(1906) 03 MAD CK 0005

In the Madras High Court

Mammikkutti and Others APPELLANT

Vs

Fuzhakkal Edom and Others RESPONDENT

Date of Decision : 01-03-1906

Acts Referred:
Limitation Act, 1908 — Article 116, 62
Transfer of Property Act, 1882 — Section 108(c), 55(2)

Citation : (1906) ILR (Mad) 353

Hon'ble Judges : Arnold White, C.J;Benson, J

Bench : Division Bench

Judgement

1. In Original Suit No. 59 of 1897 of which Pakru, the plaintiff''s predecessor in title, was a party, an injunction was granted restraining Pakru from

interfering with the forest in question. The injunction was granted upon the ground that the karar (exhibit ""G"") which had been granted by the

present first defendant to Pakru was not binding on the Tarward. The plaintiffs now claim damages under this same agreement from the first

defendant and the members of the Tarward. The finding that the karar on which the plaintiffs now sue is not binding on the parties whom it purports

to bind renders the question raised in the sixth issue as to the binding effect of the karar res judicata as between the plaintiffs and the defendants

other than the first defendant.

2. A new point was taken by Mr. Sivaswami Ayyar on behalf of the appellants which was not raised in the pleadings and was not taken in the

Court of First Instance Mr. Sivaswami Ayyar argued that the legal effect of exhibit ""G"" was to render the trees therein referred to security for the

advances which had been made by Pakru to the Tarward, and that a charge had been created on the trees in favour of the plaintiffs. So far as the wording of exhibit ""G"" goes, there is nothing to suggest that the parties intended that it should operate as a mortgage. Mr. Sivaswami Ayyar

however relies on the word ""kuttikanom"" which occurs in the body of the document. No doubt one of the meanings of ""kuttikanom"" is ""mortgage

of trees,"" and if the instrument had been described as a kuttikanom agreement we might have been prepared to take the view that it was intended

to operate as a mortgage. But the word in the document in question is used, as it seems to us, as meaning ""stamp fee"" and nothing more, and we

do not think that the instrument operated, or was intended to operate, as a mortgage. As regards the first defendant the question is - is the

plaintiffs'' personal remedy against him barred by limitation? It was held by the Sub-Judge that the claim was time barred, the period of limitation

being 3 years under Article 62 of the second schedule of the Indian Limitation Act. It was contended before us that Article 116 was applicable and

that the period of limitation was 6 years. The question is - is the karar exhibit ""G"" to be construed as containing an implied covenant for title or for

quiet enjoyment of which there has been a breach? There can be no doubt that exhibit ""G"" is an exclusive license to cut certain trees (subject to the

right of the Tarward to cut for their own necessities). Is it anything more? We have already held that it is not a mortgage. Is it a sale of Immovable

property? If it is, there is, u/s 55(2) of the Transfer of Property Act, a covenant for title. If not a sale, is it a lease of Immovable property? If it is,

there is u/s 108(c) of the Transfer of Property Act, a covenant for quiet enjoyment. By Section 3 of the Act ""immovable property"" is defined as not

including standing timber, growing crops, or grass. The contention on behalf of the appellants was that the definition only applied to standing timber

which it was the intention of the parties should be immediately severed and delivered as a chattel. It was also contended that there was under

exhibit ""G"" a conveyance of an interest in Immovable property inasmuch as a period of 6 years was allowed for the cutting of the trees and during

this period the trees would derive sustenance from the soil. In Seeni Chettiar v. Santhanathan Chettiar ILR Mad. 58 an instrument somewhat

similar to the karar in the present case was considered by a Pull Bench. It was held that the instrument there in question created an interest in land.

The case was first heard before Shephard and Best, JJ. Shephard, J. was of opinion that the instrument was a lease. Best, J., while expressing no opinion as to this, was of opinion that it created an interest in Immovable property; but the Judges differed on the question whether the document

was admissible in evidence without having been registered. On a reference to a Full Bench, Subrahmania Ayyar, J., was of opinion in that the

instrument was not a lease, but that it did create an interest in Immovable property. The two other learned Judges who constituted the Court

agreed that it created an interest in Immovable property.

3. For the reasons stated by Subrahmania Ayyar, J., in dealing with the instrument then in question, we are of opinion that the karar in the present

case is not a lease.

4. In Seeni Chettiar v. Santhanathan Chettiar ILR Mad. 58 the decision of the Court was with reference to the provisions of the law of Registration

and it does not follow that an instrument which is to be held to create an interest in land for the purpose of that law is an instrument into which there

must be imported a covenant for title or for quiet enjoyment. The transactions with regard to which these covenants are to be deemed to exist are

defined in the Transfer of Property Act, and if the transaction is not one of those so defined we do not think either covenant can be implied. It is

not necessary for us to consider whether exhibit ""G"" is a mere license or a license coupled with a grant. The question whether the grant, if any,

creates such an interest in Immovable property as to carry with it an implied covenant for title or for quiet enjoyment, must, as it seems to us, be

decided with reference to the provisions of the Transfer of Property Act. The grant, if any, in the present case does not fall within any section of

that Act, which provides for such an implied covenant.

5. Further, there appear to be good grounds on which the instrument in question in Seeni Chettiar v. Santhanathan Chettiar ILR Mad. 58 can be

distinguished from the karar in the present case for the purposes of the point we have to decide, if not for the purposes of the Registration law. The

former conveyed to the grantee not only the right to cut trees but also the grass, korai, gum, etc., on the bank and bed of the tank on which the

trees stood. The latter merely gave the right to cut and remove the trees, certain classes of trees being excepted. The latter also contained express

provisions that the licensee or grantee should have the right to cut down the trees alone and no right whatever in the land, and that the amount advanced should not be recovered but should be settled by the removal of trees only.

6. We are of opinion that the case is governed by Article 62 or Article 97 of Schedule II of the Indian Limitation Act and that the period of

limitation is 3 years. The appeal is dismissed with two sets of costs.

