

It would also follow that the corresponding amendment of the form in schedule D was *ultra vires*, and that the certificates of registration granted according to the amended form should be considered as if the words "valid for the year ending the 31st December 191" were not added. Therefore, as the applicant had a certificate, he had complied with the provisions of section 10 of the Act and the conviction under section 16 of the Act must be set aside and the fine, if paid, refunded.

SHAH, J.:—I agree.

*Rule made absolute.*

R. R.

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## APPELLATE CIVIL.

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*Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.*

RABIA BIBI WIDOW OF SHARIFF WALAD SULEMAN MEMAN AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS *v.* GANGADHAR VISHNU PURANIK AND ANOTHER, MINORS, BY THEIR GUARDIAN THEIR UNCLE RAMCHANDRA KRISHNA PURANIK (ORIGINAL DEFENDANTS), RESPONDENTS<sup>o</sup>.

1921.

*November 9.*

*Salt Act (Bom. Act II of 1890), sections 11 and 47—Salt pans—License to manufacture salt—Clause against sub-letting without permission—Agreement to grant sub-lease void.*

The defendant obtained a license from Government for the manufacture of salt. One of the terms of the license was that the licensee should not sub-let the pans without the permission of the Collector. The defendant without obtaining permission from the Collector entered into an agreement to lease the pans to the plaintiff for one year. The plaintiff sued for specific performance of the agreement.

<sup>o</sup> First Appeal No. 277 of 1920.

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*Held*, dismissing the suit, that the agreement to lease was void as the necessary effect of the agreement would be to enable the plaintiff to manufacture salt without a license in the guise of a sub-lease, although that was forbidden by law and by the terms of the license.

*Ismalji Yusufalli v. Raghunath Lachiram*<sup>(1)</sup>, followed.

FIRST appeal, against the decision of G. G. Nurgund, First Class Subordinate Judge of Thana.

Suit for specific performance.

One Vishnu, father of minor defendants Nos. 1 and 2, leased certain salt pans called Dadarkhar Agar from Government.

In 1901 the Collector of Thana granted a license for the manufacture of salt to the minor defendants represented by their guardian, their uncle Ramchandra, and one of the terms of the license was :

"That he (licensee) shall not without the permission of myself or of my successor in office for the time being, sub-let, sell, mortgage, or otherwise alienate wholly or in part, the privilege granted by this license of manufacturing salt in the land within the aforesaid limits."

On the 18th November 1916, the guardian of the minor defendants entered into an agreement with the plaintiff, Shariff, to lease the Agar for one year 1917-18 for a rent of Rs. 1,300. The terms of the bond called a service bond passed by the plaintiff were as follows :—

"I have agreed to do all the work on your behalf for one year, i.e., for the Samvat year 1974 (corresponding with A. D. 1917-18) relating to the Agar (salt-works) situate, District Thana. This Agar consists of 320 salt-pans. I have agreed to do as a servant work relating to the manufacturing of salt and also all other in connection with the Agar, (i.e., salt-works). The particulars thereof are as follows."

The defendant having failed to carry out the agreement, the plaintiff sued for specific performance of the contract.

(1) (1909) 33 Bom. 636.

The defendant contended, *inter alia*, that the contract was contrary to the provisions of the Salt Act and to the license given thereunder; that it could not be legally enforced.

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The Subordinate Judge dismissed the suit holding that the agreement in suit was void and unenforceable.

The plaintiff having died during the pendency of the suit, his heirs appealed to the High Court.

*Coyajee* with *W. B. Pradhan*, for the appellants.

*P. B. Shingne*, for the respondents.

MACLEOD, C. J. :—This case is covered by the decision in *Ismalji Yusufalli v. Raghunath Lachiram*<sup>(1)</sup> in which the facts were similar to the facts in this case. The licensee Yusufalli, who held his lease to certain salt pans on condition that he should not sub-let without the written permission of the Collector, sub-let them to the respondents without getting such permission. Then Yusufalli having died, his son obtained a fresh license from Government. The respondent obtained a fresh sub-lease on the same terms as those contained in the sub-lease obtained from Yusufalli, but no permission had been obtained from the Collector. It was urged in second appeal that the appellant manufactured salt not only under the sub-lease but also under the power-of-attorney by the appellant. The Court held that there was no evidence in support of that.

Chandavarkar, Acting C. J., said at page 643 : “ The real object and necessary effect of the agreement between the appellant and the respondent was to enable the latter to manufacture salt without a license in the guise of a sub-lease, although that was forbidden by law and by the terms of the license.” Mr. Justice Heaton

<sup>(1)</sup> (1909) 33 Bom. 636.

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said : " The question, therefore, is whether the object of the agreement is forbidden by law within the meaning of section 25 of the Contract Act. It seems to me that it is, for the object was to enable the plaintiff to manufacture salt without a license, and the law says that no salt shall be manufactured otherwise than by the authority of a license granted by the Collector."

In this case it had also been urged in the trial Court that the appellants were really servants of the licensee and agreed as such servants to work the salt pans. But considering the terms of the agreement, it is perfectly obvious, although the term "service bond" is used in the sub-lease, that the appellants in consideration of certain sum paid agreed to work the salt pan for the manufacture of salt for a particular period and to do all that was required for the purposes of manufacture. There is nothing, therefore, in the nature of an agreement between master and servant which might save the appellants from having their suit dismissed. I think, therefore, that we are bound by the decision in *Ismalji Yusufalli v. Raghunath Lachiram*<sup>(1)</sup>, and that the appeal must be dismissed with costs.

SHAH, J. :—I agree. I desire to add that apart from the decision in *Ismalji Yusufalli v. Raghunath Lachiram*<sup>(1)</sup>, I should have found it difficult to hold that a breach of the condition of the license, as to the sub-letting in so far as the permission of the Collector in writing was not obtained would necessarily mean that the object of the provisions of the Salt Act. was defeated thereby. However, there is a clear decision of this Court on the point and it is binding on us. On this ground the appeal must be dismissed with costs.

*Decree confirmed.*

J. G. R.

<sup>(1)</sup> (1909) 33 Bom. 636.