

1893

18 B. 107.

JAN. 23.

APPELLATE CIVIL.

APPEL-
LATE*Before Mr. Justice Candy and Mr. Justice Fulton.*

CIVIL. ABU BAKAR SAIBA AND ANOTHER (*Original Defendants*), *Appellants v.*
 VENKATRAMANA VISHVESHWAR (*Original Plaintiff*), *Respondent*.^{*}
 18 B. 107. [23rd January, 1893.]

Landlord and tenant—Notice to quit—Plea of permanent tenancy.

The plaintiff sued to eject the defendants from certain land. The defendants pleaded that they were permanent tenants under a lease granted to their ancestor by the plaintiff's grandfather in 1805. The Court of first instance awarded the plaintiff's claim. On appeal, the District Judge held that the lease on which the defendants relied was one determinable on the grantee's death, but as the grantee's heirs (the defendants) had continued in possession paying the stipulated rent, they were entitled to a reasonable notice to quit. The District Judge accordingly passed a decree, directing the defendants to vacate the land at the expiry of six months from the date of the decree.

Held, that the District Judge could not, in his judgment, give the notice which the plaintiff was bound to give to his tenants. Plaintiff's suit must fail for want of notice.

[F., 6 M.L.J. 59 (61); R., 20 B. 759 (761).]

SECOND appeal from the decision of Arthur H. Unwin, District Judge of Kanara, in appeal No. 47 of 1891.

The plaintiff sued to eject the defendants from the land in dispute.

The defendants pleaded (*inter alia*) that they were permanent tenants, holding under a lease granted by the plaintiff's grandfather in 1805 to their ancestors.

The lease contained the following stipulation on the part of the lessor:—"I will take back the land when you yourself surrender it. I for my part will not ask you to quit."

[108] The Subordinate Judge held that the lease in question was a lease for life only, and that on the death of the lessee the tenancy came to an end. He, therefore, passed a decree, awarding possession of the land to the plaintiff.

On appeal, the District Judge was also of opinion that the lease was one for life, determinable on the death of the grantee. But he held that as the grantee's heirs had continued in possession paying the stipulated rent, they were entitled to a reasonable notice to quit. He, therefore, amended the decree of the Court of first instance by directing that the defendants should surrender the land in suit to the plaintiff at the expiry of six months from the date of the decree.

Against this decision the defendants appealed to the High Court.

Manekshah Jehangirshah, for appellants.—Plaintiff has not given us any notice to quit. He is not, therefore, entitled to recover. The District Judge has no power to do that which the plaintiff was bound to do. The plea of permanent tenancy which we had set up does not dispense with the necessity of a proper notice—*Vithu v. Dhondi* (1). That case is conclusive on the point.

Shamrao Vithal and N. G. Chandavarkar, for respondents.

* Second Appeal No. 774 of 1891.

(1) 15 B. 407.

JUDGMENT.

CANDY, J.—The District Judge held that defendants 8 to 13 were entitled to notice, and the plaintiff has taken no objection to that ruling. The District Judge, however, has in his judgment given the notice which he thought the plaintiff was bound to give his tenants. This he could not do. On the authorities collected in *Vithu v. Dhondi* (1) we must reverse the decree of the District Judge and reject the claim. All costs on plaintiff.

Decree reversed.

18 B. 109.

[109] APPELLATE CIVIL.

Before Mr. Justice Candy and Mr. Justice Fulton.

PARSHOTAM VISHNU (*Original Plaintiff*), *Appellant v. NANA PRAYAG* (*Original Defendant*), *Respondent*.* [23rd January, 1893.]

Registration Act III of 1877, s. 17 (d)—Lease—Lease for life of the lessee—Registration.

A lease of immovable property for the life of the lessee is a lease for a term exceeding one year. It, therefore, requires registration.

SECOND appeal from the decree of Khan Bahadur N. N. Nanavati, First Class Subordinate Judge, with appellate powers, of Dhulia, confirming the decree of Rao Saheb D. S. Sapre, Second Class Subordinate Judge of Nandurbar in suit No. 994 of 1889.

The plaintiff sued to recover possession of a piece of land, alleging that it was leased by him to Nana Prayag for his life under an agreement dated 25th March, 1878; that in violation of this agreement Nana had assigned 7 gunthas of this land to defendant No. 2, and that after Nana's death his heir, defendant No. 1, refused to vacate the land.

The agreement, on which the plaintiff relied in support of his claim, provided as follows:—

" I (the lessee) shall continue to pay each year Re. 0-12-5 to you in the month of February, and I shall enjoy the said land as long as I live."

The Subordinate Judge held that the agreement in question was compulsorily registrable, being a lease falling under sub-s. 1, cl. (d) of s. 17 of the Indian Registration Act III of 1877; that as it was not registered, it was inadmissible in evidence; and that as it was the foundation of the plaintiff's case, he must fail. He, therefore, rejected the plaintiff's claim.

This decision was confirmed by the lower appellate Court.

The plaintiff thereupon preferred a second appeal to the High Court.

Narayan Vishnu Gokhale, for appellant.

Daji Abaji Khare, for respondent.

JUDGMENT.

[110] CANDY, J.—We consider that a lease for the life of the lessee is a lease for a term exceeding one year, as it entitles the lessee to hold for more than that period if he live so long. It is not a lease terminable at the end of a year or at the option of the lessor. It, therefore, requires registration. We confirm the decree, with costs.

Decree confirmed.

* Second Appeal, No. 738 of 1891.

(1) 15 B. 407.