APPELLATE CIVIL.

Before Mr. Justice Maung Ba.

1927

Aug. 30.

HAJEE LIN AND ONE
v.
MAUNG BA AND ONE.*

Evidence Act (I of 1872), s. 92—No bar to extrinsic evidence of circumstances to show relation of written language to existing facts—Whether extrinsic evidence admissible to show nature of debt when document recites it as cash loan.

Held, that whilst section 92 of the Evidence Act does not permit oral evidence to ascertain the intention of the parties to a deed, it does not enact that no statement of fact in a written instrument was to be contradicted by oral evidence nor does it prevent admission of extrinsic evidence of circumstances to show the relation of the written language to existing facts. Where the deed in suit recited the debt as a cash loan, it was open to the defendant to prove that it was really rent partly overdue and partly falling due later and that it was paid off.

Balakishen Das v. *Legge*, 22 All. 149 (P.C.); *Sah Lal Chand* v. *Indarji* 22 All. 370 (P.C.)—*referred to.*

Babu R. S. S. J. Ram v. *C.R.M.R. Chetty*, Civil 1st Appeal 71 of 1906, Ch. C LB..—*distinguished.*

S. Mukerjee—for Appellants.

Lütter—for Respondents.

MAUNG BA, J.—The appellants brought a suit against the respondents in the Subdivisional Court of Amarapura for the recovery of Rs. 2,200, being the balance of rent for a piece of paddy land. The defence was one of payment. The Subdivisional Judge held that the plea of payment has not been established; but on appeal the learned Additional District Judge held a contrary view and concluded that the plea had been established: hence this second appeal.

It has been urged that on the face of the written document, the defendant should not be allowed to prove by oral evidence that the document (Exhibit I) is not for a cash loan but for the rent partly overdue

* Special Civil Second Appeal No. 108 of 1927 (Mandalay).

and partly falling due later. In support of that objection the learned advocate placed reliance upon a Bench decision of the late Chief Court in the case of *Babu S. R. S. Ram* v. *C.R.M.R. Chetty* (1). In that case it was held that oral evidence to show that the consideration in a deed is in fact different to that stated in the deed is evidence to vary the terms of a written document and is inadmissible under section 92 of the Evidence Act. On a study of the facts reported in that case, I find that those facts are not similar to the facts in the present case. In that case the consideration mentioned in the document was Rs. 7,000, but the defendant contended that at the time of executing the deed he only owed the other party Rs. 1,000. Mr. Justice Hartnoll who delivered the judgment of the Bench rightly considered the question whether the amount of the consideration was one of the terms of the document or not. He held that it was, and consequently excluded oral evidence to prove that the consideration was only Rs. 1,000. The learned Judge however observed that the two cases quoted by the lower Court did not, in his opinion, show that evidence of any oral agreement could be admitted to vary the terms of the deed of assignment, as they dealt with the question of admission of evidence with regard to the payment and nature of the consideration and not with the amount of the consideration itself. From that observation the learned Judge laid down, by implication, that oral evidence would be admissible if it only related to tthe payment and nature of the consideration. In that judgment reference was made to the Privy Council Ruling in *Sah Lal Chand* v. *Indarjit* (2). In that case their Lordships of the

(1) Civil First Appeal No. 71 of 1906.
(2) (1900) 22 All. 370.

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HAJEE LIN AND ONE v. MAUNG BA AND ONE.

MAUNG BA, J.

Privy Council expressly stated that section 92 of the Evidence Act did not enact that no statement of fact in a written instrument was to be contradicted by oral evidence. So it is clear what construction should be placed on section 92 of the Evidence Act. That section only excludes evidence which will have the effect of varying, adding to, or subtracting from, the terms of a written contract, etc. In the present case, the question is whether this dispute about the nature of the consideration should be considered as one affecting the terms of an agreement. Exhibit I evidences the mortgage of certain porperties for Rs. 2,500. The terms were that the amount was to bear no interest and that the amount should be repaid on a certain date. In my opinion the recital that the Rs. 2,500 was a loan does not constitute one of the terms of the contract. In the well-known Privy Council case of *Balkishan Das and others* v. *W. F. Legge* (1), it was held that oral evidence for the purpose of ascertaining the intention of the parties to the deeds was not admissible, being excluded by the enactment in section 92 of the Evidence Act, but that a case had to be decided on a consideration of the documents themselves, with only such extrinsic evidence of circumstances as might be required to show the relation of the written language to existing facts. So there can be no doubt in the present case that extrinsic evidence of circumstances as might be required to show the relation of the written language to existing facts could be admitted. Here the defendant only tried to prove what those circumstances were; he tried to prove that at the time he executed the document, he owed Hajee Lin Rs. 1,100 as rent for the past year and that he was owing a

(1) (1899) 22 All. 149.

similar amount for the succeeding year, and also that Rs. 300 was added by way of interest.

The legal objection must therefore be overruled.

[On the evidence his Lordship held the case of the defendant proved and dismissed the appeal with costs.]

APPELLATE CIVIL

Before Mr. Justice Baguley.

DR. R. N. SINGHA
v.
SECRETARY OF STATE FOR INDIA IN COUNCIL.

Income-tax Act (XI of 1922), s. 67 —Bar to Civil suit—Plea that assessee is not liable for a certain income not his, whether suit lies on—Remedy of assessee—Statute dealing with total ambit of rights, effect of—Section 67 whether ultra vires*—Government of India Act* (9 and 10 Geo. 5, c. 101), *s.* 32.

The Income-tax Office called upon the appellant who was described as proprietor of a certain pharmacy to make a return of his income. He returned the form without making any return, alleging that he was not the proprietor of the pharmacy. The Income-tax Officer levied the assessment in default of the return. Plaintiff filed his suit for the return of the money.

Held, that section 67 of the Income-tax Act was a bar to the suit. The assessee's remedy was provided in the Act itself, *viz.*, to apply to the officer to revise his assessment, to appeal from his adverse order to the Assistant Commissioner and from him to the Commissioner and then a reference to the High Court. The Act dealt with the matter completely and whenever a statute deals with certain rights it is easy to conclude that it deals with the total ambit of those rights and leaves nothing standing outside the provisions of the statute. The officer did not act *ultra vires* in assessing the appellant for an income that had arisen in British India and a mere alleged error of description of an assessee is no excuse for not making a return.

Held, also, that section 67 of the Income-tax Act is not *ultra vires* for a suit of this nature would not have lain against the East India Company.

Forbes v. *Secretary of State for India*, 42 Cal. 151—*followed.*

Secretary of State for India v. *A. Forbes*, 3 P.L.T. 125 ; *Sheobaran Singh* v. *Kulsum-un-nissa*, 49 All. 367 (P.C.)—*referred to.*

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* Civil Second Appeal No. 327 of 1927.