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in a distant country may, in some cases, be cogent evidence against the plaintiff; while in others there may be other acts, besides payments by the defendant, which may be equally cogent evidence that the defendant's possession or management continued to be as much on plaintiff's behalf, as it would have been if he had been present on the spot and living in actual union with the other members of the family.

In the present case the evidence on both sides has not been fully gone into, and until it is, I think that it is impracticable to say whether the facts will show that the suit is now barred. I think that the suit should be remitted in order that the issues may be settled and the evidence fully barred; and that all other issues between the parties besides that as to the bar, should also be heard and decided, as we shall then, on the case coming back, be in a position to dispose of the suit, if we should think that it is not barred.

Suit remanded.

APPELLATE JURISDICTION (*a*)

Special Appeal No. 70 *of* 1866.

SUBUPALAYI AMMÁL.....*Appellant.*

APPAKUTTI AIYANGÁR and others.....*Respondents.*

Where there was a written agreement between the 1st defendant's father and the Collector, in which the first defendant's father undertook to pay a certain rent "for ever," but these general words were qualified by the words that he is to pay the rent "as long as the village remains in his possession," and the document did not contain any express agreement or undertaking on the part of the Collector:—*Held*, that the enjoyment of the land by the 1st defendant's father at a certain rent for as long as he retained possession of it was ample consideration and motive for his agreement to pay the rent, and that it was not necessary, in order to prevent the consideration and motive for his agreement from being wholly defeated, to imply on the part of the Collector an agreement that he should hold the land for ever at that rent and no more.

1866. *May* 26. *S. A. No.* 70 *of* 1866.

THIS was a special appeal from the decision of E.H. Bird, the Civil Judge of Tanjore, in Regular Appeal No. 177 of 1865, confirming the decree of the Principal Sadr Amin of Combaconum in Original Suit No. 36 of 1864.

(*a*) Present Holloway and Collett, J. J.

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The plaintiff as trustee of the Palaya chattram sued to oust the defendants from certain land on the ground that the lessee 1st defendant's father having died, 1st defendant refused to pay the enhanced rent demanded. The 1st defendant pleaded that the lease to his father granted by the Government through the Collector in March 1831, conferred on him and his successor the right to enjoy the land for ever, on payment of a fixed rent, and that plaintiff, who had undertaken to carry out all the obligations created by Government, had no right now to violate the conditions of the lease, or oust him as sued for.

The Principal Sadr Amin decided that the agreement of lease No. 1 on which first defendant rested his title, was a perpetual lease and that, therefore, plaintiff had no right to oust the 1st defendant.

On appeal the Civil Judge confirmed the decree of the Lower Court.

The plaintiff preferred a special appeal.

Rajagopala Charlu, for the appellant, the plaintiff.

Srinivasa Chariyar, for the 1st respondent, the 1st defendant.

The Court delivered the following

JUDGMENT :—The decision of this case depends upon the construction to be given to the document Exhibit I. That document contains the agreement of the first defendant's father with the Collector, and its words are the language of the first defendant's father. In one part of the agreement he undertakes to pay a certain rent "for ever," but these general words are followed, and must be taken as qualified, by the words that he is to pay the rent "as long as the village remains in his possession." The first defendant's own construction of this clause is that it means "so long as the defendant chooses to retain possession." It is thus clear, and indeed was admitted for the first defendant, that he or his father before him could at any time at will have put an end to the agreement by giving up possession of the land, and if they had done so, the Collector could not have sued either of them for the rent payable under the agreement.

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Now the document does not contain any express agreement or undertaking on the part of the Collector, but it is sought to imply from the agreement of the first defendant's father a corresponding agreement by the Collector; but if it were necessary or proper to imply any such agreement at all it would seem right, in the absence of any express terms, to imply an agreement corresponding in its duration as well as in other respects with that of the other contracting party, and if the first defendant's father was at liberty—as clearly he was—to determine his agreement at his option, the counter-agreement to be implied on the part of the Collector should be equally determinable at his option.

But we do not consider that it is necessary to imply an agreement on the part of the Collector. The words of the document are the words of the first defendant's father; they amount to an undertaking on his part to pay rent at not less than so much per annum, but they do not contain any suggestion that he shall never be liable to have the rent increased; if he intended such an agreement as that, he might have expressed it. In the words of Cockburn, Chief Justice, in the recent case of *Churchward* v. *The Queen*, (1 Law Reps. Q. B. 195), "where the act to be done by the party binding himself can only be done upon something of a corresponding character being done by the opposite party, you would there imply a corresponding obligation to do the things necessary for the completion of the contract. * * * * Where there is an engagement to manufacture some article, a corresponding obligation on the other party is implied to take it, for otherwise it would be impossible that the party bestowing his services could claim any remuneration. * * But in all these instances where a contract is silent, the Court or Jury, who are called upon to imply an obligation on the other side which does not appear in the terms of the contract, must take great care that they do not make the contract speak where it was intentionally silent; and above all that they do not make it speak entirely contrary to what, as may be gathered from the whole terms and tenor of the contract, was the intention of the parties."

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It is clear that in the present case the enjoyment of the land by the first defendant's father at a certain rent for as long as he retained possession of it was ample consideration and motive for his agreement to pay that rent, and that it is not necessary, in order to prevent the consideration and motive for his agreement from being wholly defeated, to imply on the part of the Collector an agreement that he should hold the land for ever at that rent and no more.

Our view of the nature of the agreement contained in Exhibit I, renders it unnecessary for us to consider the other question, whether the Collector had authority to enter into any such agreement at a permanent rent as it is sought to imply on his part.

We reverse the decrees of the Courts below, and there must be a decree for the plaintiff as prayed for, and the first defendant must pay the costs of the plaintiff here and in the Courts below.

Appeal allowed.

APPELLATE JURISDICTION (*a*)

Special Appeal No. 115 *of* 1866.

DEVAPPA SETTI.....*Appellant.*

RAMANÁDHA BHATT.....*Respondent.*

A party to a suit against whom a judgment *ex parte* has been passed in regular appeal, cannot prefer a special appeal from that judgment. He must first proceed under Section 119 of the Civil Procedure Code to get rid of the *ex parte* judgment against him.

1866. *June* 21. S. A. *No.* 115 *of* 1866.

THIS was a special appeal from the decision of Srinivása Row, the Principal Sadr Amin of Mangalore, in Regular Appeal No. 389 of 1864, reversing the decree of the District Munsif of Mulki in Original Suit No. 274 of 1862.

The father of the appellant was the plaintiff in the original suit, which was decided in his (plaintiff's) favor. The 21st defendant (the present respondent) appealed and

(*a*) Present Innes and Collett, J. J.