Bom., 21) the continuance was left absolutely to the option of the landlord. The document, therefore, in the present case required registration.

NOTES.

[AN UNACCEPTED PATTAS IS NOT A LEASE.—

This case was thus commented on in (1910) 8 M. L. T. 371 :—

"It does not appear from the Judgment in 3 Mad. 358 that the learned Judges had present to their minds the fact that the patta in that case had not been accepted by the tenant or that any argument was preferred to them suggesting that a patta not accepted could amount in law to a lease. The history of the legislation with regard to the registration of leases is referred to by the learned Judges as indicating that the word 'lease' includes *pattas* and *murchalkas* and this history may perhaps show that a patta, if accepted, is a lease, but does not lead to the conclusion that a *patta* which is refused can be also a lease."