

1943

Present : Wijeyewardene J.

CASSIM, Appellant, and NATCHIA, Respondent.

184—A. C. R. Matara, 21,474.

*Agreement to give produce in lieu of interest—Sale of land subject to leave—
Ordinance No. 7 of 1840 (Cap. 57) s. 2.*

Where the defendant agreed by an informal writing to deliver to the plaintiff a certain quantity of paddy a year in lieu of the produce obtainable from a property, which was sold by the former to the latter and which was subject to a lease at the time of sale,—

Held, that the agreement was not obnoxious to the terms of section 2 of the Ordinance for the Prevention of Frauds, No. 7 of 1840.

A PPEAL from a judgment of the Commissioner of Requests, Matara.

H. Wanigatunge (with him *C. Gnanapragasam*), for plaintiff, appellant.

M. I. M. Haniffa, for defendant, respondent.

Cur. adv. vult.

April 12, 1943. WIJEYWARDENE J.—

This appeal raises the question whether the plaintiff is prevented from enforcing his claim on the document P 1, as it was not executed in terms of section 2 of Ordinance No. 7 of 1840.

The defendants sold to the plaintiff two parcels of land lots C and E—by deeds P 2 and P 3 of November 30, 1935, for Rs. 500. At the time of the transfer, lot C and 3/5th shares of lot E were subject to a lease in favour of one Martin up to March, 1938. As the defendants were unable to give quiet possession of the lots to the plaintiff during the period of the lease, they undertook to give him 10 amunams of paddy a year during that period “in lieu of interest” on the sum of Rs. 500 as admitted by the defendants in paragraph 4 of their answer. The document P 1

was executed by the defendants on December 4, 1935, embodying that agreement and it states :

“That (the defendants) have agreed to deliver unto (the plaintiff) 10 amunams of paddy a year from the date hereof until the 1st day of March, 1938, for and in lieu of the produce obtainable from the property”

In September, 1936, the plaintiff executed lease P 5 in favour of Martin in respect of the 2/5th shares of lot E which were not subject to a lease at the time of the transfers in his favour. That lease was for a period of four years from March 1, 1937, at a yearly rental of Rs. 35.

The plaintiff filed this action stating that the defendants failed to give him 20 amunams of paddy for the two years ending December 3, 1937, and thus committed a breach of the agreement P 1. He claimed Rs. 200 as the value of that quantity of paddy. Relying on the decision of *Charles v. Baba*¹ the Commissioner of Requests held that the document P 1 was of “no force or avail in law”, as it had not been duly attested by a notary, and dismissed the plaintiff’s action with costs.

The Commissioner erred in regarding *Charles v. Baba* as an authority for the proposition of law enunciated by him. The Legislature enacted section 2 of Ordinance No. 7 of 1840, providing that agreements affecting an interest in lands, other than a lease at will or a lease for a period not exceeding one month, should be executed before a notary. Thereafter, the view was expressed at one time that the Ordinance did not govern agreements for the cultivation of lands in *anda* as it was thought that the Legislature could not have intended to discourage agriculture and cause unnecessary hardship to villagers by requiring them to execute notarial documents in respect of such agreements. (Vide *Elias v. Joronis*). That view was, however, finally rejected by the Full Court in *Meragalpedigedera Saytoo v. Owitigedera Kalinguwa*², which decided that an agreement for the cultivation of land in *anda* was “an agreement for establishing an interest affecting land” within the meaning of section 2 of Ordinance No. 7 of 1840, and required notarial execution. Shortly afterwards, the Legislature met the situation created by that decision by passing Ordinance No. 21 of 1871, as it thought—to cite the words of the preamble—“expedient to exempt certain contracts for the cultivation of paddy fields and chena lands from the operation of Ordinance No. 7 of 1840”. Section 1 of Ordinance No. 21 of 1871 reads,—

“The provisions of section 2 of the Ordinance No. 7 of 1840 shall not be taken to apply to any contract or agreement for the cultivation of paddy fields or chena lands for any period not exceeding twelve months, if the consideration for such contract or agreement shall be that the cultivator shall give to the owner of such fields or lands any share or shares of the crop or produce thereof.”

That section with certain verbal amendments appears now as section 3 (1) of the Prevention of Frauds Ordinance. Subsequent to the passing

¹ 22 N. L. R. 189.

² (1887) 8 S. C. Cir. 77.

³ 7 S. C. Cir. 71.

of that Ordinance in 1887, this Court had to consider in some cases the class of contracts which are thereby saved from the operation of section 2 of Ordinance No. 7 of 1840. These cases proceeded on the rule of construction that as the later Ordinance was in the nature of an exception to the general law laid down in section 2 of Ordinance No. 7 of 1840, the later Ordinance should be given a strict interpretation so as not to extend the class of agreements to which it was intended to apply (*Vide de Silva v. Thelenis*¹). The report of *Charles v. Baba* (*supra*) does not set out fully the facts of that case, but in view of the reference made in that case to *de Silva v. Thelenis* I think that Schneider J. dealt there with the nature of evidence necessary to establish an agreement for the cultivation of a paddy field where the consideration for the contract was an undertaking by the cultivator "to deliver 16 bags of paddy or their value, Rs. 80".

The facts of the present case are entirely different. This case does not involve an agreement for the cultivation of land or affect any interest in land. We have here merely a promise by the defendants to give a certain quantity of paddy by way of interest on the sum of Rs. 500 paid by the plaintiff. I fail to see how the provisions of Ordinance No. 7 of 1840 could possibly apply to such a case.

The plaintiff is, therefore, entitled to claim from the defendants the sum of Rs. 200 on P 1 in view of the Commissioner's findings on facts. The plaintiff should, however, deduct from that amount the sum of Rs. 35 obtained by him under P 5 for the year ending March, 1938, as the defendants agreed to give him 10 amunams of paddy a year to make good the loss sustained by the plaintiff's failure to get possession of the entirety of the lots C and E.

I set aside the decree of the lower Court and direct judgment to be entered for the plaintiff for Rs. 165. The plaintiff is entitled to costs here and in the Court of Requests.

Appeal allowed.