MADRAS HIGH COURT REPORTS.

Appellate Jurisdiction (a)

Regular Appeal No. 73 of 1868.

VENKATAKRISTNAYIA..........................*Appellant.*

VENKATACHALAIYAR..........................*Respondent.*

In a suit brought by plaintiff for the specific performance of an agreement entered into between the plaintiff and defendant, whereby the defendant, an Abkarry Contractor, undertook to sublet to plaintiff the Abkarry of a Talook, and also to recover damages for the breach of contract.

Held, that Section 9 of the Abkarry Amendment Act (Madras Act III of 1864) did not affect the rights and liabilities of the parties *inter se* under the terms of an unexecuted contract to sub-rent, although the Act would prevent the sub-renter deriving any benefit under an executed contract of sub-renting from the excise or the manufacture or sale of liquor as defined in Section 2, until he had complied with the condition prescribed in Section 9 of the Act.

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THIS was a Regular Appeal against the Decree of H. D. Cook, the Civil Judge of Coimbatore, in Original Suit No. 32 of 1866.

The suit was for confirmation of plaintiff's title for 2 years to an abkarry sub-contract, for possession of the same, and for recovery of rupees 612-13-6 profit due for 18 days from 1st July 1866, and for subsequent profits until possession was given at the rate of rupees 1,021-6-8 per mensem.

The plaint set forth that on the 22nd May 1866 defendant entered into an agreement with plaintiff, that on his (plaintiff's) depositing with one Damoder Sait, of Coimbatore, defendant's agent, the sum of rupees 5,640-10-8 on the 29th May 1866, plaintiff was to enjoy the abkarry contract of the Perundoray taluk for 2 years, from the 1st July 1866 to 30th June 1868, and to continue to pay to defendant monthly a rent of rupees 2,820-5-4; that he (plaintiff) deposited the aforesaid sum which is equal to 2 months' payment but has not been put in possession of the contract. Hence the suit.

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

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The defendant stated that no such agreement took place as stated in the plaint; the contract in question did not belong to plaintiff and he was not in possession of it. He objected to the alleged yield of the farm as set forth, and added that on the 22nd May 1866 plaintiff's brother Streenivassamurti Iyen and Vyasa Row, plaintiff's son-in-law, came to defendant at Comara Pollium, Salem district, and requested him, defendant, to sub-rent the Perundoray farm to them; that he, defendant, proposed to rent the farm to them for rupees 33,844 per annum for 2 years, with the exception of certain villages, and that if within 8 days they should deposit 2 months' kist with Damoder Sait at Coimbatore and execute a muchilka he, defendant, would send them a lease bond and write a letter to the aforesaid Damoder Sait accordingly.

They failed to do so, and on the 30th or 31st May the plaintiff appeared before him, defendant, and stated that he had deposited rupees 5,640-10-8 with Damoder Sait and had executed a muchilka and asked him, defendant, to lease the contract to him; that he (defendant) told plaintiff that he had not promised to lease the farm to him, and that if he (plaintiff) was desirous to take it he ought to give security, but he did not do so.

The issues fixed were,

I. Whether the agreement was entered into or not.

II. Whether or not the farm yields the amount set forth.

The Civil Judge decided that beyond preliminary negotiations nothing was effected and that no final contract was entered into between plaintiff and defendant on the ground that the former refused to give the security demanded; therefore the plaintiff's action for breach of contract could not be sustained. He dismissed the suit, each party to bear his own costs.

The plaintiff appealed to the High Court against the decree of the Civil Court on the ground that it was against the weight of evidence.

Sanjiva Row, for the appellant, (plaintiff.)

Miller and *Venkatapathy Row,* for the respondent, (defendant.)

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The Court delivered the following

JUDGMENT:—This was a suit for the specific performance of an agreement entered into between defendant and plaintiff whereby defendant, the Abkarry contractor for the Coimbatore District, undertook to sub-let to plaintiff for a period of two years the Abkarry of the Perundoray Talaq: also for damages Rupees 612-13-6, being the net profits wrongfully withheld from him by the defendant since the breach of the agreement, and further damages at the rate of Rs. 1,021-6-8 a month until he is put in possession. Defendant pleaded that the negotiation, to which plaintiff gave the name of an agreement, had been entered into not with plaintiff but with Srinivassamurti Aiyar, the younger brother, and Vyasa Row, the son-in-law of the plaintiff, and that no agreement had been come to with them as the negotiation had fallen through. He disputed the value also of the profits upon which plaintiff based his claim to the damages sought for.

The Civil Judge dismissed the plaintiff's claim, but gave no costs.

The plaintiff has appealed on the ground that the contract to sub-rent and the breach of it were fully established by the evidence, and we think that is so; but before expressing our judgment on the point fully, it is necessary to consider the legal objection taken on behalf of the defendant to the plaintiff's right to recover for a breach of the contract, namely, that the contract was invalid for any purpose under the provision in Section 9 of the Abkarry Amendment Act (Madras Act III of 1864.)

The Section enacts that "Abkarry Renters shall be at "liberty to sub-rent their farms on such terms as they and "their sub-renters may respectively agree upon. Sub-renters "shall execute in the mode prescribed in Section VIII of "this Act, engagements containing such conditions as the "Board of Revenue shall from time to time prescribe. No "sub-renter shall establish any still or shop or manufacture "or sell any liquor, nor shall any contract of sub-renting be "valid at law, or be recognized for the purposes of this Act, "unless and until such engagement shall have been executed "and a license agreeably thereto shall have been issued to

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"the sub-renter by the Collector." We are of opinion that this provision was not intended to affect the rights and liabilities of the parties *inter se* under the terms of a contract to sub-rent, but to prevent the sub-renter deriving any benefit under an executed contract of sub-renting from the excise on the manufacture or sale of liquor as defined in Section 2 of the Act, until he had complied with the prescribed conditions. The collocation of the sentence in which the words relied upon "nor shall any contract of sub-renting be valid at law" occur, does not preclude their being read with the words "for the purposes of this Act," and the preceding words of the sentence seem to us to favor that reading. But, the intention deducible from the nature of the Act and its whole scope and purpose is sufficient, we think, to remove all doubt.

It is purely an excise Act passed as the preamble declares to amend the laws providing for the manufacture, sale, transit and possession of distilled or fermented liquor beyond certain limits, and its other provisions relate strictly to the protection of the exclusive privilege and control of the Government in and over the manufacture and sale of such liquors, to the recovery of the revenue arising therefrom, and to Police Regulations connected therewith. Obviously, the sole intention of the Legislature was to regulate the mode in which the manufacture and sale of excisable liquors should be actually carried on by licenses, renters and sub-renters. That intention must govern the construction of the Section and giving effect to it the 2nd Clause cannot be given the general operation contended for.

The plaintiff is not seeking to enforce any right of a sub-renter under the Act. The contract to sub-rent is still executory, and his suit was brought to compel the defendant to execute the contract, and so put him in a position to execute the engagement and obtain the license required by the 2nd Clause of the 9th Section. As long as the defendant refused to complete his contract, the plaintiff was not in a position to comply with the clause. For these reasons we are of opinion that the section does not affect the rights and liabilities of the parties *inter se* under an unexecuted contract to sub-rent, and that either of the parties may sue to enforce its completion. The objection therefore fails.

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[The judgment, having dealt with the evidence in the case, concluded as follows.]

It is clear therefore, that there was a complete agreement entered into by defendant with plaintiff to sub-let to the latter the Talook of Perundoray, and that nothing has occurred to release defendant from the obligation of performing his part of this agreement.

The decree of the Civil Court must be reversed, but at present we cannot declare the liability of the defendant. The term for which he agreed to sub-rent has expired, and to enable us to decide as to the damages to which the plaintiff is entitled, the Civil Court must be required to find with reference to the 2nd issue recorded in the case :—

What is the balance of the *net* profits received by the defendant from the Perundoray Talook from the 1st July 1866 to the 30th June 1868, after deducting the amount of the rent which the plaintiff agreed to pay ?

It is accordingly ordered that the foregoing issue be, and the same hereby is, referred to the Lower Court for trial; the finding thereon, together with the evidence, to be returned to this Court within three weeks from the date of receiving this order.

Appeal allowed.