

transaction did not amount to a new contract extinguishing the old cause of action. If the defendant had given a promissory note for the amount found due, it would have been different, but a mere oral promise to pay is not sufficient to take the case out of the statute. The decrees of the Lower Courts must be reversed and the suit dismissed with costs throughout.

AMUTHU
v.
MUTHAYYA.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Handley.

VENKATASAMI (DEFENDANT), APPELLANT,

v.

KRISTAYYA (PLAINTIFF), RESPONDENT.*

1893.
Feb. 2, 21.

*Registration Act—Act III of 1877, ss. 36, 72 to 77—Compulsory registration—
Suit to compel registration.*

The plaintiff and defendant agreed that, in consideration of a sum of money already paid and of a further sum to be paid on the completion of the transaction, the defendant should transfer a certain mortgage to the plaintiff, and an instrument of transfer was prepared and executed to give effect to that agreement, but it was not registered. The plaintiff now sued for a decree compelling the defendant to execute and register that or a similar instrument:

Held, that the plaintiff was not entitled to a decree for compulsory registration, and should have proceeded under Registration Act, ss. 36, 72 to 77.

SECOND APPEAL against the decree of H. G. Joseph, Acting District Judge of Ganjam, in appeal suit No. 141 of 1891, affirming the decree of K. Ramalinga Sastri, District Munsif of Chicacole, in original suit No. 29 of 1891.

The plaintiff alleged that it had been agreed between him and the defendant that the defendant, for consideration received and a further sum to be paid when the transfer should be completed, should transfer to him a mortgage deed executed to the defendant by certain persons on 18th August 1887; it was further alleged that a deed of transfer had been prepared accordingly, but not registered; and he now prayed for a decree directing the execution and registration of a deed of transfer, to effectuate the above agreement. The defendant pleaded that the plaintiff had failed to carry out his part of the contract.

* Second Appeal No. 681 of 1892.

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The District Munsif passed a decree that the defendant do execute and register a deed of transfer and that the plaintiff do pay to the defendant the consideration remaining unpaid. This decree was confirmed on appeal by the District Judge, and the defendant preferred this second appeal.

Srirangachariar for appellant.

Seshagiri Ayyar for respondent.

JUDGMENT.—The relief asked for in the plaint is a direction, “that the deed of transfer (exhibit A) or any other document that may be caused by the Court to be written by defendant in the manner the Court thinks proper” be registered by him and handed over to plaintiff. There is also a prayer for delivery of possession of the lands, the mortgage of which is the subject of the transfer deed (exhibit A). The Lower Courts have refused this latter relief, but have given plaintiff a decree directing defendant to execute a fresh transfer deed to plaintiff on the terms of exhibit A at his own expense and present it for registration and on his part do all that is necessary to get it duly registered.

The question is whether plaintiff is entitled to that relief or any other relief in this suit.

The first prayer of the plaint, viz., for compulsory registration of the document A, clearly cannot be complied with. We agree with the decision of the Calcutta High Court in *Eidan v. Mahomed Siddik*(1), approved of in *Kunhinmu v. Viyyathamma*(2), that independently of the provisions of section 77 of the Registration Act, no suit to compel registration of a document will lie, and dissent from that of the Allahabad High Court reported in *Ram Ghulam v. Chotey Lal*(3), which is practically overruled by *Bhagwan Singh v. Khuda Bakhs*(4). One fatal objection to such a suit is that the document sought to be registered cannot, except under the special provisions of section 77, be received in evidence, and therefore the Court cannot ascertain that there is a document requiring registration. Another objection is that by section 23 of the Registration Act, subject to the provisions of sections 24, 25 and 26, no document other than a will shall be accepted for registration unless presented for that purpose within four months from date of execution. Unless, therefore, the decree compelling

(1) I.L.R., 9 Cal., 150.

(3) I.L.R., 2 All., 46.

(2) I.L.R., 7 Mad., 535.

(4) I.L.R., 3 All., 397.

registration were passed within four months from the date of execution of the document, or at least within the additional four months to which the Registrar may extend the time, the decree of the Court would be a nullity, for the registering officer could not be compelled to do that which the law forbids him to do. Moreover, we think that such a suit will not lie upon the general principle that, when a statute creates a right or an obligation and provides a method of enforcing it, that method, and not the remedy at common law, must be followed.

The District Judge is in error in supposing that in the present case no action under the Registration Act could have been taken by plaintiff. He seems to have omitted to notice that documents can be presented for registration not only by the executants, but also by any person claiming under the document. Plaintiff, therefore, who had possession of the document within the time allowed for registration, could have presented it for registration and obtained a summons for defendant's appearance under section 36. If defendant had appeared and admitted execution, the document would have been registered. If he had appeared and denied execution, registration would have been refused and plaintiff would have been entitled to an inquiry before the Registrar under sections 73 to 76. If defendant did not appear, plaintiff might have proved execution of the document, and on such proof would have been entitled to registration. If the registering officer was not satisfied with his evidence of execution and refused to register, an appeal would have lain to the Registrar under section 72. If the decision of the Registrar under section 72 or 76 had been adverse to plaintiff, he would have had a remedy by suit under section 77 of the Act. Plaintiff had therefore a complete remedy under the Act, and not having chosen to follow it, has only himself to blame that the efficacy of the document has not been completed by registration.

There remains the question whether plaintiff can have a decree such as the Lower Courts have given him for execution and registration of another document. In our opinion he is entitled to no such relief. The fallacy of the Lower Courts consists in treating the document (exhibit A) as evidencing merely an agreement to transfer the mortgage, whereas it purports to be an operative transfer of the mortgage. If it had been merely an agreement to transfer contemplating a future formal deed of transfer,

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it would not have required registration, section 17 (h). The agreement to transfer the mortgage was so far carried out that the deed of transfer was executed and no suit will lie to compel defendant to do that which he has already done. The only act wanting on his part to complete the contract was to register the deed of transfer, and this act, as we have shown, he could only be compelled to do by the proper proceeding under the Registration Act, followed by suit under section 77, if plaintiff failed to obtain his rights by such proceedings.

We must reverse the decrees of the Courts below and dismiss the suit throughout, but without costs, as it has been found that defendant was not justified in his refusal to register the document.

APPELLATE CIVIL.

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

KASI DOSS, PLAINTIFF,

v.

KASSIM SAIT, DEFENDANT.*

*Civil Procedure Code—Act XIV of 1882, s. 443—Defence of minority—
Procedure on trial of preliminary issue.*

When minority is pleaded as defence to an action, a guardian should be appointed for the defendant and a preliminary issue should be framed and tried as to whether defendant is or is not a minor.

CASE referred for the decision of the High Court by P. Srinivasa Rau, Second Judge of the Court of Small Causes, Madras, under Civil Procedure Code, s. 617, and Presidency Small Cause Courts Act, s. 69.

The case was stated as follows :

“ In this suit the plaintiff sues for Rs. 550 as being the principal and interest due upon a promissory note alleged to have been executed to him by the defendant at Madras on the 5th May 1890.

“ Mr. King, Attorney-at-Law, appearing under a vakalatnama granted to his firm by defendant, stated that the defendant

* Referred Case No. 35 of 1891.