
(1896) 11 MAD CK 0013
In the Madras High Court

Seeni Chettiar

APPELLANT

Vs

Santhauathan Chettiar and Others

RESPONDENT

Date of Decision : 12-11-1896

Acts Referred:

Specific Relief Act, 1877 — Section 42

Citation : (1897) ILR (Mad) 58

Hon'ble Judges : Arthur J.H. Collins, C.J;Subramania Ayyar, J;Davies, J

Bench : Full Bench

Judgement

Collins, C.J.—This Second Appeal No. 319 of 1894 was originally heard before SHEPHARD and BEST, J.J., and those learned Judges

disagreed in the conclusion they arrived at; and in consequence of BEST, J., having left the Court, the Letters Patent appeal had to be heard

before three other Judges.

2.The principal point in dispute was whether the yadast, dated 1st January 1891,created an interest in Immovable property, and, if so, whether it

could be used as evidence, not being registered. The yadast is as follows: ""In respect of the transaction of business heretofore taken on contract

from Madura Pattamars in fasli 1294 by me and A.N. Meenakshisundaram Settiar Avergal, I have paid, on 16th December 1890 in current fasli

1300, value for the said Meenakshisundaram Settiar half share, excluding my share, in the karuvela, velvala, margosa and manjanati trees, etc., in

Pattambudur tank to the north of the said village, and in the gum (resin),karuvela nuts, grass, korai, etc., standing thereon; and been enjoying the

same till this day. As I have settled a value of Rs. 3,400 for the said two shares, so that you may cut and enjoy the trees, etc., and the grass, korai,

gum, karuvela nut, etc., on bank and the bed of the said tank from this day till the close of fasli 1304, and executed a yadast to you on receipt of a

note from you promising to pay within a period of six months, you will enjoy in the said tank, as mentioned above. Should there be any trees or

other materials whatever in the said tank on the first day of fasli 1305, the above said person shall not interfere (with it).

3.It appears to me that there can be no doubt but that the yadast does convey an interest in Immovable property: the contrary proposition is not

arguable. It has long been settled that an agreement for the sale and purchase of growing grass, growing timber or underwood, or growing fruit, not

made with a view to their immediate severance and removal from the soil and delivery as chattels be the purchaser, is a contract for the sale of an

interest in land. I, therefore, hold that the yadast does convey an interest in Immovable property and is not receivable in evidence being

unregistered.

4. The next question is to what relief (if any) is the plaintiff entitled. For the reasons given by SUBRAMANIA AYYAR, J., in his judgment, I am of

opinion that the plaintiff is not entitled to any relief. I would, therefore, reverse the decree passed in plaintiff's favour and dismiss the suit. The other

Judges having decided that each party should pay his own costs throughout, I am not inclined to differ from them on that point.

Subramania Ayyar, J.

5. The first question argued in this case was whether the document, dated the 1st of January 1891, found to have been executed by the plaintiff to

the first defendant, was rightly held to be inadmissible in evidence for want of registration.

6.The determination of the question depends upon the soundness or unsoundness of the contentions urged on behalf of the plaintiff, viz., first, that

the transaction evidenced by the said document amounted to a lease of the plaintiff's interest in the tank of the village of Pattambadur mentioned

therein for a term of a little more than four years, and secondly, if that contention fails--that the document created in favour of the said defendant an

interest in Immovable property of the value of more than one hundred rupees.

7. First, as to the contention that there was a lease, it is to be observed that, to constitute such a transfer, it is essential that exclusive possession of

the property which is the subject of the transfer, should be intended to be vested in the transferee (Wood fall on Landlord and Tenant, 14th

edition, page 129). If the possession is, however, not of that character, the transaction, whatever else it may be, is not a lease. This being clear, we

have to see whether the instrument in the present case secured to the defendant any possession, and, if so, exclusive possession.

8. Neither the language of the instrument nor the nature of the case, in my opinion, supports the view that the plaintiff, who, as the lessee of a sharer

of the village, had joint possession of the tank, divested himself of such possession and transferred it to the first defendant under the document.

9. The term "lease" does not occur in the instrument at all. Nor is anything stated therein which, in the slightest degree, suggests that the plaintiff's

right to the possession of the tank was in any way to be affected by the instrument, Again, the tank being a work of irrigation attached to the

village, it cannot be supposed that the plaintiff, in entering into the contract with reference to the trees, etc., growing or likely to grow upon the bed

or the embankment of the tank, during the period mentioned in the document, the tank was not to be enjoyed, either by himself or by others

entitled thereto, as a reservoir for the water required by them for the irrigation of their lands, or that such parties should not be at liberty to use the

tank in any other way in which they were entitled to use it, provided their action did not injuriously affect the special rights conferred upon the first

defendant with respect to the trees, etc., already referred to. It follows, therefore, that the plaintiff did not part with such possession of the tank as

he had and that the first defendant obtained merely a right of access to the place for the reasonable enjoyment of what he was entitled to under the

contract. Further, even if by a stretch of language the first defendant were to be considered to have acquired a right to some sort of possession of

the tank bed, it is quite clear that such right was not exclusive, or, in the language of Lord Hatherley, it was not unattended by a simultaneous right

of any other person in respect of the same subject-matter, Gory v. Bristow ILR 2 App Cas262.

10. My conclusion, therefore, is that the transaction was not a lease.

11. As to the second contention, it is scarcely necessary to observe that though standing timber is, under the Registration Act III of 1877,

moveable property only, still parties entering into a contract with reference to such timber may expressly or by implication agree that the transferee

of the timber shall enjoy, for a long or short period, some distinct benefit to arise out of the land on which the timber grows. In a case like that, the

contract would undoubtedly be not one in respect of mere moveables, but would operate as a transfer of an interest in Immovable property.

Therefore, the point is whether the contract in question falls under the latter description. Taking all the provisions of the document together, I think

there was here more than a sale of mere standing timber and that, in the words of Sir Edward Vaughan Williams quoted with approval in Marshall

v. Green L.R. 1 C.P.D. 35 cited for the plaintiff, "it was contemplated that the purchaser should derive a benefit from the further growth of the

thing sold, from further vegetation and from the nutriment to be afforded by the land." The fact that the comparatively long period of a title more

than four years was granted to the defendant for cutting and removing the trees is, to my mind, strongly in favour of the above view.

12. I am, therefore, of opinion that the document in question did create an interest in Immovable property, as urged on behalf of the plaintiff, and,

being unregistered, it was rightly rejected.

13. The next question is, whether the plaintiff is entitled to any relief. As to the injunction which is the more important of the reliefs claimed by him, I

think he is not entitled to it for several reasons. According to Castelli v. Cook 7 Hare 89, 99 "a party who seeks such relief is bound to tell the

Court what the case is on which he relies; and when he brings forward prominently, and relies upon a given case, the Court will not allow him, if he

should fail in that case, to spell out another and say he might have framed his case so as to show a title to the relief asked." In the present instance,

the plaintiff came into Court alleging that the contract between him and the first defendant, the terms of which the latter was said to be violating,

was for the sale of a specific number of trees, to be cut and removed within six months from the date of the contract. This allegation has been

established to be untrue, and yet the plaintiff seeks now to rest his prayer for the injunction on a ground absolutely ignored in the plaint, namely, the

invalidity of the totally different contract set up by the defendant, which the plaintiff denied but which has been found to be true. The case last cited

seems to me to prohibit relief being granted on such a change of ground. Moreover, the state of things, from which the plaintiff asks the Court to

extricate him, is the direct outcome of the fact that the document was not registered; and as the plaintiff himself, equally with the first defendant, is

responsible for it, the former cannot complain if the Court declines to assist him on the principle laid down by Lord ELDON in *Rundell v. Murray*

Jacob 311, 316 viz. a Court frequently refuses an injunction, where it acknowledges a right, when the conduct of the party complaining has led to

the state of things that occasions the application. For another reason also the case is one which falls under the comprehensive rule embodied in

Clause J of Section 56 of the Specific Relief Act. That rule rests on the maxim that he who seeks equity must do equity and implies that a plaintiff

seeking an injunction must come with clean hands. With reference to this point, it is laid down in *Kerr on Injunctions*, on the authority of the case

therein cited, that a plaintiff, who asks for an injunction, must be able to satisfy the Court that his own acts and dealings in the matter have been fair

and honest and free from any taint of fraud or illegality, and that if, in his dealings with the person against whom he seeks relief or with third parties,

he has acted in an unfair or inequitable manner, he cannot have relief (3rd edition, page 16).

14. Now turning to the facts here, according to the contract Rs. 3,400 was payable not merely for the trees already taken away by the first

defendant, but also for a considerable number still on the ground as well as any others that may grow during the remaining period of the contract.

As the defendant cannot now enjoy the full benefit of the agreement, it is not just that he should have to pay the whole of the consideration. The

plaintiff, who, in addition to Rs. 200 paid in cash, had received a promissory note for Rs. 3,200, has not offered unconditionally or on terms to

return the note to the first defendant. On the contrary, he has throughout maintained that he has a right to the entire amount. There is nothing to

prevent his suing the first defendant upon the note. What amount, if any, the plaintiff might recover in that suit, it is not now possible to say.

However that litigation may end, it is quite clear that the plaintiff has it in his power to harass the first defendant by suing him for the whole amount.

In these circumstances, the plaintiff's conduct seems to be unfair and inequitable within the meaning of the authorities on the point. Whilst refusing

an injunction on the above ground, it would not be a sound exercise of the discretion, vested in the Court u/s 42 of the Specific Relief Act, to grant the plaintiff the other relief claimed, viz., declaration of his right to the trees.

15. I would, therefore, allow the appeal, reverse the decree passed in favour of the plaintiff and dismiss the suit, each party being made to pay his cost throughout.

Davies, J.

16. I entirely concur.