

## APPELLATE CIVIL.

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

VAIRANANDA NADAR (PLAINTIFF)

1897.  
September 3.

*v.*

MIYAKAN ROWTER (DEFENDANT).\*

*Registration Act—Act III of 1877, s. 17 (d)—Transfer of Property Act—Act IV of 1882, ss. 4 and 107—Lease of a shop for three years—Registration.*

Leases falling under section 107 of the Transfer of Property Act are compulsorily registrable notwithstanding the Government notification issued under the proviso to section 17 (d) of the Registration Act.

CASE stated for the opinion of the High Court under Civil Procedure Code, section 617, by V. M. Malhari Rau, District Munsif of Tuticorin, in Small Cause Suit No. 73 of 1889.

The question submitted was whether a lease of a shop for a term exceeding one year was compulsorily registrable. This was a suit to recover Rs. 51 being the arrears of rent accrued due on a shop leased by the plaintiff to the defendant. The letting was evidenced by a document, dated the 12th April 1883, and executed by the defendant. The period provided for was three years and the rent reserved was Rs. 2-8-0 a month. In referring the above question the District Munsif said “under Transfer of Property Act, section 107, “a lease of immovable property from year to year or for any term exceeding one year or reserving a yearly rent can be made only “by registered instrument. This section is to be read as supplementary to the Indian Registration Act—see section 4: while “section 17 (d) of the latter Act declares such leases to be compulsorily registrable, except where under the power thereby conferred “the Local Government exempts from its operation leases for “terms not exceeding five years and for rent not exceeding Rs. 50. “The Government in the exercise of the power so conferred have “exempted such leases from registration—Rajagopalier’s Registration Act, page 51—G.O., No. 1763, dated 4th November 1873. “The plaintiff contends that under the above ruling of the Government, the lease was exempt from compulsory registration. “Reading all the provisions together, I am disposed to think that,

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\* Referred Case No. 16 of 1897.

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“in places where the Transfer of Property Act is in force, all leases for a term exceeding one year are compulsorily registrable. The order of Government was passed when the Act VIII of 1871 was in force and applied to all leases which reserved an annual rent less than Rs. 50 and extended for a term of not more than five years. When Act IV of 1882 was passed, this notification became abrogated so far as leases other than agricultural were concerned, as section 107 requires leases for terms of more than a year to be registered. What little doubt there was about registration was removed by Act III of 1885, which directs that the Transfer of Property Act shall be read as supplemental to the Indian Registration Act. In this view I am supported by the opinion expressed in ‘Field’s Evidence,’ fifth edition, page 446.”

Mr. J. Adam for plaintiff.

Ramakistna Ayyar for defendant.

JUDGMENT.—Section 107 of the Transfer of Property Act is declared to be read as supplemental to the Registration Act. It is therefore to be read with section 17 (d) of the Registration Act. The proviso to that clause must, therefore, be restricted to cases not falling under section 107 of the Transfer of Property Act, which absolutely requires the registration of the leases referred to therein. Our answer to the question therefore is that leases falling under section 107 of the Transfer of Property Act, are compulsorily registrable notwithstanding the Government notification issued under the proviso to clause (d), section 17 of the Registration Act.

## APPELLATE CIVIL.

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

KANARAN AND ANOTHER (PLAINTIFFS), APPELLANTS,

v.

KUTOOLY AND ANOTHER (DEFENDANTS), RESPONDENTS.\*

1897.  
September  
14.  
November  
4.

*Mortgage—Agreement by mortgagor to sell the mortgage premises to the mortgagee—Fetter on the equity of redemption.*

A stipulation in a mortgage, that if the mortgage money is not paid on the due date the mortgagor will sell the property to the mortgagee at a price to be

\* Second Appeal No. 33 of 1897.