

*Special Appeal No. 205 of 1871.*1871.  
July 19.

SHEKH IBRA'HIM valad SHEKH LA'DLI MIYA'. *Appellant.*  
PARVA'TA' valad HARI ..... *Respondent.*

*Oral Evidence to prove a Written Contract inadmissible—Registration  
—Act XX. of 1866—Admission in a Deposition.*

A written contract can only be proved by the production of the writing itself, and if the document is inadmissible from want of registration, no secondary evidence of the contract can be received.

A party's admission as to the contents of a document not made in the pleadings, but in a deposition, is secondary evidence, and cannot supply the place of the document itself.

THIS was a special appeal from the decision of the Assistant Judge of Solápur (A. C. Watt) in Regular Appeal No. 24 of 1871, reversing the decree of the Subordinate Judge of Bársi.

The plaintiff sued to recover possession of a field No. 121, and a well situate therein, and stated that he had let them to the defendant for three years, but that the defendant declined to vacate them at the expiration of the period.

The defendant pleaded that he held two bonds from the plaintiff under which the property was to continue with him till the debt was paid off.

The Subordinate Judge of Bársi found that the plaintiff, according to the terms of the contract between him and the defendant contained in the bond (exhibit No. 8), was not entitled to recover the property till the debt due on the bond was satisfied, but allowed the plaintiff's claim, as the bond was not registered, and, therefore, not admissible in evidence.

In appeal the Assistant Judge remanded the case, and directed that the defendant should be at liberty to give oral evidence of his right to hold the property.

The following is an extract from his judgment:—

“I am clearly of opinion that No. 8 must be registered to be receivable as evidence in respect to the immoveable property which forms the subject of this suit, and, therefore, the Subordinate Judge is right so far in not receiving it as evidence. I would, however, mention that, in accordance with Full Bench Ruling, Vol. XII., p. 11, Sutherland's Weekly

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Reporter, the document would be admissible as respects the money part of it.

“On the second issue, I find that the defendant should have been allowed to prove by oral evidence what his right of occupancy is to the land, and in support of this view I rely on the case reported in Calc. W. Rep., Vol. IX., p. 351. The Subordinate Judge has wholly discarded the defendant's right, because No. 8 was not registered; and, unless there be a provision of law that all contracts must be reduced to writing, it is clear that oral evidence is admissible to prove any contract, and the Subordinate Judge should keep in view the distinction between the actual contract itself and the evidence of it. Exhibit No. 8, although in common speech called a contract, is not strictly so, but is only evidence of the contract which is engrossed upon it. In this case the defendant not being allowed to produce oral evidence is clearly inequitable. It is admitted on both sides that the defendant is in actual possession of the land, and it is also admitted that his possession is that of a tenant of the plaintiff. In No. 8 there is an agreement that the termination of the tenancy is dependent upon the plaintiff paying the defendant a certain sum, and the plaintiff in exhibit No. 36 admits this contract. This document (No. 8) is not receivable as evidence by Act XX. of 1866, and this being so, it appears to me the clear duty of a Court of Equity was to ask the plaintiff whether he did agree that the defendant's tenancy was to continue until the debt was paid. If the plaintiff admit this, then the decision of the Subordinate Judge is erroneous on the merits. If the plaintiff deny this, then the defendant should have an opportunity to lead oral evidence to prove his contract and the terms of his tenancy. I must, therefore, remand the case under Sec. 354, for the determination of the following issue:—

“Does the defendant hold the land as a tenant of the plaintiff until the plaintiff pay him the sum of Rs. 200?”

On the receipt of the case with the further evidence desired, the Assistant Judge reversed the decree of the Subordinate Judge, and threw out the plaintiff's claim.

The special appeal was argued before MELVILL and KEMBALL, JJ., on the 19th of July 1871.

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*Nánabhái Haridás*, for the special appellant:—The Assistant Judge was wrong in holding that oral evidence was admissible to prove the contents of the bond (exhibit No. 8), the same being inadmissible as evidence under Act XX. of 1866. The only evidence of importance for the defendant being that bond, and that being inadmissible, the lower court was wrong in not disposing of the case on that preliminary point, as the Subordinate Judge had done.

*Bhairavnáth Mangesh* for the special respondent.

PER CURIAM:—It is admitted that the plaintiff is entitled to recover the land, unless the defendant can make out a right to retain the land as mortgagee. The agreement as to the mortgage having been reduced into writing, it can only be proved by the production of the writing itself, and the document is in this case inadmissible from want of registration. The defendant cannot be allowed to produce secondary evidence of the contract, and the plaintiff's admission, made not in the pleadings, but in a deposition, is merely secondary evidence, and cannot supply the place of the document itself. On this ground, the Court reverses the decree of the lower appellate court, and restores that of the court of first instance.

Costs on the defendant throughout.

*Decree reversed.*