(1910) 02 MAD CK 0017

In the Madras High Court

Mangalasami alias Muthuvijia Raghunatha Thevar — APPELLANT

Vs

Subbiah Pillay and Others — RESPONDENT

Date of Decision : 25-02-1910

Acts Referred:

Registration Act, 1908 — Section 3

Citation : (1910) 20 MLJ 966

Judgement

1. The plaintiff is the owner of a fourth share in the melwaram right of Kavoor village. The 1st defendant having obtained a decree in O.S. No. 24

of 1898 in the Subordinate Court of Madura, East, for a three-twentieth share of the melwaram right, the plaintiff''s guardian entered into an

arrangement with the 1st defendant whereby the 1st dependent was to have a mortgage of the plaintiffs right to the fourth share of the rents due to

him from Fasli 1310 as security for the 1st defendant''s share of the rents for Faslis 1307 and 1308 unlawfully received by the plaintiff''s father. The

transaction was in substance a mortgage of future rents due for the plaintiff''s share to the 1st defendant. Both the Courts below have held that the

document being unregistered was inadmissible in evidence. The Munsif gave a decree to the plaintiff for the sum of Rs. 496-8-6, holding that the

1st defendant was a trespasser. The District Judge, on appeal, has dismissed the plaintiff''s suit. He has come to the conclusion 1 hat the act of the

de facto guardian, the 4th defendant, in placing the 1st defendant in possession of the plaintiff''s fourth share was bona fide and justifiable, and

although Exhibit I was inadmissible, the 1st defendant could not be treated as trespasser and the plaintiff was, therefore, not entitled to any

damages. I support of this second appeal the learned Advocate-General argots that the 1st defendant''s possession and his right to appropriate the plaintiff''s there of the rents towards his claim for Faslis 1307 and 1308 only arose under the mortgage Exhibit I, and on the footing that that

instrument was invalid the defendants'' possession could only be treated as that of a trespasser and that the plaintiff was, therefore, entitled to

recover. We think this contention must be upheld. The learned vakil for the respondent did not attempt to support the judgment of the District

Judge on the ground stated by him, but he argues that Exhibit I was receivable in evidence because it did not require registration. We are unable to

agree with this view. The document was a mortgage of the plaintiff''s right to future rents. It was over one hundred rupees in value. By Section 3 of

the Registration Act Immovable property is defined as including ""any other benefit"" to arise out of land. The question is whether future rents

payable in respect of land are benefits to arise out of land, It has never been doubted that a lease by a Zemindar or a transfer by him of the

Zemindari interests, which is generally the, right to the melwaram, is a transfer of Immovable property. If the assignment is, however, of an arrear

of rent, the benefit has already arisen out of the land and is therefore outside the definition of ""immovable property."" It has been held that a lease of

a right to market dues upon a certain land requires registration as an instrument dealing with a benefit to arise out of land--see Sikandar v. Bahadur

I. L. R. (1905) A 462--though the profits which have already accrued from a lambardar were held not to fall within the definition of Immovable

property--see Damodhar Das v. Gidari Lal I. L. R. (1905) A. 564. The decision in Venkaji Babaji Naik v. Shidramapa Balape Desai I. L. R.

(1895) B. 663 seems almost exactly to cover the present case. There a right to assessment due upon certain land was assigned by an unregistered

instrument. It was held that the instrument required registration as the assesment had not accrued due at the date of the assignment, but was only to

become due in the future. It has no doubt been decided that a sale of indigo crop of the coming year operates merely as an agreement to convey

that the conveyance takes effect only after the crops have come into being--see Misri Lal v. Moshar Hassain I. L. R. (1896) C. 262 and Bansidar

v. Sant Lal I. L. R. (1887) A. 133. No question arose in these cases as to registration, though it may be pointed out that growing crops are within

the definition of moveable property. The principle laid down in those cases is in accordance with Collyer v. Isaacs (1881) 4 R. 19 Ch. D. 362 and

Holroyd v. Marshall. (1862) 10 H.L.C. 191 Sir George Jessel observes in the first of these cases: "" A man cannot in equity, any more than at law,

assign what has no existence. A man can contract to assign property which is to come into existence in future, and, when it has come into

existence, equity treating as done that which ought to be done fastens upon that property, the contract to assign thus becomes a complete

assignment."" We do not know if the rule here laid down as to after-acquired chattels has anything to do with the assignment of future rents which a

1 ease of the melwaram generally is. But, however this may be, the question narrows itself to this: "" Whether, within the meaning of the Registration

Act, future rent is a benefit to arise out of land ? If that should be so, we have only to see whether the instrument purports to create or assign any

right, title or interest in such property. It would be compulsorily registrable u/s 17 if the value of the interest which the document purports to create

is one hundred rupees or upwards. We are, therefore, bound to hold that Exhibit I cannot be received in evidence and that there is no answer to

the plaintiff''s claim for damages.

2. In estimating the damages the District Judge has held that the defendants are entitled to reduction as regards some damage caused by fire. The

Advocate-General has made no exception to this. The plaintiff''s share, therefore, of the loss must be deducted from the damages a wardable. The

plaintiff is entitled to a decree for Rs. 496-8-5 minus Rs. 124-8-6.

3. The decree of the District Judge will be reversed and the plaintiff will have a decree for Rs. 372 against the 1st defendant personally with interest

at 6 per cent per annum from this date and against defendants Nos. 2 and 3 to the extent of their share in the joint family properties. Each party will

bear his own costs throughout.

