

(1926) 03 MAD CK 0110
In the Madras High Court

T.S.R.M. Ramaswami Chettiar represented by his Agent C.T.A. APPELLANT
Swaminathan Chetty alias Arunachallam Chettiar

Vs

K.T. Abdul Kuddus Sahib RESPONDENT

Date of Decision : 24-03-1926

Acts Referred:

Transfer of Property Act, 1882 — Section 107

Citation : 97 Ind. Cas. 548

Hon'ble Judges : Krishnan, J

Bench : Single Bench

Judgement

Krishnan, J.—This is a suit by the plaintiff for the recovery of Rs. 127 3-0 as the amount due to him for Faslis 1330 to 1332 under a contract by which the defendant was given the right to cut and remove the bark of the avaram plants growing in the plaint mentioned village. The annual amount payable was Rs. 40. The contract pleaded between the parties is an oral one and there is no written document to evidence it; but the defendant has admitted the terms of the contract. The plaintiff's suit has been dismissed on the ground that without a registered lease, the right to take the avaram bark from the trees growing upon the plaintiff's land could not be transferred u/s 107 of the Transfer of Property Act. The argument is that the lease being one for five years ought to be evidenced by a registered instrument. The learned Munsif accepted this contention and rejected the further argument that, if it was a lease, it was an agricultural lease and Section 117 excluded the application of s 107 of the Transfer of Property Act. He held that there ought to have been a registered instrument, and dismissed the suit. It seems to me that this is an erroneous way of looking at the case. The learned District Munsif has relied upon Seeni Chettiar v. Santhanathan Chettiar 6 M.L.T. 281 : 7 Ind. Dec. 41, for the view that the transaction in question is really in the nature of a lease. It seems to me that this is a misreading of the case altogether, for the judgment of Subbarama Iyer, J., in that Pull Bench shows clearly that such a document could not be treated as a lease. at all. What the learned Judge says on page 64 Page of 20 M.--[Ed.] is:

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.... If the possession is, however, not of that character, the transaction, whatever else it may be, is not a lease.

2. In this connection there is no evidence of possession of the village being given to the defendant; the defendant's right is confined to the cutting and removing of the avaram bark from the trees growing in the village. The Full Bench judgment is really against the view the District Munsif has taken. Unless it can be held that the transaction in this case amounted to a lease, Section 107 of the Transfer of Property Act will not apply, and the necessity for a written and registered instrument does not arise. In the Full Bench case in *Seeni Chettiar v. Santhanathan Chettiar* 6 M.L.T. 281 the learned Judges had to consider the admissibility of a written, but an unregistered document under the provisions of the Registration Act They had thus to decide whether, in spite of the fact that the instrument in that case was not a lease, it was not an instrument creating an interest in Immovable property and they held it was. Such a question as that does not arise in the present case, for we have not got here a written instrument. In my opinion, it is, therefore, clear that the claim of the plaintiff was not properly disallowed for want of a registered instrument. The right to go and cut and take the bark away from the land, when no further right is given to the person to whom that right has been given, will amount only to a license and can hardly be treated as anything more than a license; such a license as that does not require a registered instrument for its creation under any law.

3. The contract has been admitted and there is practically no difficulty about it.

4. The last point urged before me is that as the plaintiff is the assignee of the rights of the person who gave the contract to the defendant, his claim must fail as the assignment is really an assignment of a claim for damages and such an assignment is not valid u/s 6(e) of the Transfer of Property Act. Here again, the District Munsif, it seems to me, is in error, in upholding the contention, the claim for money due under the contract for cutting the avaram bark cannot be treated as a claim for damages. In fact the parties had settled the amount of money payable per year for this right. This is clearly not a case of damages and I see no difficulty whatever in upholding the assignment that the plaintiff got. It is a perfectly valid assignment and the plaintiff is entitled to recover the money he has claimed.

5. The revision petition is allowed and the decree of the District Munsif is set aside; and there will be a decree in favour of the plaintiff for the amount sued for with costs throughout.