

[381] APPELLATE CIVIL.

The 17th November, 1881.

PRESENT :

MR. JUSTICE INNES AND MR. JUSTICE KINDERESLEY.

Virammal.....(Defendant), Appellant
and

Kasturi Rungayyengar.....(Plaintiff), Respondent.*

*Registration Act, Section 17 (4)—Muchalka to remain in force till fresh Muchalka executed—
Exempted from registration.*

A muchalka executed for one falsi to remain in force until the execution of a fresh muchalka, for a rent less than Rs. 50, is exempted from registration by virtue of the notification of the local Government under Section 17 of the Indian Registration Act, which exempts from registration leases the terms granted by which do not exceed five years, and the annual rents reserved by which do not exceed Rs. 50.

THIS was a suit brought under Section 18 of Madras Act VIII of 1865 for the release from attachment of the lands of the plaintiff, on the ground that no patta and muchalka having been exchanged, the defendant's attachment was illegal (Section 7).

The defendant produced a muchalka dated 1876, the execution of which was admitted. By this document the plaintiff bound himself to pay Rs. 44-3-2 whether he cultivated the land or not, and it was further declared that this muchalka should be in force till the execution of a fresh muchalka.

The Deputy Collector dismissed the suit on the ground that the exchange of patta and muchalka had evidently been dispensed with.

On appeal the District Judge reversed this decision on the ground that there was no proof that the exchange of patta and muchalka had been dispensed with.

The defendant appealed to the High Court.

Bhashyam Ayyangar for Appellant.

Mr. Subramaniam for Respondent.

The arguments appear from the Judgment of the Court (INNES and KINDERESLEY, JJ.), which was delivered by INNES, J.

[382] Judgment :—It is contended by *Mr. Subramaniam* for the respondent that the document on which the plaintiff's case depends required to be registered, and is inadmissible in evidence for want of registration.

No doubt, under the Registration Act, a patta and muchalka are included under the term 'lease.' This is a lease for a rent of less than Rs. 50, and if it is also for a period not exceeding five years, it is within the exemption which the Government is authorized by the Act to declare and which it has declared.

Mr. Subramaniam contends that the agreement embodies a lease from year to year which, unless put an end to by either party, might go on for an indefinite period and one far exceeding five years, and that such a lease cannot, therefore, be held to be a lease not exceeding five years, such as by the proviso to the 17th section of the Act may be exempted by the Government.

* Second Appeal No. 370 of 1881 against the decree of F. H. Wilkinson, District Judge of Salem, reversing the decision of W. C. H. Sharkey, General Deputy Collector of Salem, dated 26th January 1881.

Mr. *Bhishyam Ayyangar* referred to the decision of the Exchequer Chamber in *Hand v. Hall* (L. R., 2 Ex. D., 355).

We think that the language of the proviso, "the terms granted by which do not exceed five years," means "the terms granted by which are not for a definite period exceeding five years," and that the lease under consideration is such a lease, as it is not for a definite period exceeding five years, but is only at most one from year to year, which may be put an end to at the end of the year.

The decision in this case will, therefore, follow that in Second Appeal No. 369 of 1881.

We reverse the decree of the District Judge and restore that of the Deputy Collector, with costs, in this and the Lower Appellate Court.

NOTES

[This case was followed in (1901) 24 Mad., 421, where, though the lease might continue beyond five years, the possibility of its prior determination was held to affect the question of registration.

See, also, (1890) 17 Cal. 548.]

[383] APPELLATE CIVIL.

The 25th November, 1881.

PRESENT :

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

Tiruchittambala Chetti.....(Plaintiff), Petitioner
and
 Seshayyangar and others.....Respondents.*

Civil Procedure Code, Sections 295 and 622—Rateable distribution of assets, decree-holder whose application is not pending at date of realisation not entitled to—Illegal order under Section 295—Remedy by petition under Section 622 as well as by suit.

An application for execution must not only have been made before the assets come into the hands of the Court, but must also be on the file and undisposed of, to entitle a decree-holder under Section 295 of the Code of Civil Procedure to share rateably in the assets realised by another decree-holder in execution of his decree against the same judgment-debtor.

Where a rateable distribution was ordered among decree-holders whose applications had been struck off the file prior to realisation of assets :

Held that it was open to the party injured to apply to the High Court under Section 622 to reverse the order.

THIS was a petition under Section 622 of the Code of Civil Procedure.

The petitioner, as judgment-creditor in Suit No. 631 of 1879, the decree in which was dated 28th October 1879, applied for execution and attached the property of the judgment-debtor in June 1880. On 6th December the property was sold, and on 18th December the sale proceeds realised. The three respondents who were decree-holders in Suits Nos. 161 of 1878, 144 of 1878, and 283 of 1877, respectively, against the same judgment-debtor had applied for execution of their decrees on former occasions, but such applications had already been disposed of and were not pending on the 18th December 1880.

* C. M. P. No. 626 of 1881 against the orders of K. Krishna Ayyangar, District Munsif of Trivadi, dated 30th July 1881.