

VALLABHA
VALIYA
RAJAH
v.
VEDAPURATTI.

left in this position that he can neither proceed upon the decree nor institute another suit, he is after all in no worse position than a mortgagor in England whose suit for redemption has been dismissed for other reasons than want of prosecution. If he is in possession, his rights are fully protected under the provisions of the Act. If the possession is with the mortgagee, the mortgagor has only himself to blame if he has not been careful to conform to the terms of the decree for which he himself asked. Where the decree has been made in a foreclosure suit as in *Poresh Nath Mojumdar v. Ramjodu Mojumdar*(1) it must be admitted that there may be more hardship. On that case, however, it is not necessary to give an opinion. For the reasons stated I think that the question whether the mortgagor is, after the day fixed in the decree for redemption, precluded from taking action under his decree, must be answered in the affirmative.

[This second appeal having come on for final disposal, the Court delivered judgment dismissing it with costs.]

APPELLATE CIVIL.

Before Mr. Justice Best and Mr. Justice Subramania Ayyar.

1895.
March 28.

AMBALAVANA PANDARAM (PLAINTIFF), APPELLANT.

v.

VAGURAN AND OTHERS (DEFENDANTS), RESPONDENTS.*

*Limitation Act—Act XF of 1877, sched. II, art. 116—Suit for rent—
Registered contract signed by lessee only.*

In a suit for rent accrued due more than three years before the date of the plaint, it appeared that the contract between the landlord and tenant was comprised in a registered document which was signed only by the latter :

Held, that the suit was not barred by limitation.

SECOND APPEAL against the decree of C. Gopalan Nayar, Subordinate Judge of Madura (East), in appeal suit No. 339 of 1893, reversing the decree of H. Krishna Rau, District Munsif of Madura, in original suit No. 164 of 1892.

(1) I.L.R., 16 Cal., 246.

* Second Appeal No. 1337 of 1894.

Suit by a landlord against his tenant for rent. The contract between the landlord and tenant was contained in a registered document signed by the latter only. The rent had accrued due more than three years before the institution of the suit.

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The District Munsif passed a decree for the plaintiff. The Subordinate Judge on appeal reversed this decree, holding that the suit was barred by limitation.

The plaintiff preferred this second appeal.

Krishnasami Ayyar for appellant.

Mr. *Gants* for respondent.

JUDGMENT.—The only question is whether the claim for rent more than three years prior to suit is time-barred. Plaintiff's contention is that it is not, as the document is registered and therefore article 116 is applicable, the rent being for a period within six years prior to the suit. The Subordinate Judge has held article 116 to be inapplicable on the authority of the decision of KERNAN and BRANDT, JJ., in *Ramasami Chetti v. Sakkkanada Chetti*(1). This decision is, however, not reported in the authorized Law Reports, and is consequently not a binding authority. See Act XVIII of 1875, section 3. Were it otherwise, we should have felt it our duty to have referred the question for decision by the Full Bench, as we are very clearly of opinion that the decision referred to is erroneous. In our opinion a contract which has, in fact, been registered is no less a "contract in writing registered" within the meaning of article 116, because it bears the signature of only one of the parties in the absence of any statutory provision requiring the signatures of both parties.

We are of opinion that the registration in the present case is sufficient to bring the present suit within the provisions of article 116, and consequently the claim for rent for faslis 1295 and 1296 is not barred.

We must set aside the decree of the Subordinate Judge, and restore that of the District Munsif.

Appellant will have his costs in this Court and in the Lower Appellate Court.

(1) 1. Mad., L.J., 787.