APPELLATE JURISDICTION (*a*)

Special Appeal No. 195 *of* 1870.

MÁHÁLATCHMI AMMÁL.....*Special Appellant.*

PALANI CHETTI and 3 others.....*Special Respondents.*

Suit to eject defendants (who held under a lease, Exhibit A.) from a house-ground and to compel them to remove the buildings thereon erected. The defendants pleaded that A. was a permanent lease and that plaintiff had no right to eject. The lease, A., expressly authorized the lessee to build. The Court of First Instance, holding that A. was not a permanent lease, decreed as sued for. The Appellate Court, while concurring with the Munsif as to the construction of A., gave to the plaintiff the option of paying for the house and resuming the land, or of receiving the value of the land from the defendant. *Held*, that the decree of the Principal Sadr Amin was right.

Muttukaruppa Kaundan v. *Rama Pillai*, 3 M. H. C., 58, applies to the defendant's admission of a transaction embodied in a written document not receivable in evidence, and is no authority whatever for construing a document present to the Court upon a defendant's admission.

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THIS was a Special Appeal against the decision of T. Kristnasámi Áyyar, the Principal Sadr Amin of Tanjore, in Regular Appeal No. 258 of 1869, modifying the decree of the Court of the District Munsif of Combaconum in original Suit No. 639 of 1865.

Plaintiff sued to eject the defendants from a house-ground rented out by her to one Vaidi Chetti, an undivided member of the defendant's family, under a lease bond (exhibit A) dated the 22nd November 1844. Plaintiff also prayed that the defendants be compelled to remove the buildings which had been erected on the house-ground in question, and which she valued at Rs. 210. The defendants admitted the document A., but contended that under the terms thereof, the plaintiff had merely a right to rent and could not eject. They also stated that the buildings were worth Rs. 1,000. By the terms of A. the lessee was authorized to build on the ground. The Munsif held that A. was not a permanent lease, and remarking on the contention of the defendants' Vakil that there was an alteration in A. whereby the figure 1 had been substituted for 60, said "even supposing that this alteration was made fraudulently by the plaintiff and that it vitiates the rent-deed entirely, I can see no reason why I should not give a decree in favor of plaintiff on the mere admission of the defendants, who have said that the lease had no term fixed

(*a*) Present : Holloway and Innes, JJ.

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for it, such admission being as much original evidence as the said lease. Vide *Referred Case No. 10 of* 1866, M. H. C. Reps., 158." He therefore decreed that the defendants should remove the buildings and restore the land sued for to plaintiff with arrears of rent.

On appeal the Principal Sadr Amin confirmed the decision of the Munsif as to the construction of the lease A., but in modification of his decree said "Equity and common sense alike compel me to pronounce that the defendants are entitled either to have the value of the building erected on the house-ground, and which is estimated by the Commissioner deputed by the Lower Court at Rs. 575, paid to them before being evicted, or, at the option of the plaintiff (the person causing the eviction), to purchase her interest in the ground at the value thereof as laid down in the plaint, irrespective of the value of the building. A decree of the above nature seems also conformable to the spirit of Section 2, Act XI of 1865."

Plaintiff preferred a special appeal.

R. Balaji Rau, for *Savundranayagam Pillai*, for the special appellant, the plaintiff.

The Court delivered the following judgments :—

HOLLOWAY, J.—In this case a lessee has been ejected from a parcel of land upon which he had built a house worth Rupees 575. The defendant below contended that the lease should be construed as giving a right of permanent occupation. The Munsif decreed restoration with arrears of rent. The Principal Sadr Amin, while agreeing with him that the lease did not give a right of permanent occupation, gave to the plaintiff the option of paying for the house and resuming the land, or of receiving the value of the land from the defendant.

The case at 3 M. H. C., 158 has been misapplied by the Munsif. That case applied to the defendant's admission of a transaction embodied in a written document not receivable in evidence, and is no authority whatever for construing a document, present to the Court, upon a defendant's admission. The construction of a document before the Court was a question of law to be determined by Grammar and Logic,

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the primary organs of interpretation, aided, where necessary by the subsidiary one of usage, were admissible to throw light upon the meaning of the words used.

The Principal Sadr Amin put the same construction upon the document, and the defendant has not appeared to contest that construction. In basing the judgment upon what is termed the spirit of Act XI of 1865, a canon of interpretation has been violated. Section 3 of the Act strictly limits the application to cases governed by English law. The Act is, therefore, a "ius singulare" which admits of no extension by analogy. Equity, too, had nothing to do with the construction to be put upon the instrument. Its office can only be to modify the natural results of the meaning, in consequence of considerations external to the instrument itself and based upon the conduct of the party against whom such relief is sought. While, however, compelled to dissent from the course of reasoning of the Lower Courts, I am of opinion that the decree should be upheld, and upon the circumstances of this transaction. A piece of lands of small value is granted as a house site. The resumption of such land at all is most uncommon; the general understanding is that the holding shall be in perpetuity at the fixed rent. The contract being in writing we are not at liberty to say that the tenancy is to endure beyond the term expressly fixed, but, following many cases, we are at liberty to say that the resumption shall be only upon the terms of the lessor compensating for the permanent improvements upon the land, and we are certainly not at liberty to say that in so deciding the Principal Sadr Amin is wrong. I am of opinion that the appeal should be dismissed.

INNES, J.—Plaintiff lets the land to defendant by an instrument in which it is expressly permitted him to erect permanent buildings. This instrument has been construed as a lease from year to year, and that construction has not been disputed in Special Appeal. It must, therefore, be taken to be what it has been found to be. But it is clear that it could not have been the intention of the parties that, after defendant had gone to the outlay contemplated by the agreement of the parties, plaintiff should be at liberty to treat this as a lease from year to year and nothing more, and to eject de-

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fendant at any yearly term, with the almost total loss of the advantage to be derived from the money he has been induced under the agreement, to lay out. For, if this were so, all that defendant could do would be to pull his house to pieces and remove the materials, which would not, of course, realize anything like the value of the building.

I think, therefore, that the decision of the Principal Sadr Amin is in accordance with principle in decreeing that plaintiff, before ejecting defendant, must pay the value of the buildings.

I agree in dismissing this Special Appeal.

APPELLATE JURISDICTION (*a*)

Special Appeal No. 27 of 1871.

KRISTNA MUDALI.....*Special Appellant.*

SHANMUGA MUDALIAR.....*Special Respondent.*

Plaintiff sued, as managing trustee of a choultry, to set aside certain mortgages of the lands with which it was endowed, made by the 2nd 3rd and 4th defendants to the 6th and 7th defendants, and for an injunction to compel payment of kist, which had been allowed to fall into arrears, contrary to the provisions of Exhibit A, the muchalka sued upon. The defendants pleaded that the mortgages made were not in violation of the provisions of Exhibit A. The Court of First Instance dismissed the suit. On appeal, the Civil Judge considered the provisions in Exhibit A—"Moreover, we are only entitled to cultivate the said four villages and to maintain the said choultry with the income therefrom as above stated; and we have no right to alienate the said lands by sale, &c."—fatal to the right to mortgage advanced by defendants 1 to 6. Accordingly he reversed the decree appealed from.

Held, by SCOTLAND, C. J.—That the reasonable construction to be put upon that portion of the rázináma relating to alienation was that the villages were not to be alienated so as to deprive the choultry of the receipt of the portion of the produce fixed by the rázináma for its support. That the security of the cultivation of the land and the application of the fixed portion of the produce to the maintenance of the choultry was all that the parties intended to effect. That there was nothing in the record to show that the payment of that fixed portion had been rendered less certain by the transfer of the villages to the mortgagees. That, consequently, the beneficial interest of the plaintiff, as trustee under the rázináma, was not impaired, and the mortgages were not made in violation of the provisions of Exhibit A.

By HOLLOWAY, J.—That the right set up was based upon a purely capricious exercise of the plaintiff's will, in the effectuation of which he had no conceivable interest: that contractual words seeking to create a right of this sort are ineffective to create it, and that, consequently, the alienations by mortgage were wrongly declared void.

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THIS was a Special Appeal against the decision of C. R. Pelly, the Acting Civil Judge of Tranquebar, in Regular Appeal No. 71 of 1870, reversing the decree of the Judge of the Court of Small Causes at Negápatam, on the Principal Sadr Amin's Side, in original Suit No. 85 of 1869.

(*a*) Present: Scotland, C. J. and Holloway, J.