

the tenancy of the defendant, but is seeking to eject him as one holding under an invalid alienation. In the plaint, which was presented in November 1886, it is stated that the plaintiff came into office in July 1886, and in the following month called upon the defendant to relinquish the property. No issue was taken upon this allegation; and, in view of the allegations made on both sides in the pleadings, I think that it could not properly have been made the subject of an issue.

MAHOMED
v.
GANAPATI.

I think the District Judge should be asked to return findings on the two issues indicated above within six weeks from the date of the receipt of this order, when seven days, after the posting of the finding in this Court, will be allowed for filing objections.

Both parties to be at liberty to adduce fresh evidence.

MUTTUSAMI AYYAR, J.—I concur.

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Parker.*

LAKSHMAMMA (PLAINTIFF), APPELLANT,

v.

KAMESWARA AND ANOTHER (DEFENDANTS NOS. 1 AND 2),
RESPONDENTS.*

1889.
Dec. 2, 12.

Registration Act—Act III of 1877, s. 17 (b), (h).

Where a deed of partition between a mother and her son declared certain existing rights in her over moveable and immoveable property above the value Rs. 100:

Held, that, although the deed showed that the execution of another deed with reference to those rights was in contemplation, yet the deed was not admissible in evidence of the mother's title to either the moveable or immoveable property.

APPEAL against the decree of Venkata Rangayyar, Subordinate Judge of Ellore, in original suit No. 31 of 1886.

Suit by the plaintiff, who was the widow of one Venkatakrishnayya, to restrain the defendants from interfering with her enjoyment of certain jewels, to recover from the defendants cer-

* Appeal No. 116 of 1888.

LAKSHMAMMA
v.
KAMESWARA.

tain moveable and immoveable property, (the immoveable property being of the value of Rs. 1,200), and to compel defendant No. 1 who claimed to be the adoptive son of the late Venkatakrishnayya to execute to her deeds of transfer in respect of the above-mentioned moveable and immoveable property as per exhibit A.

Exhibit A was translated as follows :—

“To Velagapudy Venkata Lakshamma Pinnigar (the plaintiff), who is equal to Ganga and Bhagirade.

“The manavi (representation) of Sevakudu Velagapudy Kameswara Rao.

“As my father Velagapudy Venkatakrishnayya died, what we intend in regard to division of moveable and immoveable property which was acquired by him and which we hold up to the present day is as follows:—I have given you without any share to me the inam lands which were previously purchased in Vijaiswaram, the silver and gold jewels of which you hold possession, cloths, cot and beds and all the silver things in your possession, as also the jewels which my father had, as also brass utensils which are engraved in your name. I have arranged that I shall hold without giving you any share the silver and gold articles, cloths, cot and bed which myself, my wife and my children hold and which are in my possession, as also the seri lands which stand in my name and in that of Suraparazu Gurumurty, as also the debts due to us from the people up to this day, *i.e.*, entire outstanding balance of debts due under bonds executed in my name after deducting payment as to the remaining silver, gold (articles), ready money and utensils which are forthcoming at present and which are in the house, the two houses and sites at Pentapadu, bandy and cattle I have agreed to divide them in equal shares. The pension rupees which are due to my father from the Sircar and the security money are to be divided equally when they come to us.

“I have agreed to give my father’s mother Venkamma Garu Rs. 500 from our joint money on account of her maintenance and utensils for her use.

“We should both take the boxes in our respective possession. The remaining wooden and stone articles, which are in our house, should be divided equally. I won’t make any kind of objection to the gift and sale of the moveable and immoveable property which may be made by you at any time as you please.

“It is arranged that after we divide the property above referred to and take possession of our respective shares, a document shall be drawn up and registered.

(Signed) V. KAMESWARA RAU ”

(defendant No. 1).

The Subordinate Judge held, on the authority of *Ramasami v. Ramasami*(1), that this document came within the purview of Registration Act, s. 17, cl. (b), and not within the exception in cl. (h), and accordingly ruled that it was not admissible in the evidence. He passed a decree in favor of the plaintiff for the delivery to her of certain moveable property, but otherwise dismissed the suit.

The plaintiff preferred this appeal.

Subba Rau for appellent.

As to the admissibility of exhibit A see the Full Bench decision in *Jivan Ali Beg v. Basa Mal*(2).

The Registration Act, like all disqualifying Acts, has to be construed strictly, and this document strictly creates no right in land, but merely gives a right to have a conveyance. See *Venkatagiri Zamindar v. Raghava*(3), *The Collector of Tanjore v. Ramasami*(4) and *Annappa v. Ganpati*(5). *Ramasami v. Ramasami*(1) does not govern this case, for it proceeds on the acknowledgment of the receipt of the price in the instrument, merely following *Futteh Chund Sahoo v. Leelumber Singh Doss*(6).

The document is admissible to prove the agreement for the execution of a further document, to prove the compromise between plaintiff and defendant No. 1 and to confirm the evidence of the father's intention to divide. *Venkatarama Naik v. Chinnathambu Beddi*(7).

Moreover, the document is divisible in the sense that it can be used as to moveable property, &c., though it cannot be used as creating an interest in land. *Krishto Lall Ghose v. Bonomalee Roy*(8), *Sham Narayan Lall v. Khinajit Matoe*(9), *Lachmipat Sing Dugar v. Mirza Khairat Ali*(10), *Vellaya Padyachy v. Moorthy Padyachy*(11).

(1) I.L.R., 5 Mad., 115.

(3) I.L.R., 9 Mad., 142.

(5) I.L.R., 5 Bom., 181.

(7) 7 M.H.C.R., 1.

(9) 4 Beng. L.R.F.B., 1.

(2) I.L.R., 9 All., 108.

(4) I.L.R., 3 Mad., 342.

(6) 14 M.I.A., 129.

(8) I.L.R., 5 Cal., 611.

(10) 4 Beng. L.R.F.B., 18.

(11) 4 M.H.C.R., 174.

LAKSHMANNA The *Advocate-General* (Hon. Mr. *Spring Branson*) for respon-
 KAMESWARA. dents.

The case is precluded by the authority of *Ramasami v. Ramasami*(1); where a document, which is compulsorily registrable, is unregistered, its terms cannot be consulted—see also *Nangali v. Raman*(2); that authority is not affected by *Venkatagiri Zamindar v. Raghava*(3), which only decided that the fact of a tenancy can be put in evidence, though the lease may be inadmissible. Compare also *G. Lee Morris v. Sapamtheetha Pillay*(4) and *Somu Gurukkal v. Rangammal*(5) followed in *Sambhubhai Karsandas v. Shivalaldas Sadashivdas Desai*(6) and see *Balaram Nemchand v. Appavala Dulu*(7).

The Collector of Tanjore v. Ramasamier(8) and *Annappa v. Ganpati*(9) do not apply here: the first case was a decision on the terms of Stamp Act, s. 26, and in the latter case the document in question was not intended to affect land.

As to the admissibility of the document for the purposes suggested, *Sham Narayan Lall v. Khimajit Matoe*(10) is no authority for the appellant, for the suit being for the registration of the instrument, the instrument there had necessarily to be read; nor does *Venkatarama Nalik v. Chinnathambu Reddi*(11), of which the head note is incorrect, help the appellant, for the document in that case was not of the nature described in Registration Act, s. 17.

In the present case the document does not recite the father's will or the like, but sets out the terms of a partition then and there effected; nor is it an agreement of which specific performance is sought. Compare also *Mattongency Dossce v. Ramnarain Sadkhan*(12), where *Garth, C.J.*, discussed *Lachmipat Sing Dugar v. Mirza Khairat Ab*(13) and *Krishto Lall Ghose v. Bonomallee Roy*(14), which also, like the Madras case last cited, bears on the argument as to the divisibility of the document. As to this point see also *Lachman Singh v. Kesri*(15). *Vellaya Padyachy v.*

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| (1) I.L.R., 5 Mad., 115. | (2) I.L.R., 7 Mad., 226. |
| (3) I.L.R., 9 Mad., 142. | (4) 6 M.H.C.R., 45. |
| (5) 7 M.H.C.R., 13. | (6) I.L.R., 4 Bom., 89. |
| (7) 9 Bom. H.C.R., 121. | (8) I.L.R., 3 Mad., 342. |
| (9) I.L.R., 5 Bom., 181. | (10) 4 Beng. L.R.F.B., 1. |
| (11) 7 M.H.C.R., 1 | (12) I.L.R., 4 Cal., 83. |
| (13) 4 Beng. L.R.F.B., 18. | (14) I.L.R., 5 Cal., 611. |
| | (15) I.L.R., 4 All., 3. |

Moorthy Padyachy(1) cited against me was overruled in *Achoo Bayamah v. Dhany Ram*(2). The document if registered would be a good conveyance if anything, as it is not registered it does not avail the appellant.

LAKSHMANNA
P.
KAMESWARA.

Subba Rau in reply.

JUDGMENT :—The plaintiff is the widow of one Venkatakrishnayya, who died on 21st February 1886. She sued to enforce an arrangement for partition, said to have been made with defendant No. 1 six days after her husband's death, and to compel defendant No. 1 to execute and register a formal deed in conformity with the terms of that arrangement. In the suit the plaintiff denied the adoption of defendant No. 1 by her late husband; but this point was decided against her and is not pressed in appeal. The question before us, therefore, is what effect, if any, can be given to the agreement (exhibit A) executed by defendant No. 1 on 27th February 1886. The Subordinate Judge held the document purported to create and declare rights in immoveable property to the value of more than Rs. 100, and that registration was, therefore, compulsory. In appeal it was argued that the document was merely an agreement to carry out the wishes of the deceased Venkatakrishnayya expressed shortly before his death, and did not in itself operate to create a title in immoveable property, but was merely an agreement to execute another document, which should create such title.

This contention we do not consider to be tenable. The language of the document expressly declares existent rights in the plaintiff in immoveable property, and, though the last clause of exhibit A contemplates the execution of another deed, it is clear that that future deed was only necessary because there was a certain amount of property as to which immediate division was not possible.

Nor do we think that the plaintiff's claim can be supported upon the alleged oral disposition of his property by her late husband. The evidence as to such disposition rests upon the testimony of the same witnesses who have been discredited with regard to the status of defendant No. 1 in the deceased's family; and, moreover, exhibit A, which undoubtedly was executed immediately after Venkatakrishnayya's death is absolutely silent

(1) 4 M.H.C.R., 174.

(2) 4 M.H.C.R., 378.

LAKSHMAMMA
v.
KAMESWARA.

as to any testamentary disposition made by him. Venkatakrishnaya was a Sub-Magistrate and a man of business; and had he intended to make any such disposition of his property before his death, it is not likely he would have left only oral declarations of his intentions when there was ample time during his last illness to express his wishes in writing. We are, therefore, of opinion that the plaintiff's claim must fail so far as she relies upon her husband's directions as the origin of her title.

The next contention is that even if the agreement (exhibit A) is, through want of registration, inadmissible in evidence to prove the plaintiff's right to the immoveable property comprised therein, it may still be looked at as evidencing her title to the rest of the property. The learned Advocate-General, on the other hand, contends that the transaction is one and indivisible, and that the document cannot be looked at for any purpose whatever. This objection appears to us to be well founded. The document A, if carried out, is a deed of partition, and it is clear that as between mother and son there can be no such thing as partition apart from this document. The transaction evidenced by the agreement is, therefore, one and indivisible, and the partition of the moveable property cannot be separated from the partition of the rest. The document is not merely evidence of the transaction, but is the transaction itself—*Somu Gurukkal v. Rangammal*(1) and *G. Lee Morris v. Sapantheetha Pillay*(2).

The case referred to by the plaintiff's pleader—*Krishto Lall Ghose v. Bonomalce Roy*(3)—is in reality against him, while that in *Vellaya Padyachy v. Moorthy Padyachy*(4) has been overruled by the Full Bench in *Achoo Bayamah v. Dhany Ram*(5). The same rule has been followed in *Mattongeney Dossce v. Ramnarain Suddkhan*(6) and *Lachman Singh v. Kesri*(7). The case of *Venkatagiri Zamindar v. Raghava*(8) was referred to, but it is not in conflict with these decisions. There it was merely decided that if a contract of lease is for want of registration inadmissible in evidence, the plaintiff can give other evidence of tenancy in a suit to eject.

(1) 7 M.H.C.R., 13.

(3) I.L.R., 5 Cal., 611.

(5) 4 M.H.C.R., 378.

(7) I.L.R., 4 All., 3.

(2) 6 M.H.C.R., 45.

(4) 4 M.H.C.R., 174.

(6) I.L.R., 4 Cal., 83.

(8) I.L.R., 9 Mad., 142.

On these grounds we must hold that exhibit A is altogether inadmissible in evidence. The appeal, therefore, fails, and we must dismiss it with costs.

LAKSHMAMMA
v.
KAMESWARA.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Wilkinson.

VENKATACHALAPATI (DEFENDANT), APPELLANT,

v.

KRISHNA (PLAINTIFF'S REPRESENTATIVE), RESPONDENT.*

1889.
Oct. 30, 31.
Nov. 27.

Civil Procedure Code, s. 13—Res judicata—Rent Recovery Act (Madras)—Division of Revenue Court as to landlord's title.

In a summary suit filed by a landlord against his tenant in the Court of the Deputy Collector under the Rent Recovery Act (Madras), s. 9, to enforce acceptance of a patta by the defendant, it appeared that, in a former suit between the same parties in the same Court, it had been decided that the defendant was the plaintiff's tenant and as such bound to accept a patta from him in respect of the land in question in the present suit :

Held, that the defendant was not entitled in the present suit to dispute the plaintiff's title, since the former decision constituted it *res judicata*.

SECOND APPEAL against the decree of J. A. Davies, Acting District Judge of Tanjore, in appeal suit No. 114 of 1886, confirming the decision of N. Krishnasami Ayyar, Acting Deputy Collector of Tanjore Division, in summary suit No. 224 of 1884.

Suit brought by a landlord against his tenant under Rent Recovery Act, s. 9, to enforce acceptance by the defendant of a patta tendered to him by the plaintiff, and the execution of a muchalka by him to the plaintiff.

The defendant disputed the title of the plaintiff. But it appeared that, in a former suit between the same parties in the same Court, it had been decided that the defendant was the plaintiff's tenant and as such bound to accept a patta from him in respect of the lands in question in the present suit.

* Second Appeal No. 917 of 1888.