

RAMANADAN
CHETTI
v.
PULIKUTTI
SERVAL.

It was next urged for the plaintiff that the dispossession of the first defendant was on a claim of title which was inconsistent with the plaintiff's right to the reversion and such relief as would protect that right might and ought to be given in this suit. The relief appropriate in such circumstances would be a declaration (Per Peacock, C.J., in *Womesh Chunder Goopto v. Raj Narain Roy* (1)). But as the plaint was framed upon an erroneous view of the plaintiff's rights, no declaration was prayed for with reference to the view of the matter just stated, and the case is not one in which the plaintiff should be allowed to amend at this stage of the litigation, especially because even after such an amendment the case cannot be decided in favour of the plaintiff without taking further evidence as to whether Exhibit C, which is the very first link in the chain of the plaintiff's title, was executed by the parties who are alleged to have executed it, but which evidence the plaintiff had failed to call without, so far as appears, any proper reasons for such omission.

In these circumstances there is no alternative left but to dismiss the suit on the preliminary ground stated above. The appeal, therefore, fails and is disallowed with costs.

APPELLATE CIVIL.

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

ITTAPPAN (PLAINTIFF), APPELLANT,

v.

PARANGODAN NAYAR AND OTHERS (DEFENDANTS),
RESPONDENTS.*

1898.
March 22.

*Transfer of Property Act—Act IV of 1882, s. 59—Oral agreement for kanom—
Suit for ejectment by a jenmi.*

A jenmi in Malabar sued to eject a tenant, who proved by oral evidence that he had one year before suit paid to the plaintiff a sum of money as a renewal fee and the plaintiff agreed to demise the land to him on kanom for a period of twelve years :

Held, that, although no instrument has been executed and registered, the plaintiff was not entitled to eject the defendant.

(1) 10 W.R., (C.R.), 15 at p. 19. * Second Appeals Nos. 1646 and 1647 of 1896.

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SECOND APPEAL against the decree of J. A. Davies, District Judge of South Malabar, in Appeal Suit No. 238 of 1895, confirming the decree of P. P. Raman Menon, District Munsif of Nedunganad, in Original Suit No. 456 of 1893.

The plaintiff sued to recover, with arrears of purapad, twenty-three items of land alleged to be the jenm property of his tarwad and to have been let on an improving lease to the defendants' assignor. The document tendered in evidence of that lease was found to be forgery. The defendants however admitted the plaintiff's title as landlord, and their case was that, in September 1892, the defendant had paid a renewal fee to the plaintiff and that the latter agreed to demise to him the land on kanom under which he claimed to be entitled to hold it for a period of twelve years. This agreement was established by the evidence, but the District Munsif held that it did not constitute a bar to the suit for ejectment for the reason that the terms were not proved to be sufficiently definite to be specifically enforced. He accordingly passed a decree for the land. The District Judge was of opinion that the agreement was not indefinite and really afforded an answer to the claim, and accordingly he reversed the decree and dismissed the suit.

The plaintiff preferred this second appeal.

Sundara Ayyar for appellant.

Mr. C. Krishnan for respondent No. 1.

Ryru Nambiar for respondent No. 29.

JUDGMENT.—It is argued for the appellant that the whole of the renewal fees was not paid by the defendants. That, however, was not plaintiff's case in the Court of First Instance, nor is it a ground of appeal to this Court. The contention of the plaintiff was simply that the money paid was not paid as renewal fee, but as rent. The Courts found that it was paid as renewal fee. No question was raised as to whether the payment was the full fee or only a part of it, and we cannot allow the plaintiff's present contention that it was only part of the fee to be now maintained. We find that the full fee was paid. Then it is argued that a lease of the kind agreed upon between the parties can only be made by a registered instrument, and that, as no such instrument was executed in this case, the plaintiff can maintain the present suit in ejectment. In support of this plea reliance is placed on a *dictum*

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in the case of *Papireddi v. Narasareddi*(1). That *dictum* has been doubted by the Full Bench of the Allahabad High Court (*Beyam v. Muhammad Yakub*(2), and by a Divisional Bench of this Court (*Pangi Achan v. Parameswara Patter*(3)). We must also say that we find difficulty in accepting it as correct, although, as pointed out by Edge, C.J., the decision could be supported on the ground that in that case the defendant had unsuccessfully brought a suit for specific performance and had in it set up a contract which differed from the actual contract. In the present case the plaintiff brought his suit for ejection before the expiration of the time within which the defendants might have sued for specific performance of the contract to renew the lease. In such a case to allow the plaintiff to eject the lessee would, in our opinion, be to give the plaintiff a decree in fraud of his contract of lease. We, therefore, agree with the Lower Appellate Court that the plaintiff's suit was premature, and we dismiss this Second Appeal No. 1646 of 1896 with costs.

APPELLATE CRIMINAL.

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

QUEEN-EMPRESS,

v.

AYYAKANNU MUDALI.*

1898.
February 16.

District Municipalities Act (Madras) — Act IV of 1884, s. 189—Keeping a private cart-stand without a license.

It is not necessary, in order to establish the offence of using a place as a cart-stand without a license under District Municipalities Act IV of 1884 (Madras), section 189, to prove that the cart-stand is offensive or dangerous or that fees are levied there.

APPEAL on behalf of Government under Criminal Procedure Code, section 417, against the judgment of acquittal pronounced by P. Rajagopala Chari, Second-class Magistrate of Chengam, in Calendar Case No. 220 of 1897.

(1) I.L.R., 16 Mad., 464.

(2) I.L.R., 16 All., 344.

(3) Second Appeal No. 730 of 1894 (unreported).

* Criminal Appeals Nos. 14 and 15 of 1898,