

## Appellate Jurisdiction (a.)

*Referred Case No. 13 of 1869.*

ACHOO BAYAMAH.....*Plaintiff.*

DHANY RAM and another... ..*Defendants.*

The plaintiff sued as the assignee of a mortgage of immoveable property to recover the amount of the debt from the mortgagor in pursuance of an express contract to pay the debt contained in the mortgage.

The mortgage was executed before the Registration Act (Act XVI of 1864) came into operation. The assignment to the plaintiff was executed after the last Registration Act (XX of 1866) became law.

*Held*, per Bittleston, Innes and Collett, J. J. J., that the assignment, being an instrument operating to create an interest in immoveable property, and as such requiring to be registered under Section 17 of Act XX of 1866, was not admissible in evidence in a suit to enforce the personal obligation only. Small Cause Court Referred Case No. 36 of 1868 (b) dissented from.

Per Scotland, C. J.—That an instrument which has the two-fold operation of a simple contract or bond to pay a debt and a collateral mortgage security for the debt is admissible in evidence for the purpose of proving the simple contract debt.

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**T**HIS was a case stated under Section 22, Act XI of 1865, by H. W. Bird, the Acting Judge of the Cantonment Court of Small Causes at Cannanore, in Suit No. 181 of 1868.

The case stated was as follows:—

This is a suit brought by plaintiff, through her vakil, against the defendants for the recovery of rupees 103-8-0 on account of money due on a bond, with interest.

The case came on for hearing before me on the 26th day of February 1869, and was adjourned for further consideration, subject to the decision of the High Court upon the following case.

On the 3rd August 1864, the defendants executed a bond to one Jugganath Mudeliar for rupees 100 with interest on account of money lent mortgaging certain immoveable property, viz., a house and its compound, as security for the due payment of the debt.

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

(b) IV, Madras High Court Reports, page 174.

It will be observed that when this bond was executed, Act XVI of 1864 had not come into operation.

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On 1st July 1866 Jugganath Mudeliar executed a bond to the plaintiff in the present suit for payment of a debt due to her, selling and transferring to her all his right to the bond executed on 3rd August 1864 between the two defendants and himself and informed the defendants, and they allowed the same. This bond was not registered as directed in Section 17 of Act XX of 1866. Defendants' *vakil* admits the execution of the original bond between the defendants and Jugganath Mudeliar, but takes objection to being sued by plaintiff thereon, as the bond executed by Jugganath Mudeliar to plaintiff selling all his right on the bond is inadmissible, not having been registered.

Plaintiff brings forward her claim on the first bond executed in 1864, which she states does not require to be registered, and that she can bring evidence to prove the sale and transfer of the first bond mentioned in the second bond dated 1st July 1866.

Defendants object to this, on the ground that the plaintiff is not the proper party to claim the amount due on the said bond for the reason already stated.

Upon the foregoing facts, the Court is of opinion that the bond executed in 1866 is not admissible in evidence inasmuch as it was not registered, but that the bond of 1864 is admissible although not registered, as it was executed prior to Act XVI of 1864 having come into operation, and the present plaintiff can file a suit against defendants on the original bond supporting by evidence that the bond was sold and transferred to her by Jugganath Mudeliar.

Questions for the decision of the High Court are:—

1. Whether plaintiff, having failed to register the bond executed between her and Jugganath Mudeliar, and consequent thereon its being inadmissible, can sue the defendants on the *original* bond and bring forward evidence to prove the transfer?

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2. Must an instrument executed before the operation of Act XVI of 1864 be registered before any action can be taken on it, or it can be admitted in evidence ?

No Counsel were instructed.

The Court delivered the following judgments :—

COLLETT, J.—The answer to the first question as it is stated by the Court of Small Causes is clearly no. The assignment is by an instrument in writing and if that is not admissible in evidence, because not registered, it is not allowable to give other evidence of the assignment. The answer to the second question is also no. It would be sufficient for the disposal of the reference if we simply answered the questions as they have been stated to us, but I am afraid that if we did so, we should be leaving the Court below to take an erroneous view of the case, as from the facts stated it is apparent that the question requisite to the right disposal of the case has not been raised and stated. The document of the 3rd August 1864 created an interest in immoveable property, and the document of the 1st July 1866 operated as an assignment of that interest and the value was rupees 100, and this latter document was therefore within Section 17, Act XX of 1866, and ought to have been registered. But this is a Small Cause suit, and the object of the suit is necessarily limited to enforcing the personal obligation, and the question in the case that really arises to be considered is, whether the document of the 1st July 1866 can be given in evidence in a suit to enforce the personal liability for the debt, though by Section 49 of the Registration Act it would be inadmissible in evidence in a suit to enforce the interest in the land? In Referred Small Cause Case 36 of 1868 (a) this question was decided by this Court in the affirmative. There are two Bengal cases on the point which are to the same effect. One is reported in 9 *Calcutta W. R.* 3, (*Civil Rulings*) in which *Peacock, Chief Justice*, took part but gave no reasons for his judgment; and the other is in 10 *Calcutta W. R.* 252; (*Civil Rulings.*) in which the reasons given are such, as, according to the decisions of the

(a) Ante page 174.

Madras High Court would in this Court be regarded as erroneous. The terms of Section 49 are that "No instrument required by Section 17 to be registered shall be received in evidence in any Civil proceeding in any Court unless it be registered." These are the words of the Section which raise doubts in my mind. In the Bengal cases reliance seems to have been placed on the fact that it was not sought by the suit to "affect any immoveable property," referring to the words of the latter part of the Section. But it is not, as it seems to me, in these words that the difficulty lies. The difficulty to my mind is how the words in the first part of the Section quoted above are to be got over. This document of 1866 is undoubtedly an instrument which, as an entirety, is required by Section 17 to be registered, and the prohibitive words of Section 49 are very wide and general, "in any Civil proceeding in any Court," that is, as it seems to me, for any purpose whatever as evidence, whether to affect the property or not. I should be glad to be able to take the view adopted in Small Cause Referred Case 36 of 1868 (a), for no doubt prohibitions of this nature occasionally work great injustice, but it seems to me that the above cited words are so wide that I cannot rightly concur in following that judgment. I observe that though the registration of the document of 1864 was not compulsory, yet it was an instrument which from its nature might have been registered under the old Regulation. No question as a consequence of this has been raised between the parties, and I do not wish to suggest any, but I only notice this feature in the case that it may not be supposed to have escaped observation.

BITTLESTON, J.—If this case is to be decided independently of authority, I must express my concurrence in the opinion of Mr. Justice Collett.

Act XX of 1866, Section 17, expressly requires that certain instruments SHALL *be registered*, and the instrument in question is one of the kind there referred to. By Section 22, the time within which registration is to take place is fixed at four months from the date of execution except under special circumstances and it appears to me that, quite

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independently of the purpose of furnishing satisfactory proof of the transaction in case of dispute, the Legislature intended to *insist* upon compliance with the above requirements in order that a complete registry of the titles to land throughout the country might by degrees be obtained. In furtherance of this object, the decrees of Courts affecting land are required to be registered, though practically no additional security as respects proof is thereby afforded. Then Section 49 in distinct terms provides that no instrument required to be registered shall be received in evidence in any Civil proceeding in any Court, unless it shall have been registered in accordance with the Act. The only question which (as it seems to me) the Court can consider under this Section is, whether the unregistered instrument was one which by the Act is required to be registered within four months of the execution. This question is to be determined by the nature of the instrument at the time of its execution, and not by the purpose of the suit in which it may be afterwards tendered in evidence; and if that question must be answered in the affirmative, it seems to me that the Legislature has prohibited every Court from receiving the instrument in evidence in any suit. The English decisions as to the admissibility of unstamped documents for a collateral purpose, do not, I think, afford a safe guide to the construction of the Indian Registration Act.

I have given my opinion in this case independently of the authorities which have been referred to, because the Chief Justice and Mr. Justice Collett, before whom it came in the first instance, have desired that it should be submitted to the judgment of the whole Court; and because it appears that two other Judges as well as myself dissent from the ruling in Referred Case No. 36 of 1868. (a)

INNES, J.—It seems to me that the question of the admissibility in evidence of the document of 1866 has neither arisen in this case nor been referred by the Judge, and that therefore it does not call for any opinion.

Plaintiff offered the document of 1866 in evidence, but upon the objection being taken to its admissibility, he

seems to have acquiesced in the objection and determined to prove the assignment *aliunde*, which of course he could not do, and this is the answer to the first question referred by the Judge. To the second question the answer should be also in the negative. Although I do not consider that the question of the admissibility in evidence of the document of 1866 arises in this case, I will give my opinion upon the question, as the Chief Justice, Sir Adam Bittleston, and Mr. Justice Collett think that it does arise. The decision in Referred Case No. 36 of 1868 (a) decided the point now raised, but I cannot bring my mind to agree in that decision.

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The question, as applicable to the facts of the present case, seems to me to depend upon whether the document is one which by Section 17 of Act XX of 1866 is required to be registered. If it is, I do not see how the prohibition of Section 49 can be got over. Undoubtedly it is an instrument which operates to create an interest in immovable property, and as such it appears to me that the provisions of Section 17 require that it shall be registered, and the circumstance that it is offered in evidence to prove a further interest created by the instrument, which, if it stood alone, would not render registration obligatory under Section 17, does not seem to me to except the instrument from the operation of Section 49. It is not on that account the less an instrument which required registration.

It seems to me impossible to say that in certain respects it is an instrument which required registration and in certain other respects is not so. Such provisions of the instrument as, if they stood by themselves, would not render registration obligatory, cannot be separated from the other portions in respect of which it is obligatory. And though it is possible that the Legislature may not have intended to shut out such instruments from being given in evidence of interests other than those in respect of which registration was obligatory, the language of the Section appears to me so clear as to leave no room for a resort to other means than the plain meaning of the language itself for ascertaining the intention of the Legislature. I am therefore of opinion that the instrument was not admissible in evidence.

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SCOTLAND, C. J.—The plaintiff in this case sues as assignee to recover on the instrument dated the 3rd August 1864 as a simple contract to pay a debt, and I understand from the case that the assignment by Juggnath Mudeliar to the plaintiff was made by the instrument dated the 1st July 1866, and transferred all Jugganath's rights under the former instrument. That being so, proof of the instrument of assignment was essential to entitle the plaintiff to recover, and other evidence of it is not admissible. This is an answer to the first question submitted for decision. But the question affirms the inadmissibility of the assignment and makes it necessary to consider whether, as it purports to transfer Jugganath's right as mortgagee in certain immoveable property under the instrument sued upon and has not been registered under Act XX of 1866, it is rendered by Section 49 of that Act unavailable as an assignment of the debt simply, and in my opinion it is not. I have not been able, after the further consideration which the opinions of my learned colleagues have led me to give to the provisions of the Act, to alter the opinion that the construction which is expressed in the Judgment in Small Cause Referred Case No. 36 of 1868 (*a*) is the one that best gives effect to the intention of the Act. The object of Section 49 was solely, I think, to prevent instruments from being of legal force for any of the purposes which make registration compulsory under Section 17. This is especially made evident by the words in Section 49 "or shall affect any property comprised therein." To give due effect to the intention of the Legislature as well in regard to optional registration under Section 18 as to compulsory registration under Section 17, it appears to me that Section 49 should be read as if it had expressly said that no instrument should be received in evidence, &c., for any of the purposes specified in Section 17 unless registered. Upon this construction it is that I consider it in accordance with the intention of the Legislature to hold that an instrument which has the two-fold operation of a simple contract or bond to pay a debt and a collateral mortgage security for the debt, as well as an instrument which purports to be an assignment of such contract and security is

(*a*) Ante

admissible in evidence for the purpose of proving the separate liability under the simple contract in respect of which registration was not required by Section 17.

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The second question submitted in the case admits of no doubt. Registration of the bond executed by the defendant before the passing of Act XVI of 1864 was not necessary to render it a valid instrument.

### Appellate Jurisdiction (a)

*Special Appeal No. 411 of 1868.*

NIJAMUDIN.....*Special Appellant.*

MAHAMMADALI and another.....*Special Respondents.*

An admission or acknowledgment in writing under Section 4 of the Limitation Act (Act XIV of 1859), is sufficient to give a new period of limitation although a promise to pay on request is not inferrible from it. The word due in the Section means no more than that the debt is owing and that there is an existing obligation to pay it.

An acknowledgment made in writing to a third party and not to the creditor is sufficient under the Section.

*Quære.*—Whether an acknowledgment to satisfy the Section must be made before suit.

The English and Indian Law of Limitation considered and contrasted.

**T**HIS was a Special Appeal against the decree of Srinivassa Row, the Principal Sadr Amin of Mangalore, in Regular Appeal No. 398 of 1866, reversing the decree of the Court of the District Munsif of Mangalore in Original Suit No. 193 of 1864.

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The plaintiffs brought this suit in order to recover from the defendants the sum of rupees 784-5-4, being the balance of interest and principal due under the document executed by the defendants' deceased father Siyabuddin to Saiyad Abdulrahiman, the deceased maternal uncle of the 1st plaintiff's daughter, the 2nd plaintiff.

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