

As regards the fifth plea, which, if established might, as already observed, be a valid defence to the suit, it is not alleged that any evidence was tendered or rejected.

SIVA PANDA
v.
JUSTI
PANDA.

The appeal therefore fails and is dismissed with costs.

PRIVY COUNCIL.

SUBRAMANIAN CHETTIAR (PLAINTIFF),

v.

ARUNACHALAM CHETTIAR (DEFENDANT),

P.C.*
1902.
June 12, 13.
July 9.

[On appeal from the High Court of Judicature at Madras.]

Registration—Document collateral to a permanent lease of immovable property—Registration Act—Act III of 1877, s. 17—Transfer of Property Act—Act IV of 1882, s. 107—Evidence Act—Act I of 1872, s. 92—Right of suit by assignee of agreement—Assignment of property to trustee—Construction of trust deed—Claims “now due owing or payable.”

An agreement to pay Rs. 500 a month to a lessor in consideration of receiving from him a permanent lease of portions of his zamindari, which agreement was come to before, but reduced to writing after, the execution of the lease, was held to be not affected by section 92 of the Evidence Act, nor to require registration either under the Registration Act, section 17, or the Transfer of Property Act, section 107, where it was not inconsistent with the lease, its provisions formed no part of the holding under the lease, the payment bargained for was no charge on the property, and it was not rent or recoverable as rent, but a mere personal obligation collateral to the lease.

Held also, that the lessor's rights under the agreement did not pass under a settlement subsequently executed by him for the benefit of his son, by which he assigned to a trustee his zamindari with its incidents, and also “all the outstanding debts, arrears of rent, mesne profits, claims, demands, and sums of money of whatsoever description, now due owing or payable to the settlor on any account whatsoever, and all rights to prosecute any suit or other proceeding existing in favour of the settlor at the date of these presents . . . except and always reserving to the settlor all outstanding debts, arrears of rent and other claims and demands payable and to become payable to the settlor, and all rights to prosecute any suit or other proceedings now existing, etc.” The use in an Indian document of the words “now due owing or payable” in defining the claims transferred coupled with the words that follow restricting the transfer of rights of suit in respect of such claims to those existing at the date of the deed, showed that rights of the nature of those in the agreement, accruing as they did after the

* Present.—Lord Davey, Sir Ford North, Sir Andrew Scoble, and Sir Arthur Wilson.

SUBRAMANIAN
CHETTIAR
v.
ARUNA-
CHALAM
CHETTIAR.

date of the trust deed, were not intended to pass under it; and this view was strengthened by the employment of the phrase "demands payable and to become payable" in the exception and reservation which followed.

Where, therefore, the lessor had, after execution of the trust deed, assigned his rights under the agreement:

Held, that the assignee could maintain a suit upon it to recover the amount due.

APPEAL from a decree (28th August 1900) of the High Court at Madras reversing a decree (15th October 1898) of the Subordinate Judge of Madura (East) which decreed the appellant's suit.

One Ramasami Chettiar, since deceased, the father of the present respondents, was about to take a permanent lease from the Raja of Ramnad of certain villages in the Ramnad zamindari. During the negotiations for the lease it was agreed between Ramasami and the Raja that Ramasami should enter into an agreement to pay the Raja Rs. 500 a month for 10 years beginning with July 1895 with interest on any overdue instalment at 12 per cent. per annum. The reason for this arrangement was that the Raja had then in contemplation the settlement of his zamindari estate on his three minor sons for their benefit, and wished to reserve the payment of Rs. 500 a month for his personal and exclusive use.

On 4th July 1895, the Raja executed the proposed lease to Ramasami Chettiar, who, on the 5th July 1895, executed a counterpart of the lease to the Raja. This lease and counterpart were duly registered.

On 9th July 1895, the oral agreement as to the payment of Rs. 500 to the Raja was put into writing and duly executed, by Ramasami Chettiar and delivered to the Raja. This document is set out in their Lordships' judgment. It bore an endorsement by the Raja, dated 10th July, to the effect that it is "herewith sent to the Huzur Kacheri Treasury for safe custody. This amount relates to my own allowance: it does not relate to the allowance payable from the samasthanam." It was notified as having been received in the treasury on 15th July.

On 12th July 1895, the Raja, whose property was much encumbered, executed a duly registered deed, whereby for the protection of his sons' interests he assigned to Rao Bahadur Venkatarangayyar the whole of his zamindari (including the villages permanently leased to Ramasami Chettiar), and also land in the town of Madura on certain trusts therein specified.

The portions of this deed material to this appeal are set out in their Lordships' judgment.

On 9th December 1895, the Raja, in consideration of Rs. 30,000, assigned his rights under the agreement of 9th July 1895 to Ramanadhan Chettiar, the father of the plaintiff, with whom he was joint in estate, and due notice of the assignment was given to Ramasami Chettiar.

Ramasami having failed to pay the instalments under the agreement as they fell due the present suit was, on 20th September 1897, brought by Ramanadhan Chettiar and Subramanian Chettiar against Ramasami and his sons, the present respondents, for Rs. 14,724, the amount of instalments then due with interest. The stipulation as to the payment of the sum of Rs. 60,000 payable in equal monthly instalments of Rs. 500 was stated in the plaint to be one of the terms of the lease agreed to before the execution of the lease along with the other terms of the lease; and it was further alleged that it was agreed that the said term of the lease was not to be embodied in the deed of lease.

The defendant admitted the execution of the lease and counterpart of 4th and 5th July, respectively, but denied that any agreement was made "at the same time" to the effect stated in the document of 9th July 1895. Amongst other defences he pleaded that the alleged agreement of 9th July was invalid for want of registration; that it was void for want of consideration, and was inadmissible in evidence; and even if valid and admissible the plaintiff had no right to sue upon it, as the Raja had, by the deed of 12th July 1895, assigned all his rights in his property to Venkatarangayyar, who, as trustee under that deed, was the only person who had a right to sue.

The Subordinate Judge overruled these grounds of defence and gave the plaintiff a decree for the relief prayed for.

The defendant appealed to the High Court, a Divisional Bench of which (SHEPHERD and DAVIES JJ.) reversed the decree of the Subordinate Judge and dismissed the suit. They said:—

"In our opinion it is perfectly clear that the claim, whatever it may be, arising under the document, dated the 9th July 1895, did pass to the trustee under the trust deed executed on the 12th July. The general words used in the deed are large enough to include such a claim, and there is no reason whatever for restricting their operation. There is a clause by which the Raja reserves to himself certain property, but that clause does not include the present claim. It is

SUBRAMANIAN
CHETTIAR
v.
ARUNACHALAM
CHETTIAR.

SUBRAMANIAN
CHETTIAR
v.
ARUNA-
CHALAM
CHETTIAR.

said that by his note written on the 10th July, and kept by the Raja with the document of the 9th July, he indicated his intention to keep to himself the benefit accruing to him under the document. If that was the Raja's intention on the 10th July, all we can say is that he failed to give effect to it on the 12th July—and it is impossible to hold that the formal trust deed then executed can be controlled by a mere memorandum such as we have here. The second point argued on behalf of the appellants is that the term expressed in the document sued on is one of the terms of the lease, and that it is only upon the lease that a suit can be brought to recover a sum which is in fact a part of the rent. In considering the point we must take it that the facts are as stated in the 3rd, 4th and 5th paragraphs of the plaint. The case is not one in which by a subsequent arrangement the tenant agrees to pay a further sum by way of rent. Here the stipulation to pay Rs. 500 a month is agreed upon as a term of the lease though, for some reason, it was not inserted in the instrument of lease. We think it amounts to an additional rent though payable in respect of a period prior to the date on which the lease is to take effect. The cases of subsequent agreement which have been cited have therefore no relevance. According to the Transfer of Property Act, section 107, a lease such as was executed in the present case must be made by a registered instrument, and a lease is defined as a transfer of immoveable property for a certain time or for perpetuity in consideration of a price paid or promised. All the terms must necessarily be expressed in the registered document, and therefore any term not appearing therein, but written on a separate unregistered paper must be inoperative. To hold that part of the bargain regarding rent may be put in a separate paper and not registered would defeat the object of the Transfer of Property Act, which clearly is to have the whole transaction with all its terms expressed in a registered instrument. There is no ground for holding that the instrument is a sale and not a lease.

“The plaintiff was in such a position that he was compelled to allege that the stipulation was a term of the lease, for he would otherwise have been met with the difficulty of absence of consideration which is the case raised by the defendants. On both points we think the appellants succeed and therefore we allow the appeal and dismiss the suit with costs throughout.”

On this appeal :

Mr. Cohen, K. C., and Mr. G. Branson, for the appellant, contended that the agreement of 9th July 1895 to pay the instalments of Rs. 500 a month was valid and binding on the respondents notwithstanding that it was unregistered. The High Court ought to have held that it was an agreement made in consideration of

the lease being granted to the respondent and was valid and binding before it was put into writing, and that it was collateral to the lease. The Evidence Act (I of 1872), section 92; the Transfer of Property Act (IV of 1882), sections 9, 105, and 107; the Registration Act (III of 1877), section 17; *Lindley v. Lacey*(1); *Morgan v. Griffith*(2); *Martin v. Pyeroff*(3); *Palmer v. Johnson*(4); and *Bank of New Zealand v. Simpson*(5) were referred to. They also contended that the Raja's claim in respect of the instalment of Rs. 500 a month did not pass to the trustee of the deed of 12th July 1895, but was validly vested in the appellant. It did not come within the words of the first part of clause 5 of the deed, as the instalments did not become payable until after the date of the deed; and it was reserved to the Raja by the reservation portion of that clause. *Biddle v. Bond*(6); *Rogers & Co. v. Lambert & Co.* (7) and *Farguharson Brothers v. King & Co.*(8) were referred to.

SUBRAMANIAN
CHETTIAR
v.
ARUNA-
CHALAM
CHETTIAR.

Mr. J. D. Mayne, for the respondents, contended that the document of 9th July 1895 was invalid as being unregistered, and as having been made without consideration; and that it was inadmissible in evidence under section 92 of the Evidence Act (I of 1872). It required registration under section 107 of the Transfer of Property Act (IV of 1882). It was also invalid because all the rights purporting to be assigned by it had already passed to the trustee of the deed of 12th July 1895. They passed to the trustee under the words of clause 5 of the trust deed, and did not come within the things reserved to the Raja by the latter part of that clause.

Counsel for the appellant were not called on to reply.

On 9th July 1902, the judgment of their Lordships was delivered by Sir ARTHUR WILSON.

JUDGMENT.—The material facts of this case were not in dispute before their Lordships, and they can be briefly stated.

The Raja of Ramnad was the proprietor of the zamindari of the same name. On the 4th July 1895, he executed a reversionary lease of portions of his zamindari in favour of Ramasami Chettiar. The lease recited that there were subsisting leases affecting the properties demised, some of which would not expire till the fasli

(1) (1864) 34 L.J., C.P., 7 at p. 9.

(3) (1852) 2 De Gex, Mac. & Gor., 785.

(5) (1900) L.R., A.C., 182 at p. 187.

(6) (1865) 34 L.J., Q.B., 137; 6 B. & S., 225.

(8) [1901] 2 K.B., 697.

(2) (1871) L.R., 6 Exch., 70.

(4) (1884) L.R., 13 Q.B.D., 351.

(7) (1890) [1891] Q.B., 318.

SUBRAMANIAN
CHETTIAR
v.
ARUNA-
CHALAM
CHETTIAR.

year 1318, corresponding to A.D. 1911. The new lease was accordingly made to commence with the fasli year 1319; it was expressed to be perpetual, the annual rent was fixed, its recovery, as well as that of road-cess and other charges, was provided for; and the rights and obligations of both parties defined. A counterpart of the lease was executed; and both lease and counterpart duly registered.

During the negotiations for the lease it was agreed between the Raja and Ramasami that, in consideration of his obtaining the lease, Ramasami should pay to the Raja a sum of Rs. 500 a month for a period of ten years from July 1895.

On the 9th July 1895, the arrangement with regard to the payment of Rs. 500 a month was put in writing in the form of a letter addressed by Ramasami to the Raja in the following terms:—

“Varthamana Kaduthasi.

“Sivamayam (God everywhere).

“To M.R.By. BHASKARA SETHUPATHI MAHARAJAH AVARGAL.

“Varthamana Kaduthasi (letter) written by A. L. A. R. Ramasami Chetti of Devakottah.

“You have let to me on permanent lease on the 4th day of the current month of July, the villages of Kannangudi Vagaira Division for a sum which represents the average income of ten faslis together with one-eighth thereof. As agreed to by me to pay as consideration therefor, I shall pay you at the rate of five hundred rupees per mensem for ten years, that is, for one hundred and twenty months, (beginning) from July current. In default of payment in any one month, I shall pay the sum in respect of which default was made with interest at 1 per cent. per mensem from the date of default.

“(Signed on one anna stamp)

“THIRUVUTHARAKOSAMANGAI,

RAMASAMI CHETTI.

“9-7-95.”

On the 12th July, the letter was sent to the Huzur Treasury with a note that “it should be kept in the treasury for safe custody”; and on the 15th its receipt was registered.

On the 12th July 1895, the Raja executed a trust deed in which he recited that he was possessed of his zamindari subject to subsisting debts charges incumbrances and leases, and that he was desirous of making a settlement for the benefit of his heir apparent and elder minor son. The deed assigned to Venkatarangayyar as trustee (in paragraph 4) the zamindari with its incidents. In paragraph 5 he further assigned “all and singular the outstanding

debts arrears of rent mesne profits claims demands and sums of money of whatsoever kind or description now due owing or payable to the settlor on any account whatsoever and all rights to prosecute any suit or other proceeding existing in favour of the settlor at the date of these presents and also all monies hundies cheques currency notes or other securities for money now in the Huzur Treasury Office at Ramnad and in the several Taluk Treasuries in the said zamindari and also all securities for such debts arrears of rent mesne profits claims demands and sums of money as aforesaid or any of them and other documents in respect of the same respectively and also all other documents records correspondence and other papers now in the Record Office Huzur and Taluk Offices respectively in the said zamindari or which have been produced by or on behalf of the settlor or his agents officers clerks or servants in any public Office or Court in connection with any suit proceeding or matter and which relate in any wise to the said properties hereinbefore expressed to be hereby granted conveyed and assigned respectively or any of them and also all firearms and other weapons belts and badges now held or used by any peons or other servants of the settlor and also all furniture fixtures and other articles in the Huzur and Taluk Offices in the said zamindari and all the estate right title and interest claim and demand of him the settlor into and upon the same premises respectively hereinbefore expressed to be hereby granted conveyed and assigned respectively except and always reserving unto the settlor out of the said hereditaments and premises and the grant and assignment hereby made all those several Devasthanams Chatrams and Kattalais with their respective appurtenances situate in the said zamindari and now under the superintendence and control of the settlor and the lands and endowments of whatsoever description attached thereto respectively and situate in the said zamindari and all outstanding debts arrears of rent and other claims and demands payable and to become payable to the settlor in respect of the said Devasthanams Chatrams and Kattalais respectively (other than the Dharma Magamai and Jari Magamai payable in respect of Devasthanams and Charities) and reserving also unto the settlor all rights to prosecute any suit or other proceedings now existing in respect of the same and to or in which he is a party or is otherwise interested and also all moveable property in or about the buildings and premises erected and being on the said lands and premises firstly secondly thirdly and fourthly described in the said first schedule hereto and reserving also unto

SUBRAMANIAN
CHETTIAR
v.
ARUNACHALAM
CHETTIAR.

SUBRAMANIAN
CHETTIAR
v.
ARUNA-
CHALAM
CHETTIAR.

the settlor during his life the right at all times to reside with the members of his family in the several palaces and buildings comprised in the said lands and the zamindari and in the said premises described in the said first schedule hereto but without prejudice nevertheless to the right of the said Raja Rajeswara Dorai otherwise called Muthu Ramalinga Dorai or his heir to reside with the members of his family in all or any of the said palaces and buildings."

The trusts were declared, which included the payment of a monthly allowance to the Raja himself.

No payments having been made by Ramasami in respect of his agreement to pay Rs. 500 a month, the Rajah on the 9th December 1895 assigned that agreement for value to Ramanadhan Chettiar; and notice of this assignment was at once given to Ramasami.

On the 21st September 1897 the present suit was filed in the Court of the Subordinate Judge of Madura East by Ramanadhan Chettiar, since deceased, and his son Subramanian Chettiar, the present appellant, against Ramasami, since deceased, and others who now represent him and who are the respondents. The claim was to recover twenty-six monthly instalments at the rate of Rs. 500 a month with interest.

It is only necessary to refer to two grounds of defence. It was contended first that the original agreement for the payment of Rs. 500 a month was void in law as not being in writing registered, and that the plaintiffs were not entitled in law to prove the existence of such oral agreement. It was contended secondly that whatever right the Raja might have had under the agreement to pay him Rs. 500 a month had been transferred by him under the trust deed of the 12th July 1895, and that therefore neither Ramanadhan nor his representatives had any right to sue upon the agreement.

The Subordinate Judge decided in the plaintiff's favour upon both points and made a decree in accordance with the claim of the plaintiff. An appeal was filed in the High Court of Madras, and that Court reversed the decision of the lower Court and dismissed the suit, holding that both the grounds of defence were good in law.

With respect to the first of these questions, that going to the legal validity of the agreement for the payment of Rs. 500 a month, it is necessary to refer to certain of the terms of three Acts of the Indian Legislature.

Section 92 of the Evidence Act (I of 1872) enacts that :—
 “When the terms of any such contract, grant, or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument, or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms.”²⁴

SUBRAMANIAN
 CHETTIAR
 v.
 ARUNAS
 CHALAM
 CHETTIAR.

The Registration Act (III of 1877), section 17, includes amongst the documents requiring registration, “leases of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent.”

The Transfer of Property Act (IV of 1882), section 105, defines a lease thus :—“A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.” And section 107 says that :—“A lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.”

The agreement for the payment of Rs. 500 a month for ten years from July 1895 is in no way inconsistent with the lease of the 4th of that month. Its provisions form no part of the terms of the holding under the lease ; their effect will be exhausted some years before the lease takes effect. The payment bargained for is no charge on the property ; it is not rent nor recoverable as rent, but a mere personal obligation collateral to the lease. Their Lordships are of opinion that the agreement is not affected by section 92 of the Evidence Act ; and that there is nothing in the Registration Act or in the Transfer of Property Act which required that it should be registered as part of the lease.

The second question is whether the respondents are right, in their contention, that the benefit of Ramasami's agreement to pay Rs. 500 a month to the Raja passed to the trustee under the trust deed of the 12th July, and that therefore the subsequent assignment to Ramanadhan was ineffectual, and that the plaintiffs in this suit had no right to sue. The answer to this question depends upon the construction to be placed upon the trust deed,

SUBRAMANIAN
CHETTIAR
v.
ARUNA-
CHALAM
CHETTIAR.

The Rs. 500 a month not being rent, the right to it could not pass under the grant of the zamindari with its incidents contained in paragraph 4. But it was contended that the right was conveyed by the more general words of paragraph 5, by which the settlor assigned "the outstanding debts arrears of rent mesne profits claims demands and sums of money of whatsoever kind or description now due owing or payable to the settlor on any account whatsoever and all rights to prosecute any suit or other proceeding existing in favour of the settlor at the date of these presents." The use in an Indian document of the words "now due owing or payable" in defining the claims transferred, coupled with the words which follow restricting the transfer of rights of suits in respect of such claims to those existing at the date of the deed, appear to their Lordships to show that rights of the nature of that now under consideration, accruing after the date of the deed, were not intended to pass, a view which is somewhat strengthened by the employment of the phrase "demands payable and to become payable" in the exception and reservation which follows. And it appears to their Lordships that under the agreement between the Raja and Ramasami all the instalments now sued for accrued due after the date of the trust deed.

It was further suggested that the words in the same paragraph "all monies hundies cheques currency notes or other securities for money now in the Huzur Treasury Office at Ramnad" included Ramasami's letter of the 9th July, and that therefore the Raja's right to the Rs. 500 a month passed under the trust deed. As to this suggestion it is sufficient to say that there is no evidence that the letter in question was in the treasury when the deed was executed. All that appears is that on the 12th July, the day on which the trust deed was executed, but whether before or after the execution does not appear, the letter was sent to the treasury for safe custody, and that its receipt was recorded on the 15th.

Their Lordships will humbly advise His Majesty that the decree of the High Court be reversed with costs and that of the Subordinate Judge restored. The respondents will pay the costs of this appeal.

Appeal allowed.

Solicitors for the appellant: Messrs. *Frank Richardson & Sadler.*

Solicitors for the respondents: Messrs. *Lawford, Waterhouse & Lawford.*