

1929

MAUNG
PO KYWE
AND OTHERS

v.

MAUNG
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AND OTHERS.

BROWN, J.

fraud at all it was not against the plaintiffs. I am of opinion that this appeal should be dismissed with costs.

RUTLEDGE, C.J.—I agree that this appeal must be dismissed with costs. While *Maung Myat Tha Zan's* case does not expressly decide the point at issue in the present case, I am also of opinion that the principles therein approved must be held applicable irrespective of a suit for specific performance ~~lying~~ or not. The cases cited by my brother Brown show that a large preponderance of Indian Judicial opinion is in favour of the view we take.

APPELLATE CIVIL.

Before Mr. Justice Otter.

ABDULLAKIN

v.

MAUNG NE DUN AND ANOTHER.*

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Feb. 18.

Evidence Act (I of 1872), s. 92—Character of consideration, evidence to prove—Rent set out in a lease document—Part of rent a time-barred debt—Contract Act (IX of 1872), s. 25 (3)—Specific reference to barred debt unnecessary.

A party is not debarred by anything in the Evidence Act from showing the real character of the consideration fixed between the parties. What is not allowed by by s. 92 is to contradict the *terms* of a document.

It is therefore open to a party to show that part of the consideration as to rent payable in terms of a lease represented a past debt for rent and not a future liability arising under the contract. To satisfy the terms of s. 25 (3) of the Contract Act it is not necessary that the agreement should in terms refer to the barred debt.

Appa Rao v. Suryaprakasa, 23 Mad. 94; *Ganapathy v. Munisawmi*, 33 Mad. 159; *Kumara v. Srinivasa*, 11 Mad. 213; *Lal Mahomed v. Kallanus*, 11 Cal. 519; *Vasudeva v. Narasamma*, 5 Mad. 6—referred to.

* Special Civil Second Appeal No. 428 of 1928 from the judgment of the District Court of Henzada in Civil Appeal No. 24 of 1928.

Ray for the appellant.

R. M. Sen for the respondents.

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OTTER, J.—In this case the plaintiff sued the defendants upon a deed leasing to the 1st defendant certain paddy lands. The 2nd defendant was impleaded as a guarantor for payment of rent in accordance with the covenants of the lease. The lease was granted in 1288-89 (1926-27) and the rent stated in the lease (Exhibit A) was 670 baskets of paddy. The amount claimed by the plaintiff was 448 baskets of paddy or their value, the receipt by him of 222 baskets being admitted. The defence was that the land was leased to them for 250 baskets only, and among other suggestions by way of defence fraud was alleged against the plaintiff.

It was the case for the plaintiff that of the total sum of 670 baskets mentioned in the deed of lease the amount of 420 baskets represented a debt due to the plaintiff by the 1st defendant in respect of rent of other land. This debt was, it is agreed, time-barred when the deed of lease was executed.

The defendants' case upon the question of the amount was that the rent of 670 baskets of paddy was originally fixed in respect of the two parcels of land, but that later the plaintiff refused to lease one of the parcels to them, the rent for the remaining parcel actually being 250 baskets.

It is unnecessary to deal with the various points argued in the two lower Courts for it was conceded by Mr. R. M. Sen on behalf of the respondents that upon the facts the plaintiff was bound to succeed. That this is so is evident from an examination of the statements of the witnesses which in my view disclose an overwhelming case in support of the contentions of the plaintiff.

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The only serious suggestion made on behalf of the defendant before me was that this is a case to which section 25 of the Indian Contract Act of 1872 must apply and as there is no direct reference in Exhibit A to the previous time-barred debt the amount claimed upon this footing is not recoverable. Furthermore, it was said that as the terms of the Contract Act were reduced to the form of a written document oral evidence to prove the true nature of the consideration was inadmissible. Now it is perfectly true that the document makes ~~no mention~~ of the previous debt. Indeed its terms stated clearly that the rent reserved was in respect of the leased land. The case of *Appa Rao v. Suryaprakasa Rao* (1), is relied upon and supports the first part of Mr. Sen's argument.

The case of *Ganapathy Moodelly v. Munisawmi Moodelly* (2), is relied upon by Mr. Ray for the plaintiff. In that case there was a clear reference to an existing debt in the document and I am of opinion that the present case must stand upon a different footing. It is clear however that section 92 of the Evidence Act forbids only the "contradicting, varying, adding to or subtracting from the terms of the contract." The consideration in the present case according to the plaintiff is the exact amount stated in the document. It has been decided that section 92 of the Evidence Act does not prevent a party to a contract from showing by oral evidence that the consideration is different from that described in the contract. What is not allowed by the section is to contradict the *terms* of the document. The question therefore is whether to show that a part of the consideration is in respect of a previous debt, and is not in respect of the amount due under the lease is

(1) (1899) 23 Mad. 94.

(2) (1909) 33 Mad. 159.

a contradiction of the terms of the contract. Four cases are of importance upon this point, *viz.*—

- (1) *Lal Mahomed v. Kallanus* (1),
- (2) *Vasudeva Bhatlu v. Narasamma* (2),
- (3) *Kumara v. Srinivasa* (3),
- (4) *Ganapathy Moodelly v. Munnisawmi Moodelly* (5).

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In all these cases the Courts have held the view that a party is not debarred by anything in the Evidence Act from showing the real character of the consideration fixed between the parties. In the present case the amount of the consideration is correctly stated, and it seems to me that the plaintiff brought himself within the principle I have referred to, when he adduced evidence to show that part of the consideration represented a past debt for rent and not a future liability arising under the contract. For these reasons the appeal must be allowed with costs in all Courts.

(1) (1885) 11 Cal. 519.
 (2) (1882) 5 Mad. 6.

(3) (1887) 11 Mad. 213.
 (4) (1909) 33 Mad. 159.