

Suit No. 98 of 1908.

Hatising Rowjee . . . . . Plff.

vs.

Abdul Ali Hakimjee & Bros. . . . . Defs.

18th. September 1908.

Coram. Russell J.

Judgment. I do not hesitate to say that

this document raises a question of considerable difficulty under the Registration Act. I first read the material parts of it as translated to me by the Interpreter of this Court. (I read it).

Now a lease is defined under Section

105 of the Transfer of Property Act, as follows: [Found in]

~~Transfer of a right to enjoy such property,~~  
made for a certain time, in consideration of  
~~a price paid or promised or of money &c.~~ The

transferor is called the lessor and the

transferee is called the lessee. Section

107 says :- " A lease of immovable property

from year to year, or for any term exceeding

one year, or reserving a yearly rent, can be made only by a registered instrument". So under the Transfer of Property Act it is only a lease exceeding one year which must be made by a registered instrument but then we have the Registration Act. Section 3 says:- "In this Act, unless there be something repugnant in the subject or context --

"Lease" includes a counterpart, kabuliyat, an undertaking to cultivate or occupy, and an agreement to lease".

Now, as has been pointed out, clause (d) of Section 17 of the Registration Act says:-

"Leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent", and this section

afterwards goes <sup>on</sup>:- "Nothing in Clauses (b) &

(c) "[only (d) being left out] applies to the documents thereafter specified amongst which is a document which merely creates a

right to obtain another document. Now it seems to me that clause (d) of section 17 was omitted by reason of section 3 of the Registration Act covering agreements to lease and accordingly - extraordinary although it may seem and as it does seem to me - agreements to lease must be registered and in that way they are differentiated from agreements which create a right to obtain another document. So I have pointed out I think I may fairly say that it appears that section 106 and section 107 of the Transfer of Property Act were evidently drawn without considering the effect of section 3 of the Registration Act. I can only interpret the sections as they stand and appear to me.

Now I must consider this very ambiguous document. First of all I think I am bound to hold that it is an agreement for the transfer of the owner's right to enjoy this particular property in future. I think

that must be so because it says "The contract of that house has been given to you"; then it goes on "The time of the contract has been fixed for 3 years" - that is to say, you are to begin enjoyment of this, contract from the 1st. of December 1907 and it is to last for 3 years. Then again it goes on to say "If should you delay during that period the payment of the rent which may have accrued due to us then I/we may act according to our wish and cancel the contract". that is to say, we shall have the power of extinguishing the term to be created by some future document. As I have said the question to my mind is one of great difficulty - it has been elaborately argued by both the sides and it is quite possible that some other Court may come to different in my conclusion but ~~as a~~ opinion the only conclusion is that this document does require registration and therefore I cannot

that its conclusion shows that with a further document is essential to the effect of the contract and if it is to be valid in the court of law it must be registered in the court only

admit it in evidence.

Wm. White  
S. H. White  
23-9-08