

(1914) 02 MAD CK 0038
In the Madras High Court

Natesa Gramani

APPELLANT

Vs

Tangavelu Gramani

RESPONDENT

Date of Decision : 17-02-1914

Acts Referred:

Citation : AIR 1914 Mad 362 : (1915) ILR (Mad) 883

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

Bench : Division Bench

Judgement

Oldfield, J.—The first of the two cases, on which the defendant has relied, Sultry Kurdeppa v. Goondakull Nagireddi (1871) 6 M.H.C.R. 71 can be dismissed shortly, because at its date "movable property" was not defined for the purpose of registration as it now is.

2. The second, Seeni Chettiar v. Santhanathan Chettiar I L.R. (1897) Mad. 58 was decided after the amendment of the definition in 1871, though without explicit reference to it; and it was held that an instrument authorising the enjoyment and removal of trees, grass, and other produce in a tank bed for a period of four years for a consideration of Rs. 3,400 required registration. Now, although a right to the juice of trees was not conveyed by that instrument, its terms indicating that no juice bearing trees were in question, yet it resembled Exhibit A in the present case to the extent that, the trees being referred to in the judgment as timber, it dealt with movable property as it is at present defined. That however was not held to be decisive as to the necessity for registration. The ground, on which registration was required, was in the words of Subrahmanya Ayyar, J., that "parties entering with such a contract may expressly or impliedly agree that the transferee shall enjoy for a long or short period, some distinct benefit to arise out of the land, on which the timber grows. In a case like that, the contract would undoubtedly be not one in respect of mere movables, but would operate as a transfer of an interest in immovable property." And in deciding whether the contract then in question fell under the latter description the learned Judge expressly attached importance to its duration, four years, and

presumably also to the nature of the property, timber, grass and undergrowth which would be augmented by spontaneous growth. No doubt in the present case, in which plaintiff's right was to draw palmyra juice, cut such leaves as his doing so involved and take the fruits of the trees, his right to do so for two reasons entailed that he should benefit to adopt an expression from *Marshall v. Green* (1875) L.R. 1 C.P.D. 35 by "the nutriment afforded by the land." This benefit however is not in my opinion such an interest in land as Section 17(1)(b) of the Registration Act contemplates. For it involves only a stipulation that the trees are to remain available during the currency of the contract for the use specified in it, not any limitation on the transferor's enjoyment of the land as such. In *Seeni Chettiar v. Santhanathan Chettiar* ILR (1897) Mad. 58 there was such a limitation. Although, as observed in the judgment already referred to, there was no such transfer of possession as would constitute a lease, the contract was still subject to the implied proviso that the transferor's "action should not injuriously affect the special rights conferred upon the transferee with respect to the trees, etc.," and the enjoyment of those rights would evidently have been irreconcilable with the retention of any substantial enjoyment by the transferor. Here it has not been explained and it does not appear how any ordinary use of the land could affect the nutriment it afforded to the trees, their juice or their fruit. It is therefore possible to give unrestricted effect to the reference to the juice of trees in the definition of movable property in Section 2 of the Act and to hold that Exhibit A transferred no interest in immovable property.

3. Concurring with the learned Chief Justice I would dismiss the appeal with costs.