

end of any revenue year by a writing signed in the presence of witnesses irrespective of the wishes of the landlord in the matter, there can be no doubt that the document did not require to be registered under section 17 of the Indian Registration Act. But that the document was one given for a consideration which moved from the plaintiff to the first defendant, viz., the waiver by the former of his right to the arrears of rent amounting to Rs. 600 due at the time of the relinquishment is clear from the terms of the instrument itself. It is true that the passage in the plaint, upon which stress was laid on behalf of the plaintiff, suggests that the paper in question had been delivered to the servants of the plaintiff before he signified his consent to forego his claim to the 600 rupees. But neither the fact that the plaintiff accepted the first defendant's offer only after the paper, which was to operate as evidence of the relinquishment, had been put into the hands of his servants, nor the circumstance that the acceptance was not in writing is at all material. The moment the offer was accepted the paper which had been parted with by the first defendant conditionally, as it were, became fully operative between the parties to the arrangement and extinguished the interests which the first defendant had as a tenant. Therefore the conclusion of the Lower Courts that the relinquishment was not a mere abandonment under section 12 of the Rent Recovery Act by the first defendant of his right to occupy the land, but a contract between him and the plaintiff, which fell within section 17 of the Registration Act, and which was, therefore, inadmissible for want of registration, appears to us to be correct.

RANGAYYA  
APPA RAU  
v.  
KAMESWARA  
RAU.

The second appeal fails and is dismissed with costs.

## APPELLATE CIVIL.

*Before Mr. Justice Subramania Ayyar and Mr. Justice Davies.*

KRISHNASAMI AYYANGAR (PLAINTIFF), APPELLANT,

v.

RANGA AYYANGAR (DEFENDANT), RESPONDENT.\*

1896.  
December 4.

*Civil Procedure Code—Act XIV of 1882, s. 158—Adjustment of decrees out of Court—Agreement not certified to Court—Action for damages.*

A decree for partition of family property was passed in favour of two plaintiffs. One of the plaintiffs having died before execution, a question arose between the

\* Appeal No. 220 of 1895.

KRISHNASAMI  
 AYYANGAR  
 v.  
 RANGA  
 AYYANGAR.

survivor and one of the defendants as to the devolution of his interest, and the decision was in favour of the surviving plaintiff. The contending parties made an arrangement according to which some of the land representing the share of the deceased plaintiff should be given to the defendant. This agreement was not certified to the Court and the decree was executed at the instance of the surviving plaintiff who subsequently refused to give effect to the arrangement. The then defendant now sued in the alternative for possession of the land awarded to him or for damages:

*Held*, (1) that the plaintiff's claim for the land was not maintainable; (2) that the claim for damages for breach of the agreement was maintainable.

APPEAL against the decree of V. Srinivasacharlu, Subordinate Judge of Kumbakonam, in Original Suit No. 56 of 1893.

The plaintiff was the brother of defendant No. 1, and it appeared that their father and defendant No. 1 brought Original Suit No. 22 of 1884 for partition of the family property against the present plaintiff and another coparcener, and the plaintiffs therein obtained a decree for a two-sixth share. Before the decree was executed, the father died, and a question arose as to whether the surviving plaintiff was entitled to the whole of the two-sixth share, and this question was decided in his favour. The present plaintiff unsuccessfully appealed to the High Court. Afterwards, the decision of the Lower Court having been affirmed by the High Court the present plaintiff and his brother agreed to submit the matter to the arbitration of one Virasami Ayyangar, under whose award given on 23rd June 1888, the plaintiff's present claim arose. This transaction was not certified to the Court, but it was brought to its notice with a view of procuring a stay of execution. Execution however took place notwithstanding, as there was a contest as to the nature of the agreement; and the present defendant since failed to give effect to the arrangement. The Subordinate Judge dismissed the suit now brought by the plaintiff for the land awarded to him and in the alternative for damages.

The plaintiff preferred this appeal.

*Ramachandra Rau Saheb* for appellant.

*Sankaran Nayar* and *Sankaranarayana Sastri* for respondent.

JUDGMENT.—In so far as the plaintiff's claim is made for lands adjudged to the defendant in Original Suit No. 22 of 1884, it is not sustainable in the face of that adjudication.

But as to the claim for damages for breach of the alleged agreement, the suit is not barred (*Viraraghava v. Subbakka*(1))

and *Mallamma v. Venkappa*(1)). If the Subordinate Judge in his orders in execution of the decree in the previous suit had decided that there was no agreement as alleged, that decision would no doubt have operated as a bar by *res judicata* to this suit which is based upon that agreement. We find, however, that there was no such decision. The agreement was set up simply for the purpose of staying execution until the arrangements under the agreement were ripe for being certified to the Court in adjustment of the decree. The Subordinate Judge proceeded with the execution of the decree, not because he found that there was no agreement, but, on the other hand, because there were disputes as to the nature of the agreement. Neither party applied under section 258 of the Code of Civil Procedure to have an agreement certified, and there was no order under that section. The case of *Guruvayya v. Vudayappa*(2) does not therefore apply.

KRISHNASAMI  
 AYYANGAR  
 v.  
 RANGA  
 AYYANGAR.

We must accordingly reverse the decree of the Lower Court and remand the suit for trial according to law in so far as the claim for damages is concerned. The suit as a suit for delivery of lands is dismissed. Costs to abide and follow the result.

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## APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Benson.

NITYANANDA PATNAYUDU AND OTHERS (PLAINTIFFS),  
 APPELLANTS,

1897.  
 February 5.

v.

SRI RADHA CHERANA DEO AND OTHERS (DEFENDANTS),  
 RESPONDENTS.\*

*Mortgage—Interest 'post diem'—Limitation.*

A mortgagee is entitled to interest *post diem*, if there is nothing in the document to indicate that the parties did not intend that interest should be paid after the due date.

APPEAL against the decree of R. H. Shipley, Acting District Judge of Ganjam, in Original Suit No. 40 of 1894.

Suit to recover principal and interest due on a mortgage bond, dated 16th April 1880, and executed by defendants Nos. 1 and 2

(1) I.L.R., 8 Mad., 277.

(2) I.L.R., 18 Mad., 26

\* Appeal No. 61 of 1896.