

THE COLONIAL SUGAR REFINING COMPANY
v. SEODAT.

[Civil Jurisdiction (Corrie, C.J.) May 15, 1941.]

Land (Transfer and Registration) Ordinance 1933¹—ss. 25 and 49—leases for a term exceeding one year to be in proper form and registered—rights of parties to an instrument invalid as a lease for lack of form and registration—whether registered proprietor can be granted specific performance.

The defendant was in occupation of plaintiff's land under a memorandum entitled a "Memorandum of Conditions" which provided *inter alia* for tenure of the land for a period of ten years. The document was not in the form of a lease as prescribed by the Land (Transfer and Registration) Ordinance, 1933 s. 49—(1) and (2) nor was it registered.

HELD.—(1) The defendant, had he so desired, could have obtained specific performance of the terms of the instrument.

(2) As regards delivery of possession at the end of the term the parties to an instrument invalid as a lease for lack of form and registration are in the same position as if a valid lease had been granted.

Cases referred to :—

Parker v. Taswell [1858] 27 L.J. Ch. 812 ; 44 E.R. 1106 ; 42 Dig. 459.

Walsh v. Lonsdale [1882] 21 Ch.D. 9 ; 52 L.J.Ch. 2 ; 46 L.T. 858 ; 30 Dig. 393.

SUMMONS UNDER THE LAND (TRANSFER AND REGISTRATION) ORDINANCE 1933 s. 186¹ to show cause why the defendant should not give up possession of certain land.

The facts are set out in the judgment.

H. M. Scott, K.C., and *R. A. Crompton* for the plaintiff.

N. S. Chalmers for the defendant.

CORRIE, C.J.—This summons is taken out by the plaintiff, the Colonial Sugar Refining Company Limited under s. 186 of the Land (Transfer and Registration) Ordinance 1933 calling upon the defendant, Seodat, to show cause why he should not give up possession of the land known as Farm 564.

The defendant is in occupation of the land under a memorandum dated the 1st January, 1931, described as a memorandum of conditions, of which the material provisions are as follows :—

"MEMORANDUM OF CONDITIONS on which Seodat (Father's Name Dadal) hereinafter called the tenant will hold for the purpose of growing cane for sale to the COLONIAL SUGAR REFINING COMPANY LIMITED Farm 564 being portion of field Nanuku and containing 10 acres (more or less) of cane land in accordance with the plan at the Company's Office at Penang Mill and a house site of about $\frac{1}{2}$ an acre situated near the farm.
"I. PERIOD. The tenure shall be for ten years from the date hereof but subject to the right of earlier termination by the Company.
"(a) Without notice in the event of legislation being passed limiting its freedom of action

¹ Cap. 120.

“ in the matter of buying crops to be grown on the said land or otherwise affecting the conditions under which it carries on its operations.

“ or

“ (b) At the end of any calendar year on notice given by the Company before 31st December of the previous year of its intention to cease purchasing cane in the district supplying Penang Mill.
 “ 2. RENT Ten pounds (£10 os. od.) per annum payable in advance.
 “ 3. SUB-LETTING. The tenant will be licensee only and shall not attempt to sublet nor will any transfer be recognised unless with permission in writing from the Company.”

“ 19. ACCESS. The Company and its servants reserve the right to enter and view lands at all reasonable times.”

The memorandum is signed “ E. H. Griffiths Manager ”. It has not been signed by the defendant. As, however, he admittedly obtained possession by virtue of the memorandum, it cannot be argued that its terms are not binding upon him.

S. 39 of the Real Property Ordinance 1876, which was in force at the time when this memorandum was signed, declared that:—

“ No instrument until registered in manner herein provided shall be effectual to pass any land or portion thereof under the provisions of this Ordinance ”;
 and the same provision is contained in s. 25 of the Land (Transfer and Registration) Ordinance 1933 by which the Real Property Ordinance 1876 has been repealed and replaced.

S. 49 (1) of the Real Property Ordinance provided that:—

“ When any land under the provisions of this Ordinance is intended to be leased or demised for a life or lives or for any term exceeding one year the proprietor shall execute a lease in the Form D in the First Schedule hereto.”

S. 50 provided that a lease for a term not exceeding one year should be valid without registration. Corresponding provisions are contained in sub-s. (1) and (2) of s. 49 of the Land (Transfer and Registration) Ordinance 1933.

The memorandum of the 1st January 1931 is not in the Form prescribed in Form D in the First Schedule to the Real Property Ordinance, and has not been registered. The defendant has taken the objection that it therefore is not a lease within the meaning of that Ordinance or of Ordinance 14/33, and hence that it cannot be held that the term of the lease has expired; and consequently, as no legal notice to quit has been given, the defendant cannot rely upon paragraph (d) of s. 186 of Ordinance 14/33.

To this objection the plaintiff replies that the company is the registered proprietor of the land and that the summons is validly issued under paragraph (a) of the section.

I hold that the plaintiff is entitled to proceed under s. 186.

The question that now presents itself is, what is the nature of the document described as a memorandum of conditions?

Relying upon the terms of clause 3 the “ tenant will be licensee only ”, the defendant argues that it is merely a licence to cultivate.

If such, however, were the effect of the memorandum there would be no need for the insertion of clause 19 giving the company and its servants the right to enter and view, and it would appear to be an inevitable inference from that clause, that any person other than a servant of the company entering upon the land without the leave of the defendant is to be regarded by the parties as a trespasser. Bearing this clause in mind and noting also the use of the term "tenant" to describe the defendant, and the provision of clause 1 that "the tenure shall be for ten years from the date hereof, but subject to the right of earlier determination by the company," in certain specified circumstances, I am satisfied that if the memorandum related to a term not exceeding one year it would create a valid tenancy. Relating as it does to a term of ten years it is invalid in law for lack of due form and registration: and I have to determine what is the position of the parties to a lease which is invalid on this ground.

It is clear that in English law, which requires that a lease for a term of more than three years shall be under seal, a lease for a term exceeding three years created otherwise than by deed is construed as an agreement for a lease; and specific performance of the agreement will be ordered provided that it is in other respects capable of this remedy; (see *Parker v. Taswell* 27 L.J. Ch. 812); and where the lessee has entered, the right to specific performance is sufficient to give the parties respectively rights equivalent to the legal rights, and place them under obligations equivalent to the legal obligations of lessor and lessee: (see *Walsh v. Lonsdale*, 21 Ch.D. 9).

The question therefore arises, is the memorandum an instrument of which this Court would order specific performance?

On behalf of the defendant it has been argued that there is a distinction to be drawn between specific performance of an agreement which is invalid because it is not under seal but which comes into force immediately upon execution, and that of an instrument which has no validity until it is registered. This distinction, in my view has no substance. In either case the parties have come to an agreement and have expressed their intention in a document, which however, is invalid in law owing to their failure to take the necessary steps to render their intention effective in law.

There appears to be no reason why the same remedy in equity should not be available in both cases.

Moreover, as has been pointed out on behalf of the plaintiff, it is inaccurate to say that under the law of this Colony an instrument has no validity until it is registered, as a person claiming to be interested under an unregistered instrument can, under s. 123 of Ordinance 14/33,¹ lodge a caveat to restrain dispositions of the land in which he claims interest.

From cases cited in the course of argument it appears that in the Courts of the Australian States, where a system of registration of title exists similar to the system in force in this Colony, the rule in *Walsh v. Lonsdale* is held to apply to instruments which are invalid in law for lack of registration.

¹ Cap. 120.

I see no reason for adopting a different view, and I hold that the defendant, had he so desired, could have obtained specified performance of the terms of the memorandum of conditions.

It follows that as regards delivery of possession of the land at the expiry of ten years, the parties are in the same position as if a lease valid in law had been granted.

Judgment must be entered for the plaintiff.

BADAL *v.* BHAGOTI PRASAD.

[Civil Jurisdiction (Corrie, C.J.) May, 15, 1941.]

*Bills of Sale Ordinance, 1879*¹—s. 7—*Consideration not truly stated—whether void against all parties—Moneylenders Ordinance, 1938*²—s. 2—*Allegation that mortgagee an unregistered moneylender—Ragudatt v. Ramautar followed—Mortgage collateral to void Bill of Sale—whether Mortgage ipso facto void—Consideration for Mortgage incorrectly stated—whether Mortgage therefore void.*

The plaintiff was in debt to the defendant and, to secure moneys owing, executed various documents—a Mortgage with a collateral Bill of Sale and Promissory Note securing portion of the debt. At the time of the action the Promissory Note had expired. The consideration was not correctly stated in the Bill of Sale and Mortgage.

HELD.—(1) A Bill of Sale in which the consideration is not truly stated is void against all parties by virtue of s. 7 of the Bills of Sale Ordinance, 1879.

(2) A Mortgage collateral to a Bill of Sale is not void because the Bill of Sale is void.

(3) A Mortgage in which the consideration is incorrectly stated is not void.

The case of *Ragudatt v. Ramautar* [1940] 3 Fiji L.R.— was followed as to the meaning of “calendar year” in s. 2 of the Moneylenders Ordinance.²

ACTION FOR CANCELLATION OF SECURITIES and for an account between the parties. The facts are fully set out in the judgment.

S. Hasan for the plaintiff.

R. A. Crompton for the defendant.

CORRIE C.J.—The plaintiff, Badal, son of Sukhai, claims, first, the cancellation of the following documents:—

- (a) A Bill of Sale dated 20th January, 1934, executed by the plaintiff in favour of the defendant, Bhagoti Prasad, for the sum of £98 18s. od.; and
- (b) A mortgage dated 18th January, 1939, executed by the plaintiff in favour of the defendant for £236 5s. 3d.

Secondly, an account of all transactions between the plaintiff and the defendant during the years 1934 to 1939 inclusive; and payment of such sum, if any, as is found to be due to the plaintiff.

¹ Cap. 179.

² Cap. 185. The section has since been amended.