

In the case of Rami Reddi the evidence of Abbayi alone is excluded, and his evidence upon this point is supplied by that [53] of Narayanasami Chetti, Tambaya, Muthusami Chetti, and Adinarayanasami Chetti.

No doubt the direct evidence of Abbayi Chetti in denial of the receipt of the waist-belt is shut out, but we think apart from that if the Magistrate found, as he has found, upon evidence which, excluding that which is inadmissible, is still substantial and satisfactory that Abbayi was not in Nellore on the 4th January, and that the evidence to the payment on that date was false, and that documentary evidence had been fabricated to impart to the pretence of payment an appearance of great probability, he could not but find that the entire charge against Abbayi was false.

We think, therefore, the petitions should be dismissed.

[3 Mad. 53.]

APPELLATE CIVIL.

*The 3rd June, 1881.*

PRESENT :

MR. JUSTICE INNES AND MR. JUSTICE MUTTUSAMI AYYAR.

Venkayyar.....(Defendant) Appellant.

*versus*

Venkata Subbayyar.....(Plaintiff) Respondent.\*

*Registration Act, Section 17, Clause (c)*—*Receipt for moner paid under an hypothecation bond.*

A receipt acknowledging as a fact part-payment of a sum due under an hypothecation bond does not require registration under Section 17, Clause (c) of the Registration Act, unless the fact is referred to as a consideration for a contractual engagement, whereby the interest created by the prior registered instrument is limited or extinguished.

A mere receipt does not acknowledge the receipt or payment of a consideration. *Dalip singh v. Durga Prasad* (I. L. R., 1 All., 442) dissented from; *Venkatarama Naik v. Chinnathambi Reddi* (7 M. H. C. R., 4) approved.

IN this case the plaintiff as representative of his uncle sued to recover Rs. 513-9-0 due under an hypothecation bond, dated October 6th 1873.

The defendant pleaded part-payment of Rupees 443-14-8, of which Rs. 394-14-8 had been paid to deceased on November 3rd, [54] 1877, and a receipt given therefor, and 49 rupees on other occasions.

The Munsif found that Rs. 49 had been paid, but, as to other payment, decided as follows : "The receipt is not receivable in evidence, because it has not been registered. It is an acquittance for Rs. 394 and odd, being sums paid in part liquidation of a registered hypothecation bond, and under Sections 17 and 49 of the Registration Act, it is not receivable in evidence because it is unregistered. See I. L. R., 1 All., p. 442. The payments may nevertheless be proved by oral evidence, but independent of, and unconnected with, the receipt, there is no other evidence of the payments; and I must find on the first issue

\* Second Appeal No. 795 of 1880 against the decree of J. H. Nelson, District Judge of South Arcot, confirming the decree of the District Munsif of Cuddalore, dated 2nd August 1881.

that, though the receipt appears genuine, it is not receivable in evidence, and that the payments embodied therein are not otherwise proved."

Upon appeal the District Judge confirmed this decision.

The defendant appealed to the High Court on the ground that the receipt did not need registration.

A. Ramachandrayyar for Appellant.

Mr. Handley for Respondent.

The Court (INNES and MUTTUASAMI AYYAR, JJ.) delivered the following Judgments:—

**Innes, J.**—The question in this case is whether a receipt, acknowledging part-payment of an amount due, requires registration under Clause (c), Section 17, of the Registration Act.

We were referred to I.L.R., 1 Allahabad, p. 442, as deciding that to render a written receipt admissible in evidence registration is necessary.

I am of opinion that such a document does not require registration.

The clause of the Registration Act referred to requires the registration of non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation, or extinction of any right, title or interest, vested or contingent, of one hundred rupees and upwards, to or in immoveable property.

Now, a mere receipt does not acknowledge the receipt or payment of a consideration. A consideration imports something given or done or forborne on account of something to be given or done or forborne on the other side. The payment of money [55] due, which a receipt acknowledges, is not a payment on account of anything to be given, done or forborne by the person to whom it is paid. It simply extinguishes *pro tanto* the debt due.

A mere receipt, therefore, does not acknowledge the receipt or payment of a consideration.

Upon this point, I adhere to what I have expressed in my judgment in VII, Madras H. C. R., pp. 4 and 5, as follows:—

"The instrument is, as it seems to me, nothing more than an acknowledgment of the payment of a debt and of the fact of certain legal incidents attaching by the act of payment, which does not operate as a consideration for anything to be done by the person receiving it. \* \* \* \* The clause appears to me to apply to instruments of acknowledgment of payment made on account of some such act of the party receiving payment, as is necessary to effect the change desired in the rights of the respective parties; as an instrument acknowledging repayment of the amount due on a mortgage in which the legal estate having been conveyed a reconveyance becomes necessary; or an instrument acknowledging the payment of a sum of money on account of the extinction of a right of easement, in which some act of the party receiving the money is necessary to effect the extinction of the right residing in him. When no act of the party receiving the payment is necessary to effect the change of rights aimed at, the payment, I conceive, does not properly come within the term 'consideration'."

I do not, therefore, agree with the decision reported in the Allahabad Series of the I. L. R., Vol. I, p. 442. I consider it erroneous, and that the decision at p. 1, Vol. VII, Madras H. C. R., upon substantially the same point should have been followed. I think the appeal should be allowed. But as the District

Judge has not found whether the receipt is genuine, it is necessary to send down an issue for trial of that question before we can dispose of the case.

**Muttusami Ayyar, J.**—I am of the same opinion.

According to Section 49 of the Registration Act, no document, which must be, but is not, registered, could affect any immovable property comprised in it. The instrument is, therefore, regarded as part of the transaction itself, and in the absence of registration, the fact or facts mentioned in it could, [56] even if proved, have no legal force whatever against any interest in immovable property. Hence there could be no question of proving those facts by oral evidence for the purpose of affecting immovable property. But according to the illustration (c) of Section 91 of Act I of 1872, the payment acknowledged in a receipt may be proved either by the receipt or by oral evidence, and the reason of this rule is stated to be that the existence of the receipt forms no part of the fact to be proved, and that the receipt itself is nothing more than a collateral or subsequent memorial of that fact, affording a convenient and satisfactory mode of proof (I, Taylor on Evidence, 377). Hence, it seems to me that, for the purpose of registration, a receipt which barely acknowledges payment stands on no higher footing than a subsequent allusion to an oral sale of immovable property in the seller's books. The view taken by the High Court at Allahabad, *viz.*, that a receipt which acknowledges a part-payment of more than Rs. 100 on account of a registered hypothecation-bond is a subject of compulsory registration, assumes that it is part of the transaction and is consequently inconsistent with the view that the payment acknowledged may be proved by oral evidence, which implies that the receipt is in law only a collateral or subsequent memorial of a payment. The construction suggested in VII, Madras H. C. R., 445, avoids this inconsistency. A receipt, which barely acknowledges payment and refers to the payment as a naked fact, does not, as it seems to me, fall under Clause (c), Section 17, of the Registration Act, unless the fact is referred to as a consideration for a contractual engagement, whereby the interest created by the prior registered instrument is limited or extinguished.

For these reasons I also think that the Lower Appellate Court should be required to find whether the receipt is genuine or not.

#### NOTES.

##### [STATUTORY CHANGE—

By the insertion of cl. xi under sub-cl. (2) of Sec. 17, the conflict of decisions on the point decided in this case was set at rest.

This clause excluded endorsements on mortgage-deeds acknowledging the payment of the whole or part of the mortgage-money and any other receipts for payment of money due under a mortgage when the receipts do not purport to extinguish the mortgage, from compulsorily registerable documents.

See 2 Bom. L. R. 422; 9 Bom. L. R. 254; 8 M. L. J. 269; 19 Mad. 288; P. R. No. 91 of 1904; 24 Bom. 609.]