

RAMAYYAR  
v.  
RAMAYYAR.

September. The fact of the sale came to the knowledge of the judgment-debtor on the 3rd September and on the 21st September he put in a petition under section 311 of the Code following it up with another petition of the 15th November under section 244. In these petitions the above facts found by the Subordinate Judge are stated. The District Munsif dismissed the petition holding that, under section 258, the Court could not recognize adjustment made out of Court and not duly certified. We are of opinion that the proviso to section 258 does not absolutely preclude proof of an uncertified adjustment. It only declares that it shall not be recognized as such by the Court executing the decree. However, the judgment-debtor does not rely on the adjustment as an adjustment, but only as a step in proving the fraud committed on himself and on the Court.

We think, therefore, that this proviso does not stand in the way of the judgment-debtor proving the fraud of which he complains. That there has been a fraud on the Court and on the judgment-debtor is found by the Subordinate Judge, and there can be no doubt about it. It is clear that, if the Court had been apprised of the facts, the decree-holder would not have had leave to bid and the sale would never have taken place. It would be monstrous to hold that a Court upon which such fraud as is proved in the present case has been committed is nevertheless bound to confirm the sale (*Subbaji Rau v. Srinivasa Rau* (1)).

We dismiss the appeal with costs.

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## APPELLATE CIVIL—FULL BENCH.

Before *Mr. Justice Shephard, Mr. Justice Subramania Ayyar,  
Mr. Justice Davies, and Mr. Justice Boddam.*

### REFERENCE UNDER STAMP ACT, s. 46. \*

1897.  
November 5.

*Stamp Act—Act I of 1879, s. 3, cls. (12), (13)—Lease—Mortgage.*

An instrument, therein described as a lease, was executed in consideration of one hundred and twenty rupees, and it provided that the party paying that sum should remain in possession of certain land for twelve years but contained no provision for repayment of that sum or for the payment of rent:

*Held*, that the instrument was a usufructuary mortgage and not a lease.

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(1) I.L.R., 2 Mad., 264.

\* Referred Case No. 19 of 1897.

CASE referred by the Board of Revenue for the opinion of the High Court under Stamp Act, 1879, section 46.

REFERENCE  
UNDER STAMP  
ACT, s. 46.

The case was referred with, *inter alia*, the following observations:—

“ It will be observed that in satisfaction of a sum of rupees one hundred and twenty comprising rupees eighty made up of rupees fifty-three, principal and interest, due on a former document, and of rupees twenty-seven, loan taken on the date of the document, and rupees forty, future interest on the above sum of rupees eighty calculated at eight annas for every rupee, the claimant under the document is to enjoy for twelve years certain specified lands of the executant which are already in the claimant’s possession at an annual rent of rupees ten as agreed between them, that the claimant should pay a road-cess of annas six every year for the said land and that he should deliver back the lands and the document to the executant at the end of the twelfth year.” *Reference under Stamp Act, s. 46 (1)*, was quoted as supporting the view that the document should be stamped as a lease and not as a mortgage.

The document in question was as follows:—

“ Lease deed of a piece of land, dated 16th June 1896, corresponding to Tuesday the fifth day after the new-moon in the third month of Durmukhi year made in favour of Pedda Appalamsami Garu, son of Rapeti Appadu, Gavara caste, cultivator, residing in Venkapalam, hamlet of Sitanagaram, attached to Anakapalle sub-district, Anakapalle taluk, Vizagapatam district, by Ramadu and Ammatalligadu, both sons of Marvadapudi Gangadu, Chuckler’s caste, service inamdars residing in Sitanagaram of Anakapalle sub-district of Anakapalle taluk of the said district.

“ The amount of principal and interest as per document executed by us in your favour on the 31st July 1891 is rupees fifty-three and the amount due as per grain and cash account struck between us, both parties being present, is rupees twenty-seven, making a total of rupees eighty. Adding to this principal, rupees forty, future interest, at half a rupee for every rupee, the total comes to Rs. 120 (in letters rupees one hundred and twenty). For the above you are to enjoy for twelve years from

REFERENCE  
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ACT, s. 46.

“ this date to the end of Plavanga year the income of our service  
“ inam dry half a visam land of our ancestors, lying within the  
“ boundaries hereunder given, already in your possession and  
“ enjoyment the rent of whereof has been agreed between us to be  
“ rupees ten a year. The said land is situated in Venkapalam to  
“ the south of Venkapalam of Sitanagaram, hamlet attached to  
“ Anandapuram Tana, Vizianagram Samastanam, Anakapalle sub-  
“ district, Anakapalle taluk, Vizagapatam district. Besides you  
“ will have to pay road-cess six annas for the said land. At the  
“ end of the period our land<sup>c</sup> and document should be delivered  
“ to us.”

Counsel were not instructed.

JUDGMENT.—In our opinion this is a usufructuary mortgage under which the rents and profits were estimated to satisfy both principal and interest, and accordingly no accounting on either side would become necessary. The case is quite different from that to which the Board refer.

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## APPELLATE CRIMINAL—FULL BENCH.

*Before Mr. Justice Shephard, Mr. Justice Subramania Ayyar,  
Mr. Justice Davies, and Mr. Justice Boddam.*

QUEEN-EMPRESS

v.

JAYARAMI REDDI.\*

*Arms Act—Act XI of 1878, s. 4—Possession of unserviceable fire-arm without a license.*

A revolver with a broken trigger is within the definition of “arms” in Indian Arms Act, 1878, section 4.

Whether in any particular case an instrument is a fire-arm or not, is a question of fact to be determined according to circumstances, and the circumstance that it is in an unserviceable condition is not conclusive.

APPEAL on behalf of Government under Criminal Procedure Code, section 417, against the judgment of acquittal pronounced by W. G. Underwood, Sessions Judge of Cuddapah, in Criminal

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\* Criminal Appeal No. 411 of 1897.

1897.  
September  
16.  
November  
5, 10.