

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Subramanian Chettiar v. Arunachalam Chettiar and others, from the High Court of Judicature at Madras; delivered the 9th July 1902.

Present at the Hearing :

LORD DAVEY.

SIR FORD NORTH.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Sir Arthur Wilson.*]

The material facts of this case were not in dispute before their Lordships, and they can be briefly stated.

The Rajah of Ramnad was the proprietor of the zemindari of the same name. On the 4th July 1895 he executed a reversionary lease of portions of his Zemindari in favour of Ramasamy Chettiar. The lease recited that there were subsisting leases affecting the properties demised, some of which would not expire till the Fasli year 1318, corresponding to A.D. 1911. The new lease was accordingly made to commence with the Fasli year 1319; it was expressed to be perpetual, the annual rent was fixed, its recovery, as well as that of road-cess and other charges, was provided for; and the rights and obligations of both parties defined. A counterpart of the lease was executed; and both lease and counterpart duly registered.

During the negotiations for the lease it was agreed between the Rajah and Ramasamy that,

in consideration of his obtaining the lease, Ramasamy should pay to the Rajah a sum of Rs. 500 a month for a period of ten years from July 1895.

On the 9th July 1895 the arrangement with regard to the payment of Rs. 500 a month was put in writing in the form of a letter addressed by Ramasamy to the Rajah in the following terms:—

“ Varthamana Kaduthasi.

“ Sivamayam (God everywhere).

“ To M. R. Ry. Bhaskara Sethupathi Maharajah Avergal.

“ Varthamana Kaduthasi (letter) written by A. L. A. R.

“ Ramasami Chetti of Devakottah.

“ You have let to me on permanent lease on the 4th day of the current month of July, the villages of Kannangudi Vagaira Division for a sum which represents the average income of ten faslis together with one-eighth thereof. As agreed to by me to pay as consideration therefor, I shall pay you at the rate of Five hundred Rupees per mensem for ten years, that is, for one hundred and twenty months, (beginning) from July current. In default of payment in any one month, I shall pay the sum in respect of which default was made with interest at 1 per cent. per mensem from the date of default.

“ (Signed on one anna stamp)

“ Thiruvutharakosamangai, RAMASAMI CHETTI.

“ 9.7.95.”

On the 12th July the letter was sent to the Huzur Treasury with a note that “ it should be kept in the treasury for safe custody ”; and on the 15th its receipt was registered.

On the 12th July 1895 the Rajah executed a trust deed in which he recited that he was possessed of his zemindari subject to subsisting debts charges incumbrances and leases, and that he was desirous of making a settlement for the benefit of his heir apparent and elder minor son. The deed assigned to Venkatarangaiyar as trustee (in paragraph 4) the Zemindari with its incidents. In paragraph 5 he further assigned “ all and singular the outstanding debts “ arrears of rent mesne profits claims demands and “ sums of money of whatsoever kind or description

“ now due owing or payable to the settlor on any
 “ account whatsoever and all rights to prosecute
 “ any suit or other proceeding existing in favour
 “ of the settlor at the date of these presents and
 “ also all monies hundies cheques currency notes
 “ or other securities for money now in the Huzur
 “ Treasury Office at Ramnad and in the several
 “ Taluq Treasuries in the said Zemindari and also
 “ all securities for such debts arrears of rent mesne
 “ profits claims demands and sums of money as
 “ aforesaid or any of them and other documents in
 “ respect of the same respectively and also all
 “ other documents records correspondence and
 “ other papers now in the Record Office Huzur and
 “ Taluq Offices respectively in the said Zemindari
 “ or which have been produced by or on behalf
 “ of the settlor or his Agents officers clerks or
 “ servants in any public Office or Court in con-
 “ nection with any suit proceeding or matter and
 “ which relate in any wise to the said properties
 “ hereinbefore expressed to be hereby granted
 “ conveyed and assigned respectively or any of
 “ them and also all firearms and other weapons
 “ belts and badges now held or used by any peons
 “ or other servants of the settlor and also all
 “ furniture fixtures and other articles in the
 “ Huzur and Taluq Offices in the said Zemindari
 “ And all the estate right title and interest claim
 “ and demand of him the settlor into and upon
 “ the same premises respectively hereinbefore
 “ expressed to be hereby granted conveyed and
 “ assigned respectively except and always reserv-
 “ ing unto the settlor out of the said hereditaments
 “ and premises and the grant and assignment
 “ hereby made all those several Devastanams
 “ Chatrams and Kattalais with their respective
 “ appurtenances situate in the said Zemindari and
 “ now under the superintendence and control of
 “ the settlor and the lands and endowments
 “ of whatsoever description attached thereto

“ respectively and situate in the said Zemindari
 “ and all outstanding debts arrears of rent and
 “ other claims and demands payable and to become
 “ payable to the settlor in respect of the said
 “ Devastanams Chatrams and Kattalais respec-
 “ tively (other than the Dhurma Magamai and
 “ Jari Magamai payable in respect of Devastanams
 “ and Charities) and reserving also unto the settlor
 “ all rights to prosecute any suit or other pro-
 “ ceedings now existing in respect of the same
 “ and to or in which he is a party or is otherwise
 “ interested and also all moveable property in or
 “ about the buildings and premises erected and
 “ being on the said lands and premises firstly
 “ secondly, thirdly and fourthly described in the
 “ said first schedule hereto and reserving also unto
 “ the settlor during his life the right at all times
 “ to reside with the members of his family in the
 “ several palaces and buildings comprised in the
 “ said lands and the Zemindari and in the said
 “ premises described in the said first schedule
 “ hereto but without prejudice nevertheless to the
 “ right of the said Raja Rajeswara Dorai other-
 “ wise called Muthu Ramalinga Dorai or his heir
 “ to reside with the members of his family in all
 “ or any of the said palaces and buildings.”

The trusts were declared, which included the payment of a monthly allowance to the Rajah himself.

No payments having been made by Ramasamy in respect of his agreement to pay Rs. 500 a month, the Rajah on the 9th December 1895 assigned that agreement for value to Ramanadhan Chettiar; and notice of this assignment was at once given to Ramasamy.

On the 21st September 1897 the present suit was filed in the Court of the Subordinate Judge of Madura East by Ramanadhan Chettiar, since deceased, and his son Subramanian Chettiar the present Appellant, against Ramasamy, since

deceased, and others who now represent him and who are the Respondents. The claim was to recover twenty-six monthly instalments at the rate of Rs. 500 a month with interest.

It is only necessary to refer to two grounds of defence. It was contended first that the original agreement for the payment of Rs. 500 a month was void in law as not being in writing registered, and that the Plaintiffs were not entitled in law to prove the existence of such oral agreement. It was contended secondly that whatever right the Rajah might have had under the agreement to pay him Rs. 500 a month had been transferred by him under the trust deed of the 12th July 1895, and that therefore neither Ramanadban nor his representatives had any right to sue upon the agreement.

The Subordinate Judge decided in the Plaintiffs' favour upon both points and made a Decree in accordance with the claim of the plaint. An Appeal was filed in the High Court of Madras, and that Court reversed the decision of the Lower Court and dismissed the suit, holding that both the grounds of defence were good in law.

With respect to the first of these questions, that going to the legal validity of the agreement for the payment of Rs. 500 a month, it is necessary to refer to certain of the terms of three Acts of the Indian legislature.

Section 92 of the Evidence Act (I. of 1872) enacts that:—

“ When the terms of any such contract, grant,
 “ or other disposition of property, or any matter
 “ required by law to be reduced to the form of a
 “ document, have been proved according to the
 “ last section, no evidence of any oral agreement
 “ or statement shall be admitted, as between the
 “ parties to any such instrument, or their repre-
 “ sentatives in interest, for the purpose of

“contradicting, varying, adding to, or subtracting
“from its terms.”

The Registration Act (III. of 1877) s. 17 includes amongst the documents requiring registration, “leases of immovable property from
“year to year, or for any term exceeding one
“year, or reserving a yearly rent.”

The Transfer of Property Act (IV. of 1882) s. 105 defines a lease thus :—

“A lease of immovable property is a transfer
“of a right to enjoy such property, made for a
“certain time, express or implied, or in per-
“petuity, in consideration of a price paid or
“promised, or of money, a share of crops, service
“or any other thing of value, to be rendered
“periodically or on specified occasions to the
“transferor by the transferee, who accepts the
“transfer on such terms.” And s. 107 says that :—“A lease of immovable property from
“year to year, or for any term exceeding one
“year, or reserving a yearly rent, can be made
“only by a registered instrument.”

The agreement for the payment of Rs. 500 a month for 10 years from July 1895 is in no way inconsistent with the lease of the 4th of that month. Its provisions form no part of the terms of the holding under the lease; their effect will be exhausted some years before the lease takes effect. The payment bargained for is no charge on the property; it is not rent nor recoverable as rent, but a mere personal obligation collateral to the lease. Their Lordships are of opinion that the agreement is not affected by s. 92 of the Evidence Act; and that there is nothing in the Registration Act or in the Transfer of Property Act which required that it should be registered as part of the lease.

The second question is whether the Respondents are right, in their contention, that the benefit of Ramasamy's agreement to pay Rs. 500 a

month to the Rajah passed to the trustee under the trust deed of the 12th July, and that therefore the subsequent assignment to Ramanadhan was ineffectual, and that the Plaintiffs in this suit had no right to sue. The answer to this question depends upon the construction to be placed upon the trust deed.

The Rs. 500 a month not being rent, the right to it could not pass under the grant of the Zamindari with its incidents contained in paragraph 4. But it was contended that the right was conveyed by the more general words of paragraph 5, by which the settlor assigned "the outstanding debts arrears of rent mesne profits claims demands and sums of money of whatsoever kind or description now due owing or payable to the settlor on any account whatsoever and all rights to prosecute any suit or other proceeding existing in favour of the settlor at the date of these presents." The use in an Indian document of the words "now due owing or payable" in defining the claims transferred, coupled with the words which follow restricting the transfer of rights of suit in respect of such claims to those existing at the date of the deed, appear to their Lordships to show that rights of the nature of that now under consideration, accruing after the date of the deed, were not intended to pass, a view which is somewhat strengthened by the employment of the phrase "demands payable and to become payable" in the exception and reservation which follows. And it appears to their Lordships that under the agreement between the Rajah and Ramasamy all the instalments now sued for accrued due after the date of the trust deed.

It was further suggested that the words in the same paragraph "all monies hundies cheques currency notes or other securities for money

“ now in the Huzur Treasury Office at Ramnad” included Ramasamy’s letter of the 9th July, and that therefore the Rajah’s right to the Rs. 500 a month passed under the trust deed. As to this suggestion it is sufficient to say that there is no evidence that the letter in question was in the Treasury when the deed was executed. All that appears is that on the 12th July, the day on which the trust deed was executed, but whether before or after the execution does not appear, the letter was sent to the Treasury for safe custody, and that its receipt was recorded on the 15th.

Their Lordships will humbly advise His Majesty that the Decree of the High Court be reversed with costs and that of the Subordinate Judge restored. The Respondents will pay the costs of this Appeal.
