
(1916) 02 MAD CK 0020
In the Madras High Court

Kondapi Seshayya and Others

APPELLANT

Vs

Grandhi Venkata Subbayya Chetty

RESPONDENT

Date of Decision : 01-02-1916

Acts Referred:

Stamp Act, 1899 — Section 26

Citation : (1916) 31 MLJ 234

Hon'ble Judges : Srinivasa Aiyangar, J;Abdur Rahim, J

Bench : Full Bench

Judgement

Abdur Rahim, J.—The suit in which this appeal has arisen was instituted by the plaintiffs to establish their rights to half the number of

casuarina trees now standing on a certain piece of land leased by the 1st plaintiff to the defendant's father and also for damages which are

estimated at Rs. 12,000 and for an injunction restraining the defendant from cutting the trees standing on the land. The first plaintiff owned about

270 acres of land described as Khandriga and he leased 135 acres, that is, one-half, to one Ammayya Chetti. Out of the other half, he leased

about 131 acres to the defendant's father. One of the questions we have to consider is what is the proper construction of the document Ex. I

which is described as a lease for growing casuarina trees. It is stated in that document that the quantity of land mentioned in it was leased for

planting casuarina trees for 10 years from the date of its execution, that is, until 19th September 1913. It is then provided, "you should therefore

plant in this land 50,000 trees worth about Rs. 1000 and grow them well; and when the trees have to be felled, you should fell them in my

presence, the cost of falling being borne by both of us and out of the amount shall be credited to the deed of mortgage executed by us in your

favour on 19-9-1903 (which is also the date of Ex I). You must yourself bear the cost of planting and growing the trees and I shall not have

anything to do with it." The mortgage referred to is Ex. II. It is a simple mortgage bond for Rs. 997-14-3. No time is specified for the payment of

the amount and out of 135 and odd acres of land, all the land covered by Ex. I, except 4 acres, is pledged as security for the payment of the

amount of the mortgage. The construction of Ex. I is not altogether free from difficulty. After giving the best consideration to its terms, the proper

construction seems to me to be that the lessee covenanted to plant and rear at least 50,000 casuarina trees on the lands leased to him and the price

of the trees to be grown within 10 years was fixed by the parties at Rs. 1,000. It is contended by the learned Counsel for the defendant that Rs.

1,000 was intended to be the maximum damages the defendant was liable to pay in case he fails to carry out the contract. That is to say the first

plaintiff did not bargain for his share of the value of 50 thousand casuarina trees, but only for Rs. 1,000 at the most, if the defendant did not plant

the trees and grow them as contemplated by the parties. It is difficult to accept this as the correct interpretation, because if the parties did not

contemplate that 50 thousand casuarina trees should be planted and reared in the ordinary course of husbandry and that each of them would be

entitled to his share of such trees, why should there be any stipulation for the defendant's felling the trees in the presence of the first plaintiff and

that the first plaintiff paying his half share of the charges for cutting. No doubt the parties contemplated that instead of the first plaintiff being given

half the quantity of fuel that would be realised or half of the trees, the first plaintiff should receive the equivalent value thereof for his share of the

trees.

2. His Lordship next goes into other questions not material to this report.

3. Then there is another question which is certainly not free from difficulty and that is, whether Section 26 of the Stamp Act applies to this case

and if so. whether the first plaintiff is precluded thereby from recovering any damages at all. Ex. I was not stamped though it was registered. It was

contended by the learned vakil for the appellants that this document is exempted from stamp duty under Article 35, Exception (a) of the Stamp Act

which provides exemption for "lease executed in the case of a cultivator and for

the purposes of cultivation (including a lease of trees for the production of food or drink) without the payment or delivery of any fine or premium, when a definite term is expressed and such term does not exceed one year or when the average annual rent does not exceed one hundred rupees." It is contended on the other side that this exception has no application to a case of this nature. It is argued that the exemption contemplated is intended for cases of ordinary agricultural leases in favour of cultivators. It is also suggested that it is doubtful whether when the rent or payment in the shape of produce of the kind contemplated in Ex. I is to be received by the lessor at the end of a certain period, it could be brought within the meaning of average annual rent as contemplated by Sub-article III by dividing what is payable by the number of years at the end of which it is to be paid. It is said that the average annual rent contemplated in that and the similar sub-article would apply only to cases where a yearly payment is reserved, though that payment may not be the same each year. I do not think it necessary to express any opinion on this point as I think it is quite clear, that Section 26 of the Stamp Act does not apply to this case. That section says, "where the amount or value of the subject-matter of any instrument chargeable with ad valorem duty cannot be, or in the case of an instrument executed before the commencement of this Act) could not have been, ascertained at the date of its execution or first execution nothing shall be claimable under such instrument more than the highest amount or value, for which, if stated in an instrument of the same description, the stamp actually used would, at the date of such execution, have been sufficient." Is this then a case in which the value or the amount of the subject matter was not ascertainable at the date when the instrument in question Ex. I was executed? What is the subject-matter here? The subject-matter seems to be a certain number of casuarina trees or their equivalent value, which was clearly ascertainable at the date of the contract. It is argued that the value of the trees at the end of 8 or 10 years was not ascertainable at the time when Ex. I was executed and the parties contemplated that such value should be payable. The whole matter amounts only to this : so many trees were due to the 1st plaintiff at the end of the term and the 1st plaintiff instead of receiving the trees was entitled if he so chose, to receive their value. I should

therefore say that the subject-matter was ascertainable at the date of the lease. If we put any other construction, the result would be that where

what is payable in future is not current coin, but anything else, a person would be liable to lose what is his just claim through no fault of his own, for

it would not be possible, in most cases to ascertain beforehand what the market price of a certain article would be sometime hence. And this

would have far reaching consequences. In my opinion the cases which were intended to be covered by Section 28 are like that of the produce of

mines which is expressly mentioned in that section, where what will be realised is altogether uncertain ; not merely the market value, but also the

quantity of the article bargained for. Two decisions of this Court were brought to our notice. One is reported in *The Collector of Tanjore v.*

Ramaswamier ILR (1881) M. 342. (F.B.). There the unascertainability of the subject-matter arose from the fact that the value of the paddy was to

be fixed by the Collector and therefore it was not the market value that was in question but what the Collector in his discretion might fix and which

of course was incapable of being ascertained beforehand. The next case is that reported in *Soodamani Pattar and Others Vs. Somasundara*

Mudaliar and Others, . That was a case very similar to this. It was there held that Section 25 had no application. It may be that there are some

observations in the case which are open to doubt, but the main principle laid down there seems to me to be quite applicable to the present case,

namely, where a certain quantity of produce of a certain land is reserved as payable to the lessor that could not be said to be something

unascertainable within the meaning of Section 26. Section 26 is therefore no bar to the plaintiffs recovering such damages as they may be entitled

to.

4. The judgment then deals with matters not necessary for this report.

Srinivasa Aiyangar, J.

5. I agree. I confess that I had considerable difficulty in making up my mind as to the applicability or otherwise of Section 26 of the Stamp Act to

this case. The instrument is called a lease and is not stamped though registered.

6. Under the document the defendant was entitled to the exclusive possession of the land for 10 years. His obligation was to plant and rear at least

fifty thousand casuarina trees. The trees when grown were to be cut at the

expense of both the parties and the 1st plaintiff was entitled to a moiety of the proceeds. There is no date or period or periods fixed for that cutting. It is difficult to say that the half of the proceeds of the wood cut which the first plaintiff was entitled to, was either rent or premium. It is unquestionable that the parties contemplated that the defendant should plant and rear the trees in the usual manner and that the trees should be cut from the 8th year as is usual in those parts, but it cannot be said that there was any periodical payment stipulated for by the instrument, so as to make the wood or the proceeds of the wood deliverable or payable to the 1st plaintiff as "rent". I am disposed to think that the document is really an assignment of the land for a term in consideration of recovering half the proceeds of the trees reared on the land when they were fit for cutting.

7. However this may be, there is no doubt that the parties treated the document as a lease, valued the rent at rupees one thousand for the period of 10 years, believed that the lease was one to a cultivator and that the document was exempted from duty under Article 35 of the Stamp Act. If they were right in that assumption, then Section 26 has no application ; for that section applies only to cases where the instrument is chargeable with an ad valorem duty and where no duty is payable at all, there is no question of any ad valorem duty payable on the instrument. Assuming however that the parties were wrong, (it is even doubtful whether Article 35 applies to all leases), then the instrument is not duly stamped, in which case undoubtedly Section 35 of the Act applies. The document having been admitted in evidence, cannot now be called in question, except u/s 61 of the Act. The plaintiff then can at the most be only called upon to pay ad valorem duty on the amount or value claimed by him. See *Adarji Dorabji v.*

Rajaram Jhurakhan Lal (1897) Bom. P.J. 382 where all the three learned Judges agreed on this point. I also agree with *Abdur Rahim, J.* that the value of the subject-matter of this instrument is not one which cannot be ascertained at the date of its execution.