

(1897) 10 MAD CK 0012
In the Madras High Court

Rayiran Chathan and Another

APPELLANT

Vs

Thottinkara Moopil

RESPONDENT

Date of Decision : 15-10-1897

Acts Referred:

Citation : (1897) 7 MLJ 317

Judgement

1. This is an appeal by the stani and his lessee against a decree obtained by the plaintiff as successor to the stanom. The effect of the decree is to

restrain both the defendants absolutely from cutting the timber in certain forests and to make the defendants liable in damages to the extent of Rs.

400, a peculiar direction being made as to the manner in which the money shall be treated. In the District Munsif's Court the plaintiff's suit had

been dismissed on the ground that the lease was one which the stani was competent to give. This decree is reversed by the District Judge and the

decree as above mentioned is framed on the strength of certain English cases cited by the Judge in which the position of a tenant for life

impeachable for waste was in question. There is, as has often been observed, great danger in applying English decisions on the law of Real

Property to cases which arise in this country. To make the decision cited applicable, it must be assumed that the English law of waste has been

adopted by the courts of British India, that the defendant stani was a tenant for life and further that he was a tenant for life and impeachable for

waste. No one of these assumptions can safely be made. The position and powers of a stani have been often discussed. He is not a mere tenant for

life, and he is certainly not impeachable for waste in the sense in which that expression is used in the English books. If it were true that a stani was

in that position it would follow that he could not even cut down trees which were fit to cut or in a state of decay without accounting for the

proceeds which would be treated as capital. (See cases cited in notes to Garth v. Gorton Wb. and T.L. C)

2. The decision of the Judge founded as it is on considerations wholly foreign to the case, cannot be regarded as satisfactory. In any view, the

injunction in the terms in which it is granted could not be maintained, because it goes the length of preventing the stani from making any use

whatever of the timber. As, however, the stani has died, it is unnecessary to pursue the question further except so far as it affects the other

defendant. He is viewed by the District Judge as a simple wrongdoer, and if it were true that the stani was a tenant for life, impeachable for waste,

this view might be correct. But the stani has in truth much larger powers than are attributed to him by the Judge. He is the person who represents

the estate for the time being and enjoys much the same position as was assigned to the holder of an impartible zamindari, before the current of

decisions was turned in 1881. (See Mana Vikrainan v. Sundaran Pattar I.L.R., 4. M., 118). It is certainly open to a stani to make a lease of forest

land for a term of years, and the mere fact that the alienation is intended to hold good after his life-time will not invalidate it. Similarly, it is

competent to a stani to cut down forest trees for his own purposes, though, by the manner and extent of his operations, he may render himself

liable to an action at the suit of, his probable successor. It depends upon the circumstances of the case whether an alienation made by a stani or

other conduct on his part in the management of the estate is of a character to render him liable to an action. In the present case, in order to make

the lessee liable in damages, it would at least have to be proved that the acts done by him would, if done by the stani immediately, have rendered

him liable as for destruction of the inheritance. By the mere cutting of trees, that being the ordinary and indeed the only way of enjoying the estate,

no injury is done of which as between the stani and his successor the latter has any right to complain. Considering that as regards the lessee's

liability the finding of the Judge is vitiated by the erroneous point of view which he adopted, and taking into account the extent of the forest and the

comparatively small amount of timber cut, we hold that, on the facts stated, the decree for damages against him is not justified. As it stands, the

decree relating to the damages is moreover unworkable. The District Judge in adopting it from the prayer of a bill, has failed to notice that in order

to make the decree complete, directions would be required as to the persons to whom the interest on the sum invested or the sum itself should

ultimately be paid.

3. We must set aside the decree against the surviving defendant, and restore as regards him the decree of the District Munsif. The respondent must

pay his costs in this and in the Lower Appellate Court.