

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nándbhái Haridás.

JAGJIVANDA'S JA'VHERDA'S (DECEASED) BY HIS SON AND HEIR
DEVIDA'S (ORIGINAL PLAINTIFF), APPELLANT, v. NA'RÁ'YAN BIN
LAKSHMAN PA'TIL (ORIGINAL DEFENDANT), RESPONDENT.*

1884
June 17.

Registration.—Act XX of 1866, Secs. 17 and 18—Lease.

A *kabuláyat*, or lease, under which the tenant might claim possession of the land for one year, but was to pay rent to the landlord so long as the landlord might leave the land with the tenant, did not require registration.

THIS was a second appeal against the decision of M. N. Náná-vati, Subordinate Judge (First Class) with appellate powers at Thána, confirming the decree of the Subordinate Judge (Second Class) of Murbád.

The plaintiff brought this suit to recover possession, with mesne profits, of a certain land from the defendant under a *kabuláyat*, dated 8th May, 1868, executed by the defendant to the plaintiff. The *kabuláyat* in question, after describing the land in respect of which it had been passed, set out: "I [the tenant] have taken from you the land, as described above, for cultivation from the year 1868-69. I will pay you for it 7 khandis of rice annually according to the custom of the village.
* * * I will continue to pay you rice annually, as stated above, so long as you will keep the land in my possession."

Both the lower Courts held that the *kabuláyat* was for a term exceeding one year, and was inadmissible in evidence for want of registration, as required by section 17 of Act XX of 1865. Both the lower Courts, therefore, rejected the plaintiff's claim with costs. The plaintiff thereupon appealed to the High Court.

Ghanashám Nilkanth Nádikarni for the appellant.—As the tenant was to pay rent so long as the landlord might leave the land with the tenant, the lease was for a term less than a year, and was now compulsorily registrable. The following cases were cited in argument:—*Apu Budgaráda v. Narhari Annáji*⁽¹⁾; *Viram-mal v. Kasturi Rungayyengar*⁽²⁾.

* Second Appeal, No. 92 of 1883.

(1) I. L. R., 3 Bom., 21.

(2) I. L. R., 4 Mad., 381.

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JAGJIVANDÁS
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v.
NÁRÁYAN.

There was no appearance for the respondent.

The judgment of the Court was delivered by

WEST, J.—The engagement in the *kabuláyat* in this case was, on its acceptance by the landlord, an agreement under which the tenant might claim possession for one year. But as the undertaking was to pay rent for “so long as you” (the landlord) “shall leave the land with me” (the tenant), there was no interest created by way of lease extending beyond one year. This appears from *Apu Bulgavda v. Narhari Annáji*⁽¹⁾. Besides the case mentioned there, reference may be made to *Morton v. Woods*⁽²⁾. In that case the primary engagement was for ten years; but as there was a stipulation that the landlord might re-enter when he pleased, it was construed as creating only a tenancy-at-will. The *kabuláyat* being of such a purport as we have said, it did not require registration under Act XX of 1866, sec. 17. We, therefore, reverse the decrees of the Courts below, and remand the cause for retrial and a new decree. Costs to follow the final decision.

Decree reversed and case remanded.

(1) L. R., 3 Bom., 21.

(2) L. R., 3 Q. B., 658.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nánibhái Haridás.

June 16. KISANDA'S HAJA'RIMAL (ORIGINAL PLAINTIFF), APPELLANT, v. GULA'BCHAND AND ANRUP SADA'RAM, DECEASED, BY THEIR SONS AND HEIRS KUNDA'NLAL AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.)*

Partnership—Indian Contract Act IX of 1872, Sec. 265—Jurisdiction of District Court—Jurisdiction of Subordinate Court—Practice.

Section 265 of the Indian Contract Act (IX of 1872) assumes that there has been a partnership, and enables the District Court to wind it up, but does not deprive the ordinary Courts of their jurisdiction in cases seriously contested as to the existence of partnership. Such contests ought to be decided as in ordinary cases.

THIS was an appeal from the order of E. Cordeaux, District Judge of Poona, returning the plaint to be presented to the proper Court.

* Appeal, No. 34 of 1883.