

Appellate Jurisdiction (a)

Special Appeal No. 595 of 1868.

RAMANADAN CHETTY *Special Appellant.*

VIJIASAMY *alias* NAMASIVAYA } *Special Respondent.*
 TAVER }

Special Appeal No. 167 of 1869.

RAMANADAN CHETTY..... *Special Appellant.*

VIJIASAMY *alias* NAMASIVAYA } *Special Respondent.*
 TAVER }

In a suit under Section 15 of of the Registration Act of 1864 (XVI of 1864) to compel the defendant to join in the registration of certain documents, the defendant admitted the execution of the documents but set up a collateral agreement which would render the documents of no legal force. The Lower Courts found that the agreement relied on by the defendant was come to with the plaintiff.

Held, (reversing the decrees of the Lower Courts) that, execution having been admitted, the document ought to be registered.

THIS was a Special Appeal against the decision of E. C. G. Thomas, the Civil Judge of Madura, in Regular Appeals Nos. 157 and 158 of 1867, confirming the decrees of the Court of the Principal Sadr Amin of Madura in Original Suit Nos. 17 and 18 of 1866. 1869.
August 26.
S.A. Nos. 595
of 1868 and
167 of 1869.

This suit was brought under Section 15, Act XVI of 1864, to compel the defendant to register a deed of sale executed by him in the plaintiff's favor for the sum of rupees 4,000 conveying to him the nunjah and punjah lands belonging to the defendant in the village of Sethurayanandul. The plaintiff also produced the endorsement of the District Registrar declining to register the bill of sale in consequence of the defendant's refusal to acknowledge it.

The defendant filed a written statement objecting to register the bill of sale in question, as the whole amount of the consideration for which it was executed was not paid to him, and as it was passed by him to prevent his incarceration in the debtor's jail on the eve of being sent thither on account of a judgment-debt due to the plaintiff in

(a) Present : Scotland, C. J. and Innes, J.

1869.
August 26.
 S.A. Nos. 595
 of 1868 and
 167 of 1869.

Original Suit No. 31 of 1862 on the file of the Civil Court. He added that, on the date on which the bill of sale in question was executed, it was stipulated between the plaintiff and defendant that it was to have no force or effect whatever should the amount for which it was passed be paid to the plaintiff within 30 days from the said date; and that as the money was tendered by defendant within the stipulated period but was refused by the plaintiff, the bill of sale above referred to is void.

The issues settled were:—

Whether the circumstances under which the deed of sale in question was passed are such as to vitiate it.

Whether the amount of 4,000 rupees referred to in the said instrument was offered by the defendant within the stipulated time.

The following is taken from the judgment of the Principal Sadr Amin:—

But as regards the alleged stipulation to cancel the sale on the payment of the amount of 4,000 rupees within one month from the date of the bill of sale, I have to observe that it is proved by the evidence of the mutual witness that such stipulation was made between the plaintiff and defendant; and his testimony is corroborated by the defendant's 1st and 2nd witnesses, of whom the former is the plaintiff's vakil; and considering the relation existing between him and the plaintiff, I have every reason to believe that the sale was conditional and was not concluded on the date on which it took place. The offer of payment of the amount of 4,000 rupees is also established. The mutual witness says that on the evening of the last day of the period allowed for the purpose, the defendant's servant, 2nd witness Sangu Servai, brought a bundle containing silver coins and laid the same in the entrance of the said witness's house, and that at his desire the said Sangu Servai communicated the arrival of the funds to the plaintiff's vakil who had been authorised by the plaintiff to receive the money and return the deeds of sale

in dispute both in this and the following No. 18. The plaintiff's vakil (the 1st witness for the defence) admits that he was made aware of the arrival of the funds from Shevangunga, but states that it could not be received, as the plaintiff was not in the town, and was not seen till after the fourth day after the period of one month above referred to had expired. As the plaintiff's vakil admits that he had full authority from his client to receive the money if tendered within the limited period, and he omitted to receive it unless it was paid in the plaintiff's presence, I do not think that the defendant's interests should suffer by the carelessness of the plaintiff to make arrangements for receiving payment according to the terms of the stipulation above referred to. On considering carefully all the circumstances connected with the case, I think that the defendant had done all he can to act up to the terms of the agreement in question, and that the studied absence of the plaintiff from the town and the want of decision on the part of his vakil had prevented the defendant's servant from making the payment. On this view of the case, I consider that the deed of sale must be held to have been cancelled, and therefore decline to direct the defendant to register it. The plaintiff will pay all costs.

1869.
August 26.
S.A. Nos. 595
of 1868 and
167 of 1869.

The decision was confirmed on appeal by the Civil Judge.

The plaintiff specially appealed to the High Court on the ground that,—

As the original suit was brought simply to compel the defendant to register the bond mentioned in the plaint, and as the defendant admitted the execution of the said bond and receipt of the consideration therein mentioned, the Lower Court ought to have directed the said bond to be registered.

J. H. S. Branson, for the special appellant, (the plaintiff.)

The Court delivered the following

1869.
August 26.
S.A. Nos. 595
of 1868 and
167 of 1869.

JUDGMENT:—These were suits brought to compel the defendant to join in registering certain documents executed by him in favor of the plaintiff which the District Registrar had refused to register in consequence of the defendant having denied execution of them. The defence made in both suits was not a denial of the execution of the documents but that the consideration money had not been paid in full ; that the execution by the defendant had been obtained on the eve of his being sent to jail to prevent his incarceration, and that a contemporaneous agreement was made stipulating that the instruments were to have no force or effect whatever should the amount for which it was executed be paid to plaintiff within 30 days from its date ; and that as the money was tendered but refused by plaintiff, they were of no further binding force. The issues recorded in each suit raised the points of the defence and the Principal Sadr Amin found that this collateral agreement had been come to ; that the money was tendered and refused by the plaintiff's agent ; that the agreement therefore had ceased to have any binding force, and that it would be improper to register it ; and a decree was thereupon passed dismissing the suit with costs. The Civil Judge on appeal confirmed this decision.

The plaintiff has appealed, and the objection relied upon is that the defence set up had been improperly entertained, and that registration of the instruments should have been ordered.

We are of opinion that it was not competent to the Principal Sadr Amin to enter upon the question of the existence and effect of the collateral agreement. The suit was properly brought to establish the plaintiff's right to enforce registration, and that only, and the instruments were not admissible in evidence except for the purpose of determining as to that right. Now the single question upon which under Section 29 of the Act such right depended was, whether the instruments were executed by the parties by whom they purport to have been executed, and that fact having been admitted by the defendant, registration

should have been directed without entertaining any question as to the validity or operation of the instruments—See the case of *Khadar Saib v. Khadar Bibi*, 3 *Madras High Court Reports*, 149. It makes no difference that the questions decided by the Lower Courts arose out of the defence, registration being essential to admit of the Courts looking at the terms of the instruments in order to see their nature and effect.

1869.
August 26.
S.A. Nos. 595
of 1868 and
167 of 1869.

For these reasons, we must reverse the decrees of the Lower Courts, and, as the execution of the instruments has been admitted by the defendant, the decrees in the appeals may at once direct the Registrar to register the instruments. Plaintiff's costs throughout must be paid by the defendant.

Appellate Jurisdiction (a)

Regular Appeal No. 34 of 1869.

KULLAPPA NAIK and another..... *Appellants.*

RAMANUJA CHARİYAR and 11 others..... *Respondents.*

Regular Appeal No. 61 of 1869.

COLLECTOR OF MADRAS..... *Appellant.*

RAMANUJA CHARİYAR and 11 others..... *Respondents.*

The plaintiffs sued, as the mirassidars of a village, to establish their right to the grant of a puttah of certain waste lands of the village which had been granted to some of the defendants. The Collector, who was made a defendant, stated that the Hookumnamah Rules of the District directed that land should be given to mirassidars on their tendering sufficient security, and that the plaintiffs on previous occasions had received lands for which offers had been made by others in consideration of the plaintiffs' preferential right, but that they had failed to cultivate the lands or pay the assessment in breach of their agreements.

Held, that the plaintiffs were entitled to the relief sought for.

THESE were Regular Appeals against the decision of E. B. Foord, the Civil Judge of Chingleput, in Original Suit No. 29 of 1867.

1869.
August 31.
R. As. Nos.
34 and 61 of
1869.

(a) Present : Scotland, C. J. and Innes, J.