

APPELLATE CIVIL.

Before Sir S. Subrahmaniam Ayyar, Offy. Chief Justice,
and Mr. Justice Bhashyam Ayyangar.

1908.
October 28.

MUTHIA VENKATACHELAPATI (DEFENDANT), APPELLANT,

v.

PYANDA VENKATACHELAPATI (PLAINTIFF), RESPONDENT.*

*Registration Act—III of 1877, s. 7—Registration of mortgage—Interest in land—
Right to redeem immovable property mortgaged—Transfer of Property Act—
IV of 1882, s. 59.*

Two documents were produced in evidence; one of which was in terms an absolute sale. This document had been registered. The other document (which was not dated) had apparently been written contemporaneously with the first, but it had not been registered. This document purported to show that the transaction between the parties was a mortgage:

Held, that the second document could not be received as evidence of a mortgage transaction not below Rs. 100, and that the registration of the first document, which was on the face of it an absolute and unconditional sale, could not be regarded or operate as the registration of a mortgage.

Though there is nothing to prevent the whole of a mortgage transaction being reduced in any form to writing on different papers, whether attached together or detached, yet the requirements as to registration cannot be said to have been complied with if some of such papers are registered while others are left unregistered.

A document which gives a person a right to redeem a mortgage on immovable property on payment of money creates an interest in immovable property and its registration is compulsory under section 7 of the Registration Act.

SUIT to recover money by sale of immovable property or for foreclosure. Plaintiff relied on two documents, filed as exhibit A, dated 29th July 1896, and exhibit K, a letter bearing no date but admittedly written and delivered by the defendant to the plaintiff. Plaintiff contended that defendant, by these documents, undertook to pay the amount of the debt sued for and redeem the mortgage, and that he was entitled to institute this suit for foreclosure or for sale. The defendant contended that the documents contained no covenant to pay, and that no cause of action had accrued to plaintiff. It is not necessary, for the purposes of this report, to set out the terms of the documents. Exhibit A was registered;

* Appeal No. 210 of 1901 presented against the decree of C. G. Kuppuswami Ayyar, Subordinate Judge of Cochin, in Original Suit No. 53 of 1900.

exhibit K was not. The Subordinate Judge held that exhibit A was an absolute sale. He, however, also considered exhibit K, which, he said, gave a different colour to the whole transaction and converted it into a mortgage, and he stated that there was oral evidence which, combined with the conduct of the parties, showed that plaintiff was not a purchaser but a mortgagee. He decreed that plaintiff should recover the amount due from the defendant and by sale of the mortgaged property.

Defendant preferred this appeal.

P. R. Sunlara Ayyar and *V. Ramesam* for appellant.

V. Krishnaswami Ayyar for respondent.

JUDGMENT.—It is contended on behalf of the appellant that exhibit A, on which the suit is based, is a sale-deed and not a mortgage and that therefore the plaintiff is not entitled to sue for the recovery of the money and for sale of the property for realising the mortgage debt. In our opinion this contention is well founded. Exhibit A is an absolute sale-deed. But the Subordinate Judge, relying on exhibit K, held that reading A and K together the transaction was one of mortgage with a covenant to pay and that therefore the plaintiff was entitled to a decree for sale on the footing of mortgage. We assume that exhibit K records the contemporaneous terms agreed to at the time of the execution of exhibit A. So far as section 92 of the Evidence Act is concerned, there can be no objection to the admissibility of exhibit K, notwithstanding that it contradicts, varies, adds to, or subtracts from the terms of exhibit A, and if K had been registered the decision of the Subordinate Judge could be upheld. But it has not been registered, and in our opinion it cannot be received as evidence of a mortgage transaction not below Rs. 100. Such a transaction can be created only by a registered instrument. The registration of exhibit A alone which, on the very face of it, is an absolute and unconditional sale, cannot be regarded or operate as the registration of a mortgage.

Though there is nothing in law to prevent the whole of a mortgage transaction being reduced in any form to writing on different papers, whether attached together or detached from each other and the Court, in cases in which the terms as appearing in the different papers are contradictory or inconsistent, has to ascertain the intention of the parties by reading all the papers together as forming one document though each paper on the face

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of it purports to be a separate document, yet the requirements of the Transfer of Property Act making registration compulsory for the validity of such a transaction cannot be held to have been complied with if some of the papers are registered while the others are left unregistered. We are also of opinion that exhibit K, on its very face and according to its proper construction, creates an interest in immoveable property in favour of the defendant by entitling him to redeem on payment of the sums therein mentioned, and that its registration was compulsory under section 7 of the Registration Act. Excluding therefore exhibit K from consideration, the plaintiff cannot maintain this suit on the strength of exhibit A, which is an absolute sale-deed. On this ground we must allow the appeal, and, reversing the decree of the Subordinate Judge's Court, we dismiss the suit. Having reference to the pleadings of the parties and the contentions on which the case proceeded, especially in the Court below, we think each party must bear his costs throughout.

APPELLATE CIVIL.

*Before Sir Arnold White, Chief Justice, and Mr. Justice
Subrahmaniu Ayyar.*

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VENKATARATNAM NAIDU (COUNTER-PETITIONER), APPELLANT,

v.

THE COLLECTOR OF GODAVARI (PETITIONER), RESPONDENT.*

Land Acquisition Act—1 of 1894, ss. 12, 18, 49,—Award—Compulsory acquisition of buildings—Buildings adjacent and structurally connected—Onus on public body.

When a public body seeks, under the Land Acquisition Act, to acquire any portion of a block of buildings which is structurally connected with the main block, the onus is on that body to show that the portion is not "reasonably required for the full and unimpaired use of the house."

ACQUISITION of land under the Land Acquisition Act. The Sub-Collector, in his award, stated that the Municipality of Rajahmundry had originally proposed to acquire an extent of 40—54 square

* Appeal No. 51 of 1902 presented against the award of F. H. Hamnett, District Judge of Godavari, dated 29th October 1901, in Civil Miscellaneous Petition No. 282 of 1901.