Nur Muhammad Veerjibhai Veelmahomed Vs. Natwar Lal and ors.

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Court : Allahabad

Decided On : Nov-15-1922

Reported in : AIR1923All112; (1923)ILR45All220

Judge : Grimwood Mears, C.J. and ;Pramada Charan Banerji, J.

Appellant : Nur Muhammad Veerjibhai Veelmahomed

Respondent : Natwar Lal and ors.

Judgement :

Grimwood Mears, C.J. and Pramada Charan Banerji, J.

1. This was a suit for specific performance brought in the name of Nur Muhammad Veerjibhai Veelmahomed, who asked for specific performance based upon a letter signed by the defendant, whereby, according to the plaintiff, the defendant agreed to lease to the plaintiff a bone-crushing factory at Agra. In the court of the Subordinate Judge one of the questions which arose was whether, assuming there to be a contract, it had been made with the plaintiff or with the plaintiff's father. Ultimately the Subordinate Judge decided that the contract had been made with the plaintiff's father, and although there was an application by the plaintiff that the father should be joined as a co-plaintiff in order to get over any technical difficulty, and although it appeared that the father himself came from Bombay to the court to testify his willingness to become a plaintiff and signed an application which was made by a pleader so as to verify the statements made therein, the learned Subordinate Judge refused to allow the father to be joined, on the most narrow and technical ground that the father, Veerjibhai Veelmahomed, had not himself filed a petition to be made a plaintiff. It is true that the application of the von to join the father as co-plaintiff was made at a very late stage of the case, but it was not suggested that it would operate in any way to the prejudice of the defendant. In the absence of any such prejudice an application of this kind ought to have been granted. We disagree most strongly with the procedure adopted by Mr. Govind Sarup Mathur, because it in the manifest duty of a judge to try to put an end, once for all, to all questions that can arise in relation to a particular transaction; and he, when the pleader had stated to him that the father had come from Bombay to his court, should at once have told the pleader to put the matter in order, by the father himself making an application, and that application should have been granted. In the particular circumstances of this case it so happens, however, that no injustice has been done but that does not in the least detract from our view that where an amendment is necessary for the purposes of settling all matters in controversy and works no injustice, nor takes by surprise the opposite party, judges should make such amendments.

2. The learned Subordinate Judge took the evidence on the whole case but ho decided

the matter adversely to the plaintiff, first on the ground, as we have said, that the contract, if any, was not made with him; and then on the more general ground that with whomsoever the contract may have been made, it was a document which, when properly construed, came within the terms of Section 17 of the Registration Act, being a document in the nature of an agreement to lease: (Section 17 and Section 2, definition 7). The document in question is in the form of a letter addressed, curiously enough, to the defendant himself and signed by the defendant. The addressee, however, was admitted to be N. Veelmahomed. The letter undoubtedly is the result of an interview at Agra, and is dated the 19th of September, 1918, and sets out substantially all the conditions which would be necessary to create a lease. The important passage which bears upon the question of registration is this: 'The period will commence from the 1st of December, 1918, and before that date a proper lease will be executed and registered; this letter, a copy whereof signed by you has been kept by me, will be binding upon both of us so far as the main conditions are concerned. Pull details will be given in the coming lease.' The parties had in fact written to each other identical letters. It will therefore be seen that this letter in terms states that the letter really embodies the terms and conditions agreed upon, and that it is the letter which is to be the, binding, formal, unalterable record of the conditions. It is conceivable that the claim might have been pleaded in another way and the agreement alleged to have been an oral agreement. But when one turns to the plaint one observes that the pleader took precisely the same view of the value of this letter, not that it was merely evidential record of an oral arrangement, but that it did constitute the repository of the arrangement and superseded the oral agreement. The plaint in paragraph 1 sets out that 'the defendant agreed to give a lease and the plaintiff agreed to take on lease the hone-crushing factory...on the terms and conditions mentioned in the letter of the defendant, hereto attached.' And when the relief sought is examined, the prayer is 'that the contract of lease may be specifically enforced between the parties by enforcing the execution of the lease by the defendant...in terms of the letter mentioned in paragraph 1 of the plaint.' It was no doubt a consideration of the form of the letter and of the method in which it was treated by the pleader that induced the judge to come to the decision that this was a document which was an agreement for a lease for a period of five years. Under these conditions he rightly, in our view, applied Section 17 and held that as it had not been registered it was inadmissible in evidence; and once that document was cut out from the case, nothing was left for the plaintiff to rely upon. Being of the same opinion, we think this appeal, must be dismissed with costs.