

We must, therefore, reverse the decree of the Court below and restore that of the Subordinate Judge, with costs in this Court and in the Court below on the plaintiff.

1889
NOV. 18.

APPELLATE
CIVIL,

14 B. 317.

14 B. 319.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Hart.

JIVRAJ GOPAL (*Plaintiff*) v. ATMARAM DAYARAM (*Defendant*).*
[21st November, 1889.]

Landlord and tenant—Registration—Lease reserving annual rent—Construction.

The defendant executed to the plaintiff a rent-note under which he rented two houses from the plaintiff at a rent of Rs. 18 *per annum*. The document provided that the defendant was to live in the said houses so long as the plaintiff permitted him to do so, and so long as he should pay the rent. He was to vacate when asked to do so by the plaintiff.

Held, that the lease created a tenancy-at-will, and did not require registration, although an annual rent was reserved thereby.

[R. 9 C.P.L.R. 57; D., 19 B. 150; 9 C.P.L.R. 88.]

THIS was a reference by Khan Saheb Jahangirshah Edalji Modi, Subordinate Judge of Viramgam, under s. 617 of the Civil Procedure Code (Act XIV of 1882). The question was whether the following rent-note was compulsorily registrable under s. 17 (*d*) of the Registration Act?

The Subordinate Judge's opinion was in the affirmative.

(Translation of the rent-note.)

"The 1st of *Shravan Sud Zalavad* in the *Samvat* year 1943, the English date the 1st August, 1886. To Shah Jivraj Gopal; written by Raval Atmaram Dayaram, residing at mauze Chorvadodara. To wit: your houses, two in number, situated in mauze Chorvadodara, particulars whereof are as follows (Here followed the description.) I have this day hired from you the [320] abovementioned two houses, which are *kacha* buildings, together with doors, door-frames, all the '*dhako-dhuno*' (? furniture, &c.), old building materials and eaves. Rupees 18, namely, eighteen, Bombay currency, have been agreed to be paid to you as rent thereof *per* one year. I am to live therein so long as you allow me to do so and pay the rent as mentioned above. When you will ask me to vacate (the said two houses of yours), I will do so without dispute and deliver them over to you. As regards daubing the said two houses (and besmearing them) with cow-dung mixed with earth and earth and the turning of the tiles, together with the loss of tiles, the same is to be on the head of Raval Atmaram. I have given this lease in writing of my free will and accord and in my sound mind and body and consciousness. The same is agreed to by me and my heirs and representatives. What is written above is valid."

JUDGMENT.

SARGENT, C.J.—We think the lease in question must be construed as creating a tenancy-at-will, and, therefore, not requiring to be registered,

* Civil Reference, No. 19 of 1889.

1889
 NOV. 21.
 APPEL-
 LATE
 CIVIL.
 14 B. 319.

although an annual rent is reserved. A lease on which a yearly rent is reserved, as contemplated by s. 17, cl. (d), of the Registration Act, must, we think, be one which on the proper construction of it would create a tenancy from year to year. This we presume was the opinion of the Allahabad Court in *Khuda Bakhsh v. Sheo Din* (1).

14 B. 320.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and
 Mr. Justice Nanabhai Haridas.

CHINTAMANRAV MEHENDALE (*Original Defendant*), Appellant v.
 KASHINATH, MINOR, BY HIS GUARDIAN (*Original Plaintiff*),
 Respondent.* [2nd December, 1889.]

Hindu law—Father and son—Liability of ancestral estate for father's debts—Improper and immoral debts of father—Evidence of general immoral character of father not enough—Evidence—Burden of proof.

The power of the father, as representative of the family, to bind the son's interests in the family estate except in special cases, being judicially recognized, [321] the onus of establishing the existence of those special circumstances necessarily lies on the sons for the purpose of defeating his creditor's remedies against the ancestral estate.

The plaintiff sued to recover the balance of a debt due on a mortgage-bond alleged to have been executed in 1875 by the defendant's father (since deceased) to the plaintiff's father. The defendant (*inter alia*) pleaded that the loan was contracted without his knowledge and for immoral purposes, and that his share in the mortgaged property was not answerable for the debt. He also contended, as to a sum of Rs. 109-8-0 claimed by the plaintiff, that this sum was claimed in respect of *saranjam*, and was not recoverable by the plaintiff without a certificate under the Pensions Act.

The lower Court found that the defendant's father had been a man of extravagant and vicious habits, but held that the defendant had failed to prove that the debt in question had been contracted for immoral purposes. The Judge, therefore, awarded the plaintiff's claim. On appeal by the defendant to the High Court,

Held, confirming the decree of the lower Court, that the burden lay on the defendant of proving that the loan to the father secured by the mortgage-bond in the suit was for an illegal or immoral purpose, and that the defendant had not discharged this burden. The mere proof that his father had been a man of extravagant and immoral habits was not enough.

Held, also, that as no certificate from the Collector had been produced, as required by the Pensions Act XXIII of 1871, the claim to Rs. 109-8-0 should be disallowed.

[F., 20 B. 534 (537); 9 Bom.L.R. 125 (135); Appr., 24 B. 343; 2 Bom.L.R. 450; R., 28 A. 508=3 A.L.J. 274=26 A.W.N. 117; 30 A. 156=5 A.L.J. 175=28 A.W.N. 61; 31 A. 176=6 A.L.J. 263=1 Ind. Cas. 479; 36 B. 63=13 Bom. L.R. 1161; =12 Ind. Cas. 949; 20 C. 328; 29 M. 200 (F.B.)=16 M.L.J. 69=1M.L.T. 23; 17 C.L.J. 38=17 C.W.N. 280=18 Ind. Cas. 625; 6 C.P.L.R. 140; 6 M.L.J. 139; 14 M.L.J. 181.]

APPEAL from a decision of Rav Bahadur G. A. Mankar, First Class Subordinate Judge of Satara.

Suit by a mortgagee praying for sale or foreclosure.

* Appeal, No. 12 of 1885.