
(1892) 09 MAD CK 0011
In the Madras High Court

Ramakrishna

APPELLANT

Vs

Unni Check

RESPONDENT

Date of Decision : 08-09-1892

Acts Referred:

Easements Act, 1882 — Section 52

Citation : (1893) ILR (Mad) 280

Hon'ble Judges : Parker, J;Best, J

Bench : Division Bench

Judgement

1. We are of opinion that the Courts below are in error in holding that Exhibit III is more than a license. The ground of decision apparently is that,

whereas the grant of the right to trap elephants upon the plaintiff's land is a mere license, the right to carry away the elephants and reduce them to

possession is something more. In coming to this conclusion, the Court have, we think, overlooked the definition of "license" contained in Section 52

of the Indian Easements Act. The right granted is not more than a license, unless it amounts to an easement or an interest in the property, i.e., in the

Immovable property. The right to carry away the elephants and reduce them to possession is not an interest in Immovable property, nor does it

amount to an "easement" as defined by Section 4, since it is not attached to the ownership of any Immovable property for the better enjoyment of

that property.

2. In Doe v. Wood 2 B. & Ald., 724, it was held in a case of grant of mining rights that the grant of a power to search for and get and carry away

tin within a certain term was a mere license, no more than the grant of a right to a personal chattel, and that it did not amount to a grant of an estate

or property in the land itself or any part of the ore or metals ungot therein.

3. The licensee may have a right under section 56 of the Basements Act to employ his servants to dig the pits and aid in capturing the elephants,

but this will not carry with it the right to transfer his license or any part of the rights contained therein.

4. It was found by the Subordinate Judge that the sub-karar VII had been executed by the licensee with the knowledge and consent of the plaintiff.

The District Judge gives no finding upon this point, but observes that Exhibit IV shows that the Tirumalpad made no objection to the transfer of his

rights by the licensee to the defendant. In this observation we are not able to concur. Exhibit IV makes no mention of the sub-karar, but is a receipt

given to the Nambudiri. It is true that it mentions the elephants were in possession of Unni Check and were caught in pits dug by him but this is

consistent with the defendant having acted as an employee under the Nambudiri. There is no finding on the evidence that the plaintiff either

consented to or subsequently ratified the sub-karar VII."

5. We must, therefore, reverse the decree of the lower Appellate Court and remand the appeal for rehearing. The appellant is entitled to the costs

of this second appeal and the costs in the Courts below will abide and follow the result.