

APPELLATE CIVIL.

Before Mr. Justice Bhashyam Ayyangar.

KARAMPALLI UNNI KURUP (PETITIONER), FIRST PLAINTIFF,

1902.
March 24.

v.

THEKKU VITTI MUTHORAKUTTI AND ANOTHER (RESPONDENTS),
DEFENDANT AND SECOND PLAINTIFF.*

Evidence Act—I of 1872, s. 92, proviso 4—Registered document—Subsequent oral agreement—Contract Act—IX of 1872, s. 63—Remission of portion of promise—Discharge in full on receipt of portion of amount due—Evidence of oral agreement.

In a suit for two years' rent, due under a registered lease, defendant pleaded a subsequent oral agreement by plaintiff to remit a portion of the rent each year, and filed a receipt by which plaintiff accepted payment at the reduced rate in full discharge in respect of one of the years :

Held, that though under proviso 4 to section 92 of the Evidence Act, evidence of such an agreement was inadmissible and plaintiff was entitled to claim rent at the rate stipulated in the registered lease, the discharge for one of the years was valid, under section 63 of the Contract Act, and took effect. It was immaterial that the discharge had been given in pursuance of the alleged oral agreement, which, though not admissible in evidence, was not illegal.

SUIT for arrears of rent due in respect of the Malayalam years 1075 and 1076. By the terms of the document of lease sued on and which was registered, the rent payable was Rs. 50-2-6 per annum. This lease was admitted, but it was pleaded in defence that the amount of rent claimed was not due, and a subsequent oral agreement was set up by the terms of which the plaintiff was said to have remitted rent to the extent of Rs. 15 per annum as from the year 1872. Defendant claimed to be entitled to deduct that amount, in which case only Rs. 35-2-6 would be due down to the end of the year 1876. A receipt was filed by which defendant was given a discharge in full in respect of the rent due for the year 1875, though only Rs. 35-2-6 was actually paid and the District Munsif said that as this receipt was admitted by the plaintiff, it tended to prove that the reduction in the rent had been made. After

* Civil Revision Petition No. 333 of 1901, presented under section 25 of Act IX of 1887, praying the High Court to revise the decree of U. Babu Rau, Principal District Munsif of Calicut, in Small Cause Suit No. 248 of 1901.

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considering some other matters he gave plaintiff a decree for Rs. 31-2-6, and dismissed the rest of his claim.

Plaintiff presented this civil revision petition.

J. L. Rosario for petitioner.

JUDGMENT.—This is a suit to recover rent due under a registered lease for the Malayalam years 1075 and 1076, the rent stipulated in the lease being Rs. 50-2-6 besides some rent in kind. The defendant set up a subsequent oral agreement that the Karnavan being convinced that the lessee was not realising proper income promised to reduce the rent by Rs. 15 a year from the year 1072. Under proviso No. 4 to section 92 of the Indian Evidence Act no evidence of such agreement is admissible and the first plaintiff is therefore entitled to claim rent at the rate stipulated in the registered lease (*Mayandi Chetti v. Oliver*(1)). For the year 1075, however, the Karnavan gave a discharge for the whole rent on receiving only Rs. 35-2-6. Under section 63 of the Contract Act a promisee may remit in whole or in part the performance of the promise made to him or may accept instead of it any satisfaction which he thinks fit. The fact that he did so in pursuance of an alleged prior oral agreement is immaterial and the discharge as such will take effect under section 63 independently of the prior oral agreement which certainly is not illegal, though it cannot be proved under section 92 of the Evidence Act. The first plaintiff, therefore, cannot claim the alleged balance of rent for the year 1075, but no discharge having been given by the Karnavan for the rent which became payable for 1076, the alleged oral agreement cannot be relied on in respect thereto. The decree will accordingly be modified by substituting Rs. 46-2-6 for Rs. 31-2-6. The revision petition is allowed but without costs.

(1) I.L.R., 22 Mad., 261.