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male reversioners, and that the present suit filed by the plaintiff as next reversioner is barred under article 141 of the Limitation Act.

Their Lordships are therefore of opinion that both appeals should be dismissed and will humbly advise His Majesty accordingly. The appellant will pay the respondents' costs.

Solicitor for appellant : *Hy. S. L. Polak & Co.*

Solicitor for respondents : *Harold Shephard.*

A.M.T.

APPELLATE CIVIL.

*Before Sir Owen Beasley, Kt., Chief Justice, and
Mr. Justice Bardswell.*

1933,
December 19.

RAI BAHADUR B. MOPURAPPA (PLAINTIFF), APPELLANT,

v.

K. RAMASWAMI GRAMANI (DEFENDANT), RESPONDENT.*

*Transfer of Property Act (IV of 1882), ss. 105 and 107—
Agreement in respect of immovable property—Whether it
amounts to a transfer of an interest in immovable property,
that is to say a present demise, or an agreement to grant a
lease, that is to say a future letting—Tests to be applied.*

A purchased certain immovable property on 5th September 1930. B was then in possession of the same under a previous tenancy agreement which was to terminate on 30th September 1931. On 13th July 1931 A entered into an oral agreement with B to give a lease of the property for three years, commencing from 1st October 1931, at a fixed monthly rent. Two months' rent was also paid by B as advance. All the terms of

* Original Side Appeal No. 32 of 1933.

the agreement were finally settled on 13th July 1931. It was also agreed that a formal deed should be executed at a later date, which however, owing to some differences, was not executed.

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Held that the oral agreement amounted to a present transfer of an interest in immovable property within the meaning of section 105 of the Transfer of Property Act and being for a term exceeding one year was affected by the provisions of section 107 of the Transfer of Property Act which compulsorily requires a registered instrument.

APPEAL from the judgment and decree of STONE J., dated the 10th day of January 1933 and made in the exercise of the Ordinary Original Civil Jurisdiction of the High Court in Civil Suit No. 228 of 1932.

K. S. Krishnaswami Ayyangar for *M. Ramachandra Rao* for appellant.

G. Krishnaswami Ayyar for *K. Gopalaswami* and *C. Brooke Elliot* for *K. Subramanyam* for respondent.

Cur. adv. vult.

JUDGMENT.

BEASLEY C.J.—This is an appeal from a judgment of STONE J. which, as our learned brother says, raises a very interesting point of law. It relates to an oral agreement or arrangement entered into on the 13th July 1931 between the plaintiff-appellant and the defendant-respondent. This agreement was for a lease for three years ; and the question for consideration is whether it is an agreement within the provisions of section 107 of the Transfer of Property Act which provides that a lease of immovable property for any period exceeding one year can be made only by a registered instrument and that all other leases of

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immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession. Turning to section 105 a lease is therein defined as follows :—

“ A lease of immovable property is a transfer of a right to enjoy such property.”

In this case the lease was of immovable property for a term of three years; and it was contended on the defendant's behalf at the trial that the agreement in question was a present transfer of a right to enjoy immovable property within the provisions of section 105 and, therefore, being for a term exceeding one year, necessitated a registered document by reason of section 107 of the Transfer of Property Act. This was raised as a preliminary question. STONE J. upheld the defendant's contention.

It is necessary, first of all, to state a few facts. The appellant purchased the property in question on the 5th September 1930. The respondent was then in possession of the property from the vendor under a tenancy which was to end on the 30th September 1931. On the 13th July 1931 the respondent entered into the oral agreement in question here. That agreement, according to the appellant's evidence, was, as already stated, to give the respondent a three years' lease. At the same time it was agreed that the rental was to be three hundred and fifteen rupees per month, that the respondent should pay the cost of manuring the trees and ploughing the garden, that he should also pay the appellant an advance of two months' rent, and that the monthly rent should be paid thereafter by the

second of every succeeding month. The lease was to commence on the 1st October 1931. All these matters were settled on the 13th July 1931 and on the same date the advance of two months' rent was paid to the appellant amounting to six hundred and thirty rupees being the rent for October and November 1931. Later on a draft lease deed was prepared. This was sometime in August 1931. According to the appellant, it was at the request of the respondent that he prepared the draft lease deed. It was hand-written and sent to the respondent for his approval on the 22nd August 1931. The respondent came with it to the appellant and wanted certain alterations to be made in it. These alterations he had already made but in addition to those he wanted two other alterations as well and these were made ; and the deed never got beyond that stage. The respondent refused thereafter to execute the lease.

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The question is what were the intentions of the parties when the oral agreement of the 13th July was entered into? The appellant's contention is that it was on that date agreed that a lease should be given, that is to say, at some future date. The respondent's contention, on the other hand, is that all the details were agreed upon on that date and that the only agreement as regards the future was that a deed in pursuance of this agreement should formally be drawn up. I think that from the evidence on the plaintiff's side it is quite clear that all the details were settled orally on the 13th July 1931. STONE J. received evidence in order to ascertain whether on the facts the oral agreement in question was an agreement of lease within section 105 of the Transfer of Property Act

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or whether it was an agreement which on certain authorities before him could be distinguished from a lease or transfer so as to take the case out of section 107 of the Transfer of Property Act. The authorities to which he referred were, amongst others, *Chunilal Dutt v. Gopiram Bhotica*(1) where it was held that a verbal agreement of lease notwithstanding the fact that the parties were intending to execute a formal lease deed does not contravene the provisions of sections 105 and 107 of the Transfer of Property Act and is not therefore a nullity ; *Nanda Lal Ghose v. Sarat Chandra Banerji*(2) where it was held that the word "lease" in section 107 of the Transfer of Property Act must be read as speaking of leases as defined in section 105 and that it did not include an agreement to lease and that, even in the absence of a registered lease, the contract, namely, the agreement to lease, is valid ; and *Sm. Baranashi Dassi v. Papat Velji Rajdev*(3) where it was similarly held that an oral agreement to lease is valid and that section 107 of the Transfer of Property Act refers to leases, i.e., actual transfers of property, and not to agreements to lease. On the other side the decision of PAGE J. in *Ramjoo Mahomed v. Haridas Mullick*(4) was strongly relied upon. In that case all the decisions bearing upon this question were very fully discussed in the judgment ; and what clearly emerges from that discussion is that the question is whether it is intended to give an immediate right to the party to be from that moment and before the execution of any lease a tenant from a future day. If it is,

(1) (1926) 100 I.C. 404.

(3) (1919) 25 C.W.N. 220.

(2) (1910) 5 I.C. 562.

(4) (1925) I.L.R. 52 Calc. 695.

then it is a lease. If otherwise, it is an agreement not of present demise but of future demise. The rule is stated in *Gore v. Lloyd*(1) by BARON ALDERSON as follows :—

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“ That you must look at the whole of the instrument, to judge of the intention of the parties as declared by the words of it, for the purpose of seeing whether it is an agreement or a lease. And, looking at the whole of this instrument, it appears to me that it was not intended to give an immediate right to the party to be from that moment, and before the execution of any lease, a tenant from a future day, but that the true construction of the instrument is, an agreement between the parties that at a future time one of them shall become the tenant, provided certain things are intermediately done by the landlord or his agent, so as to put the premises into a certain state, which the agreement describes . . . Where, indeed, by an agreement of this sort, one person agrees to take certain premises at a certain rent from a certain time, and both parties sign the paper; looking at the whole of such an instrument together, nobody can doubt, that, though it contains no words of demise by the party who signs it as landlord, such an instrument would amount to a lease, because you cannot give effect to the signature, unless by supposing that there is an implied agreement to demise, besides the express words by which the tenant agrees to take . . . It appears to me, therefore, that there is an obvious distinction between the two cases, and that, upon the whole, this instrument is not an agreement of demise, but it is an agreement that there shall be, under certain circumstances, at some future time, if certain things be done, a demise; it is an agreement between the parties, the terms of which, undoubtedly, were to regulate the future tenancy, if a future tenancy should exist.”

It is clear from this quotation that the fact that the tenancy is to commence from a future date does not prevent the agreement being one of present demise which was a circumstance strongly relied upon by the appellant. On the other hand,

(1) (1844) 12 M. & W. 463; 152 E.R. 1279, 1286.

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there are two other circumstances which, in my opinion, tell very strongly against the appellant's case, namely, that the respondent was already in possession at the date of the oral agreement and also paid two months' rent in advance on the same date. Nor can the fact that the formal document was to be executed in the future assist the appellant; and it is quite clear from the evidence of the appellant himself that there really was a concluded agreement on the 13th July 1931. He says: "The writing that was to come into being was to express the terms we had really agreed upon, and no other terms."

This is also made clear in the evidence of Mr. T. Rajagopalachari, the appellant's second witness, who says: "The matter was as good as finally agreed at that one interview."

STONE J. was of the opinion that the oral agreement in question amounted to a present transfer of an interest in the immovable property, that is to say, it was a present demise or lease and not an agreement to grant a lease or a future letting. Having regard to the circumstances to which I have already referred, in my view, STONE J. was right; and we have here an agreement which comes within the provisions of section 107 of the Transfer of Property Act and it being unregistered, the appellant's suit upon it must fail. For these reasons, this appeal must be dismissed with costs.

BARDSWELL J.—I agree.

G.R.