

(1924) 10 MAD CK 0062
In the Madras High Court

Addepalli Kondayya

APPELLANT

Vs

Yandru Veeranna

RESPONDENT

Date of Decision : 07-10-1924

Acts Referred:

Citation : 92 Ind. Cas. 672

Hon'ble Judges : Jackson, J

Bench : Single Bench

Judgement

Jackson, J.—Appeal from the decree of the Subordinate Judge of Cocanada in A.S. No. 45 of 1921.

2. The plaintiff and defendant entered into an oral agreement whereby the defendant, was permitted to rest the beams of a structure upon plaintiff's wall, and to open certain cupboards in the said wall, in exchange for land which plaintiff added to his property. Plaintiff alleges that the full amount of land has not been made over to him, and sues to have the cupboards and beams removed. The lower Appellate Court has found that less land than what is alleged by plaintiff was agreed to be exchanged, and that defendant has fulfilled his part of the agreement. Accordingly it has dismissed plaintiff's suit and plaintiff appeals.

3. Two points have been argued.

(1). The lower Appellate Court's finding on the facts is not based upon any evidence (10th ground of appeal).

(2). The exchange pleaded by defendant is not valid since there was no registered document and no delivery (2nd ground).

4. I do not find that the lower Appellate Court proceeded without regard to the evidence. Appalaswami (D.W. No. 3) says that the land given in exchange extended to the west as far as the line in continuation of the western boundary of the western verandah of plaintiff's house and to the north of the red line in

Ex. "B." That is the triangular section south of the new wall and north of the red boundary line which the Subordinate Judge finds to have been the portion surrendered by defendant; and this finding on the evidence cannot be traversed in second appeal.

5. It is a very small trip of land admittedly below Rs. 100 in value (District Munsif's judgment, para. 7). Therefore, there is no question of the necessity of a registered document. Each party has delivered possession to the other, the defendant by allowing plaintiff to wall off the triangle of land, and the plaintiff by constructing the cupboards on defendant's side of the wall and having them available for his use. Therefore, the exchange is valid, and plaintiff has no right to oust the defendant. As regards the other grounds of appeal, (grounds Nos. 2 and 3), if an exchange for defendant's land plaintiff has only obtained an easement (and the transfer of the portion of his wall occupied by the cupboards is not a transfer of tangible property), then there is no question of plaintiff's transferring (apart from creating) any Immovable property either tangible or intangible. The only transfer would be the transfer of defendant's triangle, and the transaction is on the same footing as it would be if plaintiff had given cash instead of an easement in exchange for this land. This point, that the grant of an easement is not a transfer of ownership, is laid down in *Bhagwan Sahai v. Narsingh Sahai* 3 Ind. Cas. 615, the ruling quoted by the lower Appellate Court. The Subordinate Judge may have overlooked that the other side of the bargain, the transfer of defendant's land, is a transfer of ownership, but to establish that transaction proof of delivery is sufficient because, as I showed above, its value is well below Rs. 100.

6. Ground No. 4.--And if plaintiff has transferred tangible property by the transfer of the cupboard space, then again, its value is so small that proof of delivery is sufficient.

7. Ground No. 5.--There is no such finding. The site "all along the northern side" which the Subordinate Judge finds was intended to be given is just that triangle which I have explained above and. that has been given.

8. Grounds Nos. 7 and 8 do not arise and there is no question of onus.

9. The appeal fails on all grounds and is dismissed with costs.