

(1895) 07 MAD CK 0003
In the Madras High Court

Seeni Chettiar

APPELLANT

Vs

Santhanathan Chettiar and Others

RESPONDENT

Date of Decision : 17-07-1895

Acts Referred:

Citation : (1895) 5 MLJ 253

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

Bench : Full Bench

Judgement

Shephard, J.—The first question is whether the Yadast tendered in evidence by the defendant is a lease and, as such, requires registration.

The interest acquired by the defendant under the instrument consisted in the right to enjoy the produce of all the trees in the tank-bed as also the

grass and the reeds and further to cut and remove the trees for a period exceeding four years. It was not merely the trees and grass then growing

and ready to be cut that the defendant was to acquire. He was further to be at liberty to take all the trees which might grow on the ground within

the period named. The intention was, in my opinion, to create an interest in Immovable property, and certainly it was intended that the defendant

should have exclusive enjoyment of the produce named in the yadast.

2. There was, therefore, a lease of Immovable property and not a mere license, Sultry Kurdeppa v. Goondakull Nagireddi (1870) 6 M.H.C.R. 73

and as the enjoyment was given for a term exceeding one year, registration of the yadast was compulsory. Failing the evidence, which the

instrument would afford, the defendant's claim to continue cutting the trees cannot be substantiated. The question however, remains whether the

plaintiff is entitled to relief by way of injunction,

3. The judgments of the courts below while discussing at length the question of law, do not state the facts with sufficient fullness and adequacy. It

appears, however, to be found that the plaintiff received from the defendant Rs. 200 in cash and Rs. 3,200 in the shape of a promissory note and

that this payment was made in consideration of the plaintiff allowing the defendant to cut the trees and take the other produce for a period of years.

It also, appears to be found that the defendant, was not, at the time of the suit, in actual possession of the ground. The District Judge finds against

the plaintiff on his contention that a particular number of trees only were sold to the defendant. He also appears to think that all the timber and

grass standing at the date of the yadast had been removed. It is not stated explicitly; but I think it may be inferred, that the note for Rupees 3,200

which was produced by the plaintiff has never been liquidated by the defendant. Under these circumstances, the question which I suggested at the

hearing does not arise, I mean, the question whether the court should assist by an injunction a plaintiff who, while he has himself received the

greater part of the agreed consideration, is endeavouring to prevent the defendant from enjoying that for which he has paid. Seeing that the

defendant has actually paid only Rupees 200 and must have had in the shape of timber and other things sufficient quid pro quo, I do not think he

has any cause to complain of the injunction. I would dismiss the appeal with costs.

Best J.

4. The yadast on which appellant relies is no doubt an instrument creating an interest in Immovable property for a period of 4 1/2 years extending

from its date (1st January 1891) to the close of Fasli 1304 (30th June 1895). It is not merely a license to cut trees and grass in existence on the

tank-bed at its date, but, ""to cut and enjoy the trees &c. and the grass, korai, gum, nuts &c. from this day till the close of Fasli 1304."" It is,

therefore, a document that should have been registered and in default of registration is inadmissible as evidence of any transaction affecting

Immovable property. Consequently it would be of no avail to defendant if produced by him in"" support of a suit for possession of the tank--or for

enforcement of his right to take grass, nuts, &c, (Cf Sukry Kurdappa v. Goondakull Nagireddi (1871) 6 M. H. C. R. 71 Nor would it be

admissible as evidence to resist a claim by the plaintiff for possession of the tank. The present suit, however, is not for possession of the tank, but

only for a declaration of plaintiff's right to certain standing trees and for an injunction restraining defendant from felling the same. An unregistered

document inadmissible as evidence affecting Immovable property is none the less admissible when the question relates only to moveables. Cf.

Thandavan v. Valliamma 16 M.H.C.R. 71 Standing timber is moveable property according to the definition given in of the Registration Act itself.

Consequently, the non-registration of the document in question is no bar to its admissibility for the purposes of this suit. The genuineness of the

yadast is found as a fact and the payment by defendant of Rupees 3,400 as consideration is not denied.

5. The District Judge would no doubt have dismissed the plaintiff's suit, had it not been for his finding that the unregistered yadast could not be considered.

6. As in my opinion, the yadast is admissible as evidence for the purposes of this suit, in which no Immovable property is sought to be affected, I

would allow this appeal, and setting aside the decrees of the Courts below, dismiss the plaintiff's suit and direct him to pay 1st defendant's costs

throughout.

7. In consequence of the difference of opinion between their Lordships, the following order was made by Mr. Justice Best u/s 575 of the Civil

Procedure Code.