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an estate in the land, as it has always been considered in England and in this country, is immovable property within the contemplation of that section. The decree, in execution of which the equity of redemption was sold, was passed prior to the Dekkhan Agriculturists' Relief Act of 1879; but the Amending Act, XXII of 1882, came into force on 1st February, 1883, before the sale took place on 10th February, 1883, by s. 9 of which the words "passed whether before or after this Act comes into force" were introduced into s. 22 of the Act of 1879 after the words "decree or order." It was suggested that the order of sale was made before the Amending Act came into force. Whether this was so or not, does not appear on the evidence in the case. But it is, in our opinion, immaterial, as s. 9 of the Amending Act of 1882 expressly provides for the case of a sale in execution of an "order" made prior to that Act.

We must, therefore, reverse the decree of the Court below and send back the case for a decree on the merits. The plaintiff to have his costs of this appeal and in both the Courts below.

Decree reversed and case sent back.

18 B. 745.

APPELLATE CIVIL.

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

GURUNATH SHRINIVAS DESAI (*Original Defendant*), *Applicant v.*
 CHENBASAPPA (*Original Plaintiff*), *Opponent.** [21st November, 1893.]

Registration—Evidence—Lease—Agreement to indemnify contained in lease—Suit for indemnity.

A lease of land for nine years contained a clause by which the lessor agreed to indemnify the lessee in case he should incur any loss in consequence of disputes which might arise as to the land between the lessor and his kinsmen. The lease was not registered. After the lessee had held the land under the lease for two years, a suit for possession was brought against him, and the lessor and he were dispossessed and obliged to pay mesne profits. He then brought this suit against the lessor under the above clause in the lease.

[746] *Held*, that the lease being unregistered was not admissible in evidence and could not be looked at. The clause on which the plaintiff sued could not be separated from the lease itself, and the plaintiff's claim must, therefore, be rejected.

[F., 10 Bom. L.R. 1146 (1150) = 33 B. 610; [Appl., 1 N.L.R. 47 (49); Cons., U.B.R. (1904) 4th Cr., Registration I.]

THIS was an application under the extraordinary jurisdiction of the High Court (s. 622 of the Civil Procedure Code, Act XIV of 1882) against the decision of J. L. Johnston, District Judge of Dharwar.

In December, 1881, the applicant Gurunath (the defendant) granted a lease of certain land for nine years to the opponent Chenbasappa (the plaintiff) which contained a clause by which Gurunath agreed to indemnify Chenbasappa for any loss which the latter might incur by reason of any dispute which might arise between Gurunath and his kinsmen with reference to the land. The lease was not registered.

Chenbasappa held the land under the lease for about two years, but in 1883 one Venkaji Krishnaji sued both him and Gurunath for possession

* Application No. 78 of 1893 under extraordinary jurisdiction.

and obtained a decree and dispossessed Chenbasappa. The decree also awarded Venkaji mesne profits which Chenbasappa had to pay and which he did pay in November, 1888.

In February, 1891, Chenbasappa brought this suit against Gurunath to recover Rs. 360 under the above stipulation in his lease.

Gurunath admitted the lease, but contended that the suit was barred by limitation.

The Subordinate Judge held that the lease was not admissible in evidence being unregistered, and accordingly dismissed the suit.

In appeal the Judge held that the lease was admissible in evidence to prove the agreement to indemnify the plaintiff. He further held that the suit was not time-barred, being brought within three years from the date of the above-mentioned payment by plaintiff to Venkaji. He, therefore, reversed the decree and allowed the claim with interest at 9 per cent. per annum on Rs. 288, the amount of mesne profits paid to Venkaji from the date of the institution of the suit till payment.

The defendant applied to the High Court under its extraordinary jurisdiction, and obtained a *rule nisi* calling upon the plaintiff [747] to show cause why the decree should not be set aside on the ground (*inter alia*) that the Judge was wrong in holding that the lease was admissible in evidence though unregistered.

Shivram V. Bhandarkar appeared for the applicant (defendant) in support of the rule.—The lease being unregistered could not be looked at even for the purpose of determining whether the plaintiff was entitled to recover damages. The clause of indemnity being incorporated in the lease cannot be separated from it—*Raju Balu v. Krishnarav* (1); *Venkatrayudu v. Papp Reddi* (2); *Martin v. Sheo Ram Lal* (3). The Judge has exercised his jurisdiction illegally, and we are entitled to apply to this Court under its extraordinary jurisdiction—*Chenbasappa v. Lakshman* (4); *Shri Vishvambhar Pandit v. Shri Vasudev Pandit* (5).

Narayan Ganesh Chandavarkar appeared for the opponent (plaintiff) to show cause:—Even if the Judge's decision be wrong in law, it cannot be disturbed under the extraordinary jurisdiction—*Amritrav v. Balakrishna* (6); *Sakharam v. Parvati* (7).

JUDGMENT.

SARGENT, C. J.—The District Judge was wrong in holding that the term in the lease on which the plaintiff sued could be looked at although the lease itself required registration. That term cannot be separated from the lease itself, as the lease must necessarily be looked at to determine whether the defendant had incurred liability under it. See *Raju v. Krishnarav* (1) and *Martin v. Sheo Ram Lal* (3).

The District Court has, therefore, exercised its jurisdiction illegally, as was held in *Chenbasappa v. Lakshman* (4), and we must, therefore, make the rule absolute and reverse the decree and reject the plaintiff's claim, with costs on plaintiff throughout.

Rule made absolute. Decree reversed.

(1) 2 B. 273 (281).

(2) 8 M. 182.

(3) 4 A. 232.

(4) P. J. (1893), 224; 18 B. 369.

(5)

(5) 16 B. 708.

(6) 11 B. 488.

(7) P. J. (1888), 274.