

(1939) 12 MAD CK 0001
In the Madras High Court

S.P.K.N. Subramanian Firm

APPELLANT

Vs

M. Chidambaram Servai

RESPONDENT

Date of Decision : 05-12-1939

Acts Referred:

Transfer of Property Act, 1882 — Section 3

Citation : AIR 1940 Mad 527

Hon'ble Judges : Wadsworth, J;Lakshmana Rao, J

Bench : Division Bench

Judgement

Wadsworth, J.—This appeal raises the question whether a security bond pledging an oil engine installed as part of a cinema can be deemed

to be a transaction relating to immovable property so as to attract the provisions of Expl. 1 to Section 3, T.P. Act. The essential facts are the

following: Defendant 5 owned a building which he let for a period of three years to defendants 1 and 2 who installed machinery therein and ran it as

a cinema. We are now concerned with a 35 horse-power Petter oil engine which was used to work a dynamo to generate electricity for the

apparatus and lighting. It is common ground that this engine was installed by making a concrete base fitted with bolts and attaching the engine to the

bolts by means of nuts. The lease of defendants 1 and 2 expired in 1930 and there was a suit by defendant 5 for eviction and arrears of rent.

Defendant 5 attached before judgment the machinery on the premises. That suit resulted in a compromise decree passed in October 1930

whereunder defendant 5 agreed to give defendants 1 and 2 a further lease for two years, the arrears of rent to be paid in instalments and there was

a provision that in the event of default in paying any instalment the lease should cease and defendant 5 should be entitled to evict. The decree also

recognized the subsistence of a charge by virtue of the attachment before judgment. It would appear that there was a default in the end of 1930

and an attempt to execute the decree. On 16th February 1931, when defendants 1 and 2 were still in possession of the premises, they borrowed

money from the plaintiff and by way of security for the loan they pledged the machinery in the premises under Ex. A. Ex. A recites the existing

charge in favour of defendant 5 for the arrears. The bond purports to be executed as a pledge of moveable property, but it was registered in

accordance with the provisions of Section 325 of the Registration Manual in the book relating to immovable property. After this transaction

defendant 5 brought further pressure to bear on defendants 1 and 2, as a result of which they executed a sale to defendant 5 of the machinery in

the premises in order to discharge the arrears due to defendant 5. This sale deed says nothing about the prior security bond in favour of the

plaintiff.

2. Now the question is whether defendant 5 can be deemed to have notice of the transaction embodied in the security bond. This question

depends on whether this is or is not a transaction relating to immovable property so as to attract the provisions of Explanation 1 to Section 3, T.P.

Act. The question is one of some difficulty involving as it does a consideration of the Indian statute law in relation to the English case law on similar

facts. The statutory provisions are simple : it is their application which presents a difficulty. "Immovable property" is defined in Section 3, General

Clauses Act (10 of 1897) as including land, benefits to arise out of land and things attached to the earth or permanently fastened to anything

attached to the earth. Section 3, T.P. Act, excludes from "immovable property" standing timber, growing crops or grass and defines the term

attached to the earth"" as (a) rooted in the earth, (b) imbedded in the earth or (c) attached to what is so imbedded for the permanent beneficial

enjoyment of that to which it is attached. Now I think it is settled that the English law relating to fixtures does not apply in toto to India, Clearly,

with reference to the right to fixtures as between landlord and tenant the provisions of the Transfer of Property Act are substantially different from

the law obtaining in England. Nor is it an absolute rule in India that whatever is fixed to the soil belongs to the owner of the soil though this is a rule

which applies in many cases.

3. In England it appears to be settled that when the owner of a building installs therein an engine similar to that with which we are now concerned

by fixing it in a manner similar to that in which the suit engine is fixed, for the purpose of carrying on industrial operations in the premises which he

owns, that engine becomes annexed to the realty and would be bound by a mortgage over the premises. The two leading cases on the subject are

Hobson v. Corringe (1897) 1 Ch. 182 and Reynolds v. Ashby (1904) A.C. 466. These cases both relate to engines acquired by the owner on the

hire-purchase system and claimed by the mortgagee of the premises before the title of the owner to these engines had become perfected by

payment of all the instalments. It was held in spite of the defects in the title of the owner of the premises to the engines that they had been fixed in

such a manner and in such circumstances as to indicate an intention that they should be permanently attached to the premises for the beneficial

enjoyment thereof and that therefore they became annexed to the freehold. But I do not read those cases as laying down an absolute rule that

wherever there is an oil engine fixed with nuts to a concrete platform, it is necessarily and for all purposes immovable property. As Lord Lindley

has observed in the last quoted case, in deciding whether that which has once been a chattel has become annexed to the realty, attention should be

paid to the nature of the thing itself, the mode of its attachment and the circumstances in which it came to be attached, the object for which it has

been introduced and also the relative positions of the rival claimants.

4. The considerations which should govern the decision of the question whether a thing is or is not a fixture forming part of the freehold have been

discussed in two cases where the question was really one at issue between landlord and tenant. In Leigh v. Taylor (1902) A.C. 157 the question

was whether certain valuable tapestries fixed by the life tenant on the walls should be deemed to be chattels belonging to the life tenant or part of

the premises and so immovable property. Lord Halsbury in dealing with this, points out that one should consider not only the manner of annexation

but also its purpose, in order to find out whether there was an intention to treat the thing attached as a permanent fixture or whether it was merely

attached for its beneficial enjoyment as a chattel. A similar case is that in *Spyer*

v. Phillipson (1931) 2 Ch. 183, a case relating to panelling on the walls of a house, where again emphasis was laid on the fact that the mode of annexation of the thing to the premises is not the only consideration and not always the most important factor. Attention is there invited to the steady progress of the law in England towards the extension of the tenants' rights and the relaxation of the rigidity of the rule that whatever is fixed into the premises becomes part of the freehold. Once more it is pointed out that the real question is, what was the object and purpose of the annexation of the thing? Was it to create a permanent improvement to the premises or was it merely a temporary annexation for the enjoyment of the chattel by the tenant?

5. Now it seems to me that there is nothing in these English cases to which I have been referred which cannot profitably be applied to the statute law as laid down in India. If a thing is imbedded in the earth or attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached, then it is part of the immovable property. If the attachment is merely for the beneficial enjoyment of the chattel itself, then it remains a chattel, even though fixed for the time being so that it may be enjoyed. The question must in each case be decided according to the circumstances. An engine installed in a factory may be immovable property or it may be a chattel. The plaintiff-appellant lays emphasis on the fact that defendant 5's own sale deed recites that this machinery is permanently fixed. Defendant 5 on the other hand emphasizes the fact that the plaintiff's own security bond recites that the machinery is moveable property. When one considers the different objects and circumstances of these two instruments, the difference in the recitals regarding the description of this engine is easy to understand. Defendants 1 and 2 never had more than a three years lease of the premises. At the time when they executed the security bond in favour of the plaintiff their hold over the premises was liable to be terminated at any moment. They had a two years lease under the compromise agreement, but they were already in default. There would be no point in mortgaging this engine to a stranger as part of the premises to which it was attached, for, in those premises they had no real title at all. When defendants 1 and 2 executed a sale deed of the same machinery to defendant 5 they were selling it as a thing fixed to the premises

which were owned by defendant 5 himself. They therefore had every incentive to treat it for that purpose as part of the realty.

6. Now, in deciding whether or not a transaction relating to an engine is a transaction relating to immovable property, one is entitled, I think, to

have regard not merely to the nature of the attachment by which the engine is fixed on the ground but also to the circumstances in which it came to

be fixed, the title of the person fixing it in the immovable property and the object of the transaction by which the engine is transferred or bound.

When defendants 1 and 2 introduced this engine into defendant 5's premises, they could not have intended to make a permanent improvement to

the immovable property. Their object must, from the very circumstances in which the installation was made be deemed to have been to utilize the

machinery for their own profit so long as they had the use of the premises and to sell it if and when their lease terminated. It is not therefore a

parallel case to the cases in *Hobson v. Gorringe* (1897) 1 Ch. 182 and *Reynolds v. Ashby* (1904) A.C. 466, both cases in which the owner of a

building installs machinery therein and may well have been deemed to intend to make a permanent improvement to the premises which he owned in

order to facilitate the user of those premises, it seems to me most unlikely that defendants 1 and 2 when they had this engine bolted on to the

concrete base, intended that the engine should be permanently attached as an improvement to the premises for the benefit of whoever might be

entitled to those premises.

7. When we come to consider the circumstances of the actual security bond, then quite clearly it cannot have been the intention of the parties to

bring about a transaction relating to immovable property, for defendants 1 and 2 were in daily expectation of being evicted from the premises and

they could not give to the plaintiff any rights of a valuable nature in the immovable property as such. All that they could give would be a right to the

plaintiff to hold as security for their debt a chattel over which they had a power of disposal which implied its severance from the base to which it

was for the time being attached. Looked at in this way it seems to me to be clear that this security bond (Ex. A) was, as it purports to be, a

transaction relating to moveable property and the mere fact that the property in question was firmly but not permanently attached to the premises

and also the fact that the registration department for its own purposes requires such a transaction to be treated as a transaction relating to

immovable property, will not to my mind affect the true nature of the transaction which was one regarding a chattel. In this view I must hold that the

security bond is not one relating to immovable property, that Expl. I to Section 3, T.P. Act does not apply and that therefore defendant 5 cannot

be deemed to have had constructive notice of that transaction even though it was registered. The appeal therefore fails and is dismissed with costs

of defendant 5. Leave to appeal is granted.