
(1923) 04 MAD CK 0055
In the Madras High Court

A.D. Narayana Sah

APPELLANT

Vs

Balaguruswamy Nadar and Others

RESPONDENT

Date of Decision : 18-04-1923

Acts Referred:

Transfer of Property Act, 1882 — Section 8

Citation : 75 Ind. Cas. 838

Hon'ble Judges : Kumaraswamy Sastriar, J

Bench : Single Bench

Judgement

Kumaraswamy Sastriar, J.—This is an application by the Receivers for an order that they may be permitted to remove from the Vyasarpady Buildings, copper stills, vats, copper pipes and other old furniture and documents and papers belonging to the Nadars' estate and now lying in the Vyasarpady Distillery Buildings which were sold in auction on the 21st of December 1922 in execution of the decree in the suit.

2. The plaintiff in this suit, A.D. Narayana Sah obtained a simple money-decree against the defendants to whose estate the petitioners, Messrs. Fraser and Ross, have been appointed Receivers. The decree was for over Rs. 2,69,000 and in execution the property known as the Distillery Buildings at Vyasarpady was attached and sold. What was sold was only the Distillery Buildings and the proclamation describes the property to be sold as follows: "Distillery Buildings, Door No. 3, Brighton Road Barracks, Peramboor, Madras, bearing Re-Survey Number, etc." These buildings were originally used as a distillery by the Nadars but sometime before the sale the business ceased to be carried on there. One of the stills had been removed by the Nadars themselves and the property which the Receivers want to remove consist of pipes, stills and a number of vats.

3. The application of the Receivers is opposed on the ground that what they want to remove are fixtures which in law go with the property and which have passed to the auction-purchaser. The contention for the Receivers is that, what was sold was only the building and nothing more and that, apart from any question of law

about fixtures, they are entitled to remove whatever was put in there for the purpose of the business by the Nadars. It is also contended that the Law of Fixtures does not apply to India and that, even if it did, the articles sought to be removed are not fixtures which in law could pass to the purchaser.

4. I am of opinion that both these contentions are sound. So far as the purchase is concerned, it seems to me to be clear that what was sold was only the Distillery Buildings. In cases where business is carried on in the premises and the sale is only of the premises and not of the business as a going concern, or the premises together with the fixtures or machinery, prima facie all that the purchaser is entitled to are the buildings. It can hardly be the intention of the parties when they sell the building alone without reference to the machinery or the business that the purchaser should get the valuable machinery in the buildings by calling them fixtures and by claiming to get them under that head. Even assuming that the plaintiff is entitled to all the fixtures properly so called, I think it is clear from the evidence of Mr. Barker, who was examined as an expert in this case, that the vats and the pipes cannot be fixtures in any sense of the term. As regards the copper stills, they are 8 feet in horizontal diameter and 7 feet in vertical diameter. They are placed upon two iron rails and they can be removed by pulling down the brick and mud wall which is put upon one side for the purpose of keeping them in position. as pointed out in *Mofiz Sheikh v. Rasik Lal Ghosh* 6 Ind. Cas. 796 : 37 C. 815 : 14 C.W.N. 952 : 12 Cri.L.J. 246, the technical English Law of Fixtures is not applicable to India. The provisions as to fixtures are contained in the Transfer of Property Act. Section 8 of the Transfer of Property Act runs as follows:--"Unless a different intention is expressed or necessarily implied a transfer of property passes forth with to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof. * * * "

5. And where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows and all other things provided for permanent use therewith. Section 3, Clause 25, of the General Clauses Act defines "immovable property" as including land; benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth. It seems to me that, in cases of houses, the primary consideration in determining whether the items claimed are fixtures u/s 8 of the Transfer of Property Act should be whether the articles are provided for the permanent use of the house, and whether they can be said to be articles which are necessary or which are provided for the more beneficial enjoyment of the property and I do not think that under that term machinery brought into the house for the purpose of carrying on business can be included. One important test in these cases is, with what intention were the articles put into the house? Were they put in for the more beneficial enjoyment of the house or with the object of improving the value of the house by making it more artistic or were they put in with a collateral purpose?

6. Numerous cases were referred to by Mr. Venkatramana Rao in the course of his able argument but I do not think that the facts of the present case would render those cases applicable. *Hobson v. Gorringe* (1897) 1 Ch. 182 : 66 L.J. Ch. 114 : 75 L.T. 610 : 45 W.R. 356 was a case where the deed of transfer conveyed the land in question "together with the saw mill, engine-house, ware-houses and other buildings erected thereon and the fixed machinery and fixtures" to secure a loan and the contest was between the mortgagee on the one hand and the vendors of an engine fixed to the freehold which was sold on the hire purchase system. In the present case the sale proclamation is clear and only sells the Distillery Buildings, no reference being made to any machinery in the premises. *Reynolds v. Ashby* (1904) A.C. 466 : 73 L.J.K.B. 946 : 9 L.T. 607 : 53 W.R. 129 : 20 T.L.R. 766 is similarly a case of conflict between the owner of a machinery sold on the hire-purchase system and the mortgagee who had taken possession. Lord Lindley in giving judgment observed. "My Lords, I do not profess to be able to reconcile all the cases on fixtures, still less all that has been said about them. In dealing with them attention must be paid not only to the nature of the thing and to the mode of attachment, but to the circumstances under which it was attached, the purpose to be served, and last but not least to the position of the rival claimants to the things in dispute." *Monti v. Barnes* (1901) 1 K.B. 205 : 70 L.J.K.B. 225 : 83 L.T. 619 : 49 W.R. 147 : 17 T.L.R. 88 was a case where the mortgagor subsequent to the mortgage removed the fixed grates from various rooms and substituted for them "dog-grates", which were of considerable weight and it was held that, having regard to all the circumstances of the case, the true inference was that the "dog-grates" were substituted with the object of improving the inheritance and that they were, therefore, fixtures which passed to the mortgagee. A.L. Smith, M.R. referred with approval to the observations of Blackburn, J., in *Hollund v. Hodgson* (1872) 7 C.P. 328 : 41 L.J.C.P. 146 : 26 L.T. 709 : 20 W.R. 990 where the learned Judge observes: "There is no doubt that the general maxim of the law is, that what is annexed to the land becomes part of the land; but it is very difficult, if not impossible, to say with precision what constitutes an annexation sufficient for this purpose. It is a question which must depend on the circumstances of each case, and mainly on two circumstances, as indicating the intention, viz., the degree of annexation and the object of the annexation." The Master of the Rolls was of opinion that, "the question which has to be considered in such a case is whether, having regard to the character and the circumstances of the particular case, the article in question was intended to be annexed to the inheritance or to continue a mere chattel, and not to become part of the freehold."

7. Applying these tests, it seems to me to be clear that the object of the Nadars in placing what are known as fixtures in the building was simply to carry on the business of distillery there. It will be a dangerous doctrine to hold in this country that plant and machinery brought into a building for the purpose of trade being carried on whether by the owner or by the mortgagee were so annexed to the building as to make them pass for fixtures merely because the building is sold

either by the owner or by the Court in execution.

8. I direct that the Receivers do remove the articles referred to in the Judge's summons. As regards costs, I direct that the Receivers' taxed costs as between Attorney and client do come out of the estate and that the purchaser do bear his own costs. Certified. I fix the fee of expert at Rs. 150.