VENKATA-CHALAPATI v. SUBBA-RAYADU.

[The Subordinate Judge having recorded on the above issues findings in favor of the respondents, this second appeal came on for rehearing, and their Lordships delivered judgment as follows:—

JUDGMENT.—The finding is that, upon the evidence recorded, the plaintiff is, under the circumstances, excluded by the usage of the temple and the intention of the founder from the inner shrine of the temple.

The objections have not been pressed.

We accept the findings and dismiss the appeal with costs.]

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

1890. Jan. 20, 30.

SAMBAYYA (DEFENDANT), APPELLANT,

v.

GANGAYYA (PLAINTIFF), RESPONDENT.*

Registration Act—Act III of 1877, *ss.* 17 (*d*), 49—*Covenant in unregistered lease—specific performance.*

The plaintiff leased a house to the defendant for three years by an unregistered instrument which contained a covenant by the lessee that he would purchase the house at a certain price on an event which took place. The plaintiff now sued for specific performance of this covenant:

Held, that the unregistered instrument was not admissible in evidence and the suit should be dismissed.

SECOND APPEAL against the decree of W. H. Welsh, Acting District Judge of Cuddapah, in appeal suit No. 81 of 1888, affirming the decree of Mahomed Abdul Allam Saheb Bahadur, District Munsif of Madanapalli, in original suit No. 374 of 1887.

Suit for specific performance of a covenant for the purchase of a house, contained in an unregistered lease. The facts of the case are stated sufficiently for the purposes of this report in the judgments of the High Court.

The District Munsif passed a decree as prayed, and this decree was affirmed in appeal by the District Judge.

The defendant preferred this second appeal.

Sadagopa Chariyar for appellant.

Subbayya Chetti for respondent.

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* Second Appeal No. 185 of 1889.

MUTTUSAMI AYYAR, J.—The appellant rented a house from the respondent for three years and executed a kararnama in his favor on the 5th September 1884 undertaking to keep the premises in repair during the period and to restore possession on the expiration of the lease. The document provided further that, if the appellant either failed to execute the necessary repairs or to restore possession, he should pay the respondent Rs. 60, and take a sale-deed from him regarding the house. It has been found by the Courts below that the appellant lived in the house but for six months, and then left the village where it is situated, refused to make over possession to the respondent on the ground that he (appellant) was entitled to remain in possession for three years, and continued to occupy the house whenever he came to the village.

It has also been found that the appellant failed to repair the house and that it became dilapidated and ceased to be habitable. Upon these facts, the District Munsif directed the respondent to pay the appellant Rs. 60, and the appellant to execute and register a sale-deed in respect of the house. On appeal, the District Judge agreed with the District Munsif, and held that the omission to register the kararnama or lease for three years did not preclude the appellant from enforcing specific performance of the covenant for the purchase of the house. The contention in second appeal is that the kararnama acquired no legal force for want of registration, that the lease for three years which it purported to create was not a valid transaction, that the covenant for purchase was likewise invalid, and that the document was not admissible in evidence to prove either the lease for three years or the stipulation for the purchase.

The transaction evidenced by document A, or the principal contract which forms the foundation for the respondent's claim, is the lease for three years, and the covenant which the respondent sued to enforce was part of, and depended on, the principal contract. Document A was compulsorily registrable under section 17, clause (*d*) of Act III of 1877, and under section 49, it was ineffectual for the purpose of creating a lease of the house for three years and inadmissible as evidence of any transaction affecting the house. As the principal contract failed, the covenant depending upon it likewise failed (*Venkatrayudu* v,

SAMBAYYA v. GANGAYYA.

Papi(1)). The decision in *Muttukaruppa Koundan* v. *Rama Pillai*(2), on which the Judge relies proceeded on the ground that when a document is merely evidence and not of the essence of a transaction, the statement of a party to a suit is admissible original evidence as against him to prove the contents of a document which is not admissible in evidence under the Stamp Act. But in the case now before us registration is of the essence of the transaction, and the question is whether the covenant for purchase ought not to stand or fall with the principal contract. The question to what extent a document, which is a subject of compulsory registration but not registered is admissible in evidence for the purpose of proving a money claim, was considered by this Court in *Stri Seshathri Ayyengar* v. *Sankara Ayen*(3) and *Guduri Jagannadham* v. *Rapaka Ramanna*(4). The course of decisions on this point has been influenced by the language of the Registration Act in force at the time when the document sued on was executed. The first case is that of *Achoo Bayanah* v. *Dhany Ram*(5) decided in 1869 with reference to Act XX of 1866. The words of section 49 of that enactment were as follows :—"No instrument required "by section 17 to be registered shall be received in evidence in "any civil proceeding in any Court or shall affect any property "comprised therein, unless it shall have been registered in accord-"ance with the provisions of this Act." The question decided in that case was whether an unregistered instrument of mortgage might be admitted in evidence for the purpose of proving the covenant to repay the debt and enforcing the personal obligation only. Three of the learned Judges of this Court held that it was not admissible and relied on the general words: "No document shall be received in any Court." But the learned Chief Justice, Sir Colley Scotland, dissented and observed that, "An instrument "which has the twofold operation of a simple contract or bond to "pay a debt a collateral security for the debt is admissible in "evidence, though unregistered, for the purpose of proving the "simple contract debt."

When Act VIII of 1871 was passed the language of section 49 was modified and rendered less stringent, the words being, "No document required to be registered shall, unless registered,

(1) I.L.R., 8 Mad., 182. (2) 3 M.H.C.R., 158. (3) 7 M.H.C.R., 296.
(4) 7 M.H.C.R., 348. (5) 4 M.H.C.R., 378.

"be received in evidence of any transaction affecting any immove-
"able property comprised therein." The cases decided under this Act are *Stri Seshathri Ayyengar* v. *Sankara Ayen*(1), *Guduri Jagannadham* v. *Rapaka Ramanna*(2), and it was held in both that the unregistered document, though a subject of compulsory registration, was admissible in evidence for the purpose of enforcing the personal liability of the person executing the document. In the second case this Court observed that the new law (Act VIII of 1871) explicitly adopted the doctrine which the late Chief Justice believed to be derivable from the old. The language of the present registration section 49 is same as that of Act VIII of 1871; and the test therefore is whether the transaction evidenced by the particular instrument is single and indivisible, or whether it really evidences two transactions which can be severed from each other, the one as creating an independent personal obligation and the other as merely strengthening it by adding a right to proceed against immoveable property. But it should be remembered that it is not enough that there is an obligation to pay a sum of money, but that it is also necessary that the obligation should have an independent existence, and be in no way contingent or conditional on the breach of some obligation relating to immoveable property created by the same instrument, for the contingency or the condition and the obligation would then be parts of one indivisible transaction. This principle was recognized in *Venkatrayudu* v. *Papi*(3) decided in 1884, in which there was a covenant in a deed of sale for a term of years to the effect that if the grantor failed to observe the stipulations relating to the land mentioned in the unregistered instrument, he was to pay the principal debt after deducting the profits and interest received from the date of the document. The present case is on all fours with the above and it is further a suit by the vendor to enforce the specific performance of a covenant relating to immoveable property. I would reverse the decrees of the Courts below and direct that the suit be dismissed.

BEST, J.—The question for decision in this appeal is whether the Lower Appellate Court is right in giving the plaintiff a decree on the so-called admission of the defendant, notwithstanding that the karar on which the suit is based is inadmissible in evidence by reason of its not being registered.

(1) 7 M.H.C.R., 296. (2) 7 M.H.C.R., 348. (3) I.L.R., 8 Mad., 182.

SAMBAYYA v. GANGAYYA.

In the case of *Muttukaruppa Kaundan* v. *Rama Pillai*(1), to which the Judge refers in support of his finding that the admission is sufficient, it appears that the then defendant had "himself admitted before the Court the contents of the counterpart, which had been admittedly executed by him, and such admission was held to be *primary* evidence of the terms of the tenancy" upon which the plaintiff was entitled to rely without producing the written instrument or accounting for its absence. In the present case, though the defendant appears to have admitted the existence of a karar such as is mentioned in the plaint, he does not appear to have stated what were the contents of such karar, or to have expressly admitted that it contained a stipulation such as is now sought to be enforced; and the mere fact that an allegation in a plaint is not traversed does not relieve a plaintiff from the burden of proving his case—*Mulji Bechar* v. *Anupram Bechar*(2).

If authority were required for the proposition that when a document is inadmissible in evidence no *secondary* evidence of its contents can be admitted, it is found in the very case relied on by the Judge, namely, that in *Muttukaruppa Kaundan* v. *Rama Pillai*(1), wherein it was held that the plaintiff's admission of the want of stamp precluded secondary evidence of the contents of the counterpart. Further, as observed by West, J., in *Burjorji Cursetji Panthaki* v. *Muncherji Kuverji*(3) (at page 153 of the report), "if, the document being pronounced absolutely invalid for "some purpose on considerations of public policy, it were sought "to defeat the law through the effect usually given to an admission "in pleading such an attempt could not be allowed to succeed." Compare also *Varada* v. *Krishnasami*(4) and *Venkatrayudu* v. *Papi*(5).

The covenant now sought to be enforced being a contract depending on the lease, and the latter being invalid for want of registration, the former must also fail.

This appeal must therefore be allowed, and the decrees of both the Lower Courts being set aside, plaintiff's suit must be dismissed and the respondent (plaintiff) directed to pay the appellant's (defendant's) costs of this appeal. Each party is directed to bear his own costs in the Lower Courts as the ground on which the suit is now found to fail was not taken in the original Court.

(1) 3 M.H.C.R., 158. (2) 7 Bom. H.C.R., 136. (3) I.L.R., 5 Bom., 143.
(4) I.L.R., 6 Mad., 117. (5) I.L.R., 8 Mad., 182.