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**(1967) 09 MAD CK 0025**

**In the Madras High Court**

**Case No :** Letters Patent Appeal No. 97 of 1963

Perumal Naicker

APPELLANT

Vs

T. Ramaswami Kone and Another

RESPONDENT

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**Date of Decision :** 26-09-1967

**Acts Referred:**

Transfer of Property Act, 1882 — Section 3

**Citation :** AIR 1969 Mad 346

**Hon'ble Judges :** Veeraswami, J; Ramaprasada Rao, J

**Bench :** Division Bench

**Advocate :** A. Sundaram Iyer and T.R. Mani, for the Appellant; Govt. Pleader, T. Sivamani, N. Krishna Mitra and V. Narayanaswami, for the Respondent

**Final Decision :** Allowed

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## Judgement

Veeraswami, J.—This appeal, under the Letters Patent, is from the Judgment of yenkataadri, J., by which he reversed the decree of the

appellate Court below him and decreed the suit. The first respondent having defaulted in repayment of a loan obtained from the State, the second

respondent, under the provisions of the Land Improvement Loans Act, the Fetter Engine and pump-set, which the first respondent had purchased

out of the funds provided by the loan, were attached in recovery proceedings under the provisions of the Revenue Recovery Act, and brought to

sale. The appellant was the purchaser. He was impleaded as the second defendant in the suit, which was to set aside the sale on the ground,

among others, that the engine being a permanent fixture to the land, it was an immovable property, and that in the recovery proceedings the

procedure applicable to such property having not been applied, the sale itself was invalid. The first two Courts below differed in their view as to

the nature of the property, the first appellate Court being of opinion that it was not an immovable property, Venkatadri J., was not prepared to accept that view and stated:

When once a land owner borrows money from the State and purchased an oil engine and fixes it to his land, it must be deemed to be part of the

immovable property as his intention is to make the machine a permanent fixture imbedded to the earth. Since the object is for the beneficial

enjoyment of the land, it is immaterial whether he subsequently removes the machinery from place to place in any part of the land. Wherever it is

fixed, it becomes immovable property.

The learned Judge, in the course of his judgment, referred to certain tests, both English and Indian, and summed up that two tests have been laid

down to determine the question:

(1) the degree or mode of annexation and (2) the object of annexation; but in applying these tests it does not appear that the factual basis has been

kept in view. The trial court assumed that the engine and pump-set were fixed permanently to the earth from 1952. The first appellate Court, with

reference to the notice preceding the attachment and sale in recovery proceedings and the conduct of the first respondent himself, was inclined to

think that the engine and pump-set, when sold, were movable property. Apparently, at that time, the engine had been detached from its base in a

room on the land of the first "respondent.

2. The question whether when a chattel is attached to the earth or a building, it is immovable property, is a mixed question of law and fact, and has

to be decided in the light of particular facts in each case. Obvious cases may not call for tests. Where doubt arises, certain tests have been

formulated in particular contexts, which, if literally applied, may not yield always a proper and correct result. While general tests pointed out by

judicial decisions, in the light of specific facts, may be borne in mind, eventually the decision on the question should depend upon how the Court,

looking at the facts as a whole, feels on the matter.

3. "Immovable property" is defined at least in three Indian enactments, the General Clauses Act, the Registration Act and the Transfer of Property

Act. The first two are not of much assistance, for they merely say that "immovable property includes things attached to the earth, or permanently

fastened to anything attached to earth. They give no guidance as to what is meant by "attached" or "permanently fastened". The third enactment, by Section 3, describes what is meant by "attached to the earth", to wit, (a) rooted in the earth, as in the case of trees and shrubs; (b) imbedded in the earth, as in the case of walls or buildings; or (c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached. Broadly speaking, the degree, manner, extent and strength of attachment of the chattel to the earth or building, are the main features to be regarded. All the three aspects, in the description, show that the attachment should be such as to partake of the character of the attachment of the trees or shrubs rooted to the earth, or walls or buildings imbedded in that sense, the further test is whether, such an attachment is for the permanent beneficial enjoyment of the immovable property to which it is attached. Even here, although there may be an attachment to the earth, as contemplated by the first two aspects in the description of "attached", still if the attachment is a necessary requisite and that is the manner by which the movable property is or can be enjoyed or worked, it may be open to question whether because of its fixture, though permanently, in the qualified sense, it can ipso facto or ipso jure be regarded as immovable property. Board of Revenue, Chepauk, Madras Vs. K. Venkataswami Naidu, illustrates this. In that case, which was under the Stamp Act, a lease of properties relating to a touring cinema (tent and machines), though collapsible and capable of being removed, but permanently fastened to the earth when in use, was held to be not chargeable to stamp duty u/s 30(a)(1) of Schedule 1A of that Act, as in the nature of things such properties could not be immovable property. The learned Chief Justice, who spoke for the Court, further observed that the poles of the tent and machinery were imbedded in the earth only temporarily and not permanently. It may be seen that a touring cinema, which is located in a place, is not shifted from place to place but continues to function for fairly a long period. Permanence of the fixture, in the context, is, therefore, of a relative character. For a chattel to become part of immovable property and to be regarded as such property, we should think, it must become attached to the immovable property as permanently as a building or a tree is attached to the earth. If, in the nature of things, the property is a movable property

and for its beneficial use or enjoyment, it is necessary to imbed it or fix it on earth, though permanently, that is when it is in use, it should not be

regarded as immovable property for that reason. That, as we understand, is the ratio of Board of Revenue, Chepauk, Madras Vs. K.

Venkataswami Naidu, S.P.K.N. Subramanian Firm Vs. M. Chidambaram Servai, resembles the principles of Board of Revenue, Chepauk,

Madras Vs. K. Venkataswami Naidu, . Certain tenants installed an oil engine as part of a cinema in a certain leasehold land, with the object of

utilising the machinery for their profit. Wadsworth, J., held that a security bond pledging the oil engine could not be deemed to be a transaction

relating to immovable property. The learned Judge approached the question in the following manner:

If a thing is imbedded in the earth or attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached, then it

is part of the immovable property. If the attachment is merely for the beneficial enjoyment of the chattel itself, then it remains a chattel, even though

fixed for the time being so that it may be enjoyed.

We find ourselves in agreement with the second part of these observations, which is apposite to the instant case. In the case before us, the

attachment of the oil engine to earth, though it is undoubtedly a fixture, is for the beneficial enjoyment of the engine itself and in order to use the

engine, it has" to be attached to the earth and the attachment lasts only so long as the engine is used. When it is not used, it can be detached and

shifted to some other place. The attachment, in such a case, does not make the engine part of the land and as immovable property. Mohammed

Ibrahim Vs. Northern Circars Fibre Trading Co., was decided by a Division Bench of this Court under the provisions of the Registration Act, that

was a case of machinery of a mill fixed to a cement platform and attached to iron pillars fixed in the ground. It was hold that the movable property

so attached should be regarded as immovable property. It seems to us that this case turned on the special facts and the nature of the fixture,

including the intention derived from the physical features of the fixture, that the mill was to be a permanent attachment to the earth. A Petter oil

engine, as in this case, stands on a different footing and from the very nature of this type of machinery.

We do not think that any useful purpose would be served by a reference to English Cases, because they have proceeded on basis of fixtures to realties, under the English Law. Different considerations have been applied by English Courts in deciding whether given things amounted to fixtures, in the sense in which the term is understood in the law relating to real property. Nevertheless, reference may be made to two of these English cases. In *Leigh v. Taylor*, 1902 AC 157, the House of Lords held that valuable tapestries affixed by a tenant for life to the walls of a house for the purpose of ornament and the better enjoyment of them, were not fixtures and therefore did not pass with the freehold to the remainderman. The House of Lords thought that the tapestries formed part of the personal estate of the tenant for life. The speech of Lord Halsbury shows that questions like this cannot always be answered, in the nature of things, with arithmetical accuracy, but certain discernible tests, as aids in deciding the question, are well-established, as, for instance, if something is made part of the house, it must necessarily go to the heir, because the house goes to the heir and it is part of the house. So, where something is attached in some form to the walls of a house, nevertheless, having regard to the nature of the thing itself, and the purpose of its being placed there, it is not intended to form part of the realty, but is only a mode of enjoyment of the thing while the person is temporarily there, and is there for the purpose of his or her enjoyment. Though these observations were in the context of fixtures, and we are conscious that English law relating to fixtures cannot be bodily applied to conditions in this country the observations of Lord Halsbury certainly are of weight and point to the correct approach to question of this kind.

The House of Lords, again, had to consider in *Reynolds v. Ashby & Son* (1904) A. C. 466, whether machinery attached to freehold was a fixture. There the machines affixed to concrete beds in the floor of the factory by bolts and nuts, could have been removed without injury to the building or the beds. In this case too Lord Halsbury was one of the Law Lords who decided it, but with this difference, here the House considered that as the machines were part of a factory, which was the subject-matter of a lease, the attachment of the machines to the earth in that manner should be regarded as a fixture.

4. The Fetter Engine, which has been the subject-matter of sale in the instant case, may be assumed to have been mounted on cement base and

fastened to it by bolts and nuts, Actually, there is no evidence in this case to that effect, It is surprising that when the main question which the

Courts below had to decide was whether the chattel should be regarded as immovable property, no effort was made to put on record the nature of

the attachment or fixture. But proceeding on the assumption we made just now, we are of opinion that by the very nature of things, it is not

possible, to our minds, to regard the Fetter Engine as immovable property merely because for the beneficial enjoyment of it during its use, it is fixed

to the earth in that manner, The engine cannot be used except by fixing it to the earth. Therefore, it cannot be said that the intention, as disclosed by

the fixture, is to make it a permanent part of the earth and so it is immovable property. The nature of the engine and the purpose of its fixtures, both

show that it cannot be regarded as immovable property. No doubt, the evidence in this case is that the Fetter engine stood affixed to the earth from

1952. But this is because during that period the engine was used for that purpose the fixture was necessary. On that account, the fixture cannot be

viewed as a permanent one.

5. On the view we have taken, namely, that the engine and the pump-set remained to be movable property, there was nothing wrong in the

procedure applied to the attachment and sale thereof. This being the only point before us, the appeal is allowed, the result of which is that the suit

will stand dismissed. Each party will bear its own costs throughout.