
(1943) 03 MAD CK 0019
In the Madras High Court

S. KR. M. Subramanyam Chettiar

APPELLANT

Vs

Meyyammai Achi and Others

RESPONDENT

Date of Decision : 18-03-1943

Acts Referred:

Transfer of Property Act, 1882 — Section 54(2)

Citation : AIR 1943 Mad 522 : (1943) 56 LW 279 : (1943) 2 MLJ 15

Hon'ble Judges : Happell, J

Bench : Division Bench

Judgement

Happell, J.—The appellant was the first defendant in a suit in which the first respondent was the second plaintiff having been added as the

legal representative of the first plaintiff after his death, for an injunction restraining the appellant from interfering with the right of way over a lane and

for a direction that the appellant should demolish a dust bin which he had put up in the lane at his own cost. The right of way, it was alleged was

conveyed to the first respondent under the deed Ex. C, for a consideration of Rs. 175. Ex. C is an unregistered document and it was contended by

the appellant that it required registration and was accordingly inadmissible in evidence. The lower Courts, following the decisions in Bhagwan Sahai

v. Narasingh Sahai ILR (1909) All. 612 and in Satyanarayanamurti v. Lakshmayya (1928) 57 MLJ. 46 held that the deed Ex. C did not require

registration. Substantially the only question in this-second appeal is whether Ex. C did or did not require to be registered. In Bhagwan Sahai v.

Narasingh Sahai ILR (1909) All. 612 and in Satyanarayanamurti v. Lakshmayya (1928) 57 MLJ. 46 in which Madhavan Nair, J., followed the

decision of the Allahabad High Court a distinction was drawn between a document which created and a document which transferred an easement.

A document which created an easement, it was held, was valid without registration because it was not a transfer of property within the meaning of the Transfer of Property Act, whereas the transfer of an existing easement is a transfer of property and so the transfer of an intangible thing within the meaning of clause 2 of Section 54 of the Transfer of Property Act which can be made only by a registered instrument, the transfer of an existing easement being the act of the dominant owner and inseparable from the transfer of the dominant heritage. Earned Counsel for the appellant agrees that Ex. C amounts to the creation of an easement and that it does not fall within the purview of the provisions of the Transfer of Property Act. He argues, however, that although the document does not attract the provisions of the Transfer of Property Act, it does attract the provisions of the Registration Act and as it has not been registered, it cannot be admitted in evidence. In support of this contention I have been referred to the decision in *Sital Chandra Chowdhury v. Mrs. A.J. Delaney* 20 C.W.N. 1158. In the second last paragraph of the judgment in that case it is stated:

It may be added that Section 2, clause 6 of the Registration Act which defines "immovable property" for the purposes of that Act, expressly includes "rights to ways." Where, therefore, a right of way is created in writing the writing may require registration but not if the value of the right is less than one hundred rupees.

2. It is quite true, as pointed out for the respondent, that this observation is obiter. With respect, however, having regard to the provisions of Section 2, clause 6 and Section 17 of the Registration Act there can be, in my opinion, no doubt that it is correct. In Section 2, clause 6 "immovable property" is stated to include "rights to ways", and in Section 17(1), sub-clause (b) it is enacted that "non-testamentary instrument which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property" shall be registered. u/s 2, clause 6 for the purposes of the Indian Registration Act rights of way are immovable property. A document therefore which creates a right of way creates a right to or interest in immovable property. The consideration for Ex. C was Rs. 175 and therefore a

right to or interest in immovable property was created of the value of Rs. 100 and upwards. Ex. C accordingly should have been registered and under the provisions of Section 49 of the Indian Registration Act it cannot be received as evidence. Earned Counsel for the respondent stressed the fact that no contention with regard to the provisions of the Indian Registration Act was put forward in either Bhagwan Sahai v. Narasingh Sahai I.L.R.(1909) All. 612 or Satyanarayanamurti v. Lakshmayya 20 C.W.N. 1158. This, however, would seem to have been because no money value could have been attached to the easements created. The consideration for the grant of the "easement was a promise on the part of the grantee to do something of a like kind for the grantor. The provisions of the Indian Registration Act are quite clear and in my opinion, it cannot be doubted that Ex. C required registration u/s 17 and so by virtue of Section 49 it could not be admitted as evidence of the creation of the easement. Admittedly there is no other evidence and consequently it follows that the suit should have been dismissed.

3. The argument has been put forward by Mr. Rajah Aiyar for the respondent that irrespective of a right of easement the enjoyment by the respondents of the right of way entitled them to an injunction against a stranger who obstructed them in their enjoyment. In support of this contention I have been referred to the decision of a Full Bench of this Court in Venkatanarasimha Raju v. Ramaswami ILR (1909) All. 612. The question to be answered in Venkatanarasimha Raju v. Ramaswami I.L.R.(1909) All. 612 was framed in these terms:

Can a person who has been using a particular way over land adjoining his, but for less than the prescriptive period, maintain an action to prevent a stranger from obstructing him using the way?

4. The answer was that an action cannot be maintained in ordinary circumstances. It can only be maintained if the obstruction to user will have the effect of substantially depriving a person of the enjoyment of his property. There is no evidence at all in the present case that obstruction to his right of way would substantially deprive the respondent of the enjoyment of his property. The appeal is, therefore, allowed with costs throughout.