Appellate Jurisdiction. (a)

Referred Case No. 50 *of* 1869.

MR. G. LEE MORRIS, the Receiver of the Estate of His Highness the late Rajah of Tanjore,

against

PANCHANADA PILLAY and another.

Where a written instrument provided for a joint tenancy and joint contract by all the parties executing it to pay the whole rent of village without any reference to the quantity of land in the holding of each.

Held, that oral evidence was not admissible to show that separate specific contracts were entered into by each of the parties, and it made no difference that the evidence was put forward as evidence of a custom.

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THE following case was referred for the opinion of the High Court by V. Jayaram Row, the District Munsif of Combaconum in suit No. 653 of 1869.

Plaintiff instituted this suit against the defendants for the recovery of Rupees 39-15-4, being balance of rent due for Fusly 1275 including interest thereon as payable under a muchilika executed to Her Highness Kamatchi Boyi Saib, the senior widow of the said rajah, on the 26th October 1863 by the said 2nd defendant, on behalf of himself and Velayuda Pillay, the late father of 1st defendant, and the other Mirasidars of the village of Kilakarakai, of which the following is a translation :—

"26*th October* 1863.

"To

"Her Highness Matostri Kamatchi Ammal Boyi Saib.

"In the presence of Nelakanta Pillai Madhiast of "Mokasa, &c., Dimmati Izara Muchilika executed by "Krishnasawmy Aiyyar, Narakistnaji Pandithar, Kristna-"sawmy Aien, Sokalinga Pillai and the others that have "signed below, being the Mirasidars of the village of Kila-"karakai. As we have taken up the said village on rent "from the current Fusly 73 up to Fusly 75 at the following "annual rates, namely, calams 195 and marcals 2½ being "the melvaram including mahamai, due out of a standard

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"gross produce of calams 389 and marcals 5, realizable from "valies 2 and gulies 85½ grown with kaddapupaddy, and ca- "lams 765, bring the melvaram including mahamai, due out "of a standard gross produce of calams $\frac{16}{20}$ and marcal 1 "realizable from valies 13, mahs 8 and gulies 10⅞ grown with "sambapisanam paddy, making a total of calams 960 and "marcals 2½ (calams nine hundred and sixty and marcals "two and half) due out of a standard gross produce (realiz- "able from valies 15, mahs 8 and gulies 96⅜) of calams 2009 "and mahs 6 by a marcal of 10½ seers, including vial poonjah "produce and excluding cooly and sotantarams, and a teerwah "of Rupees 11-14-9 due on valies 1, mahs 11, and gulies $34\frac{5}{16}$ "of poonjah land, a teerwah of Rupees 37-15-3 due on a valies 1, "mahs 16 and gulies 68⅝ of sornadayam land, thus making "a total teerwah of Rupees 49-14-0 due on valies 3, mahs 8 "and gulies $2\frac{15}{16}$ of poonjah, &c., land and aggregating to "Rupees 136-1-6, together with Rupees 84-15-3, sundry "items and Rupee 1-4-3, nezar, we shall pay the said "ready money item, and the price of the nunjah melvaram "according to the price of each year, as prevailing in the "mahanam, with the usual caval and treasury fees, by "instalments to be fixed by the palace authorities, and shall "obtain katchats for the same. Moreover, if land out of "poonjah waste is brought under cultivation, or if a second "crop is raised on nunjah one crop land, we will also pay "teerwah for the same in proportion to the above assessment. "When such maramut works of the village as clearing the "channel, &c., may have to be executed, we will carry out "the same according to any estimate which may be framed "by the palace authorities, and will receive such an amount "for them as may be found due on examination of the work. "We have thus to the foregoing effect executed this izarah "muchilika out of our own free will * * * 20 "signatures omitted. Signature of Pavadai Naick, Mirasidar. " * * * * 3 signatures omitted. "Signature of Pavadai Naick holding on swamibhogum the "lands of Valayuda Pillai, Mirasidar.

" * * * * One signature and "attestations, &c., omitted."

Plaintiff states that the amount claimed from the defendants in this cause is their share of the total assessment

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payable under the said muchilika, such share being determined with reference to the extent of land they hold.

2nd defendant contends, among other things, that under the muchilika in question he has incurred no separate liability to any extent, and that any responsibility arising under it attaches to all the renters bound by it as a body only.

The case was heard on the 4th October and 11th November 1869, and was adjourned for further consideration, subject to the decision of the High Court upon the following case.

The plaintiff urges that it was always understood between the parties to the muchilika that each person liable to pay assessment had only to pay an amount which was due on the extent of land held by him, with reference to the total amount of assessment, which alone required, therefore, now and then to be fixed; and that consequently, by the muchilika in question, the total assessment was only determined by the contracting parties, the separate liability of each individual land-holder being presumed to follow, as a matter of course, in accordance with the custom which has obtained among them. He also adds that though the former muchilikas executed by the defendants and others were also worded to the same effect as the one under consideration, each party liable under them was, as a matter of course, only paying his share of the total assessment; and, insisting on his right of explaining the terms of the muchilika in question by giving in evidence the aforesaid custom, has, requested me to make a reference to the High Court as to whether under the circumstances set forth by him he is not entitled to adduce such explanatory evidence.

The question which I, therefore, respectfully beg to submit for the decision of the Honorable the Judges of the High Court is, whether as the plaintiff requests, he can be allowed to add to the terms of the muchilika in question, so as to make it import a separate responsibility in each party liable under it for only a defined portion of the amount of it, by adducing that sort of evidence which he wishes to do.

I would respectfully beg to add that it is my opinion that plaintiff should be allowed to adduce the said evidence

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under the rule which sanctions the evidence of custom being admitted in explanation of written documents, as the effect of the evidence that the plaintiff would adduce will not be to vary or contradict the terms of the muchilika in question, but to superadd one condition to them, which, he says, was always taken for granted between the contracting parties in regard to their agreements with reference to the assessment in question.

No Counsel were instructed.

The Court delivered the following

JUDGMENT:—We are of opinion that the oral evidence sought to be adduced in support of the alleged several liabilities of the defendants and the other tenants who are parties to the muchilika is not legally admissible. There is no ambiguity in the terms of the muchilika. It plainly expresses a joint tenancy and a joint contract by all the tenants to pay the whole rent of the village at the stipulated rates without reference in any way to the quantity of the land in the holding of each. In effect therefore what is sought to be done by the oral evidence is to alter the written contract by showing that separate specific contracts were entered into by each of the tenants and not one joint contract by all. This if allowed would be a direct violation of the well established salutary rule of law that oral evidence cannot be used to contradict or vary the clear meaning of a written instrument.

It makes no difference in the case that the evidence has been put forward as evidence of a custom. In reality it appears to be simply evidence to show that the parties to previous similar contracts had not insisted on the terms of such contracts being strictly complied with. But as evidence of a custom it is equally inadmissible. Such evidence is available to explain the meaning of the language of a contract or to annex an incident consistent with its meaning, but not to prove something which is excluded by the express terms of the written instrument. We therefore answer the question submitted in the negative.