
(1945) 08 MAD CK 0020
In the Madras High Court

V. Pedda Rangaswami Shreshti by agent and power of attorney holder, V. Subba Rangayya Setty APPELLANT

Vs

Sri Vishnu Nimbaker by agent and power of attorney holder RESPONDENT
C. Srinivasa Rao

Date of Decision : 08-08-1945

Acts Referred:

Transfer of Property Act, 1882 — Section 107

Citation : AIR 1946 Mad 180 : (1945) 58 LW 573 : (1945) 2 MLJ 400

Hon'ble Judges : Kuppuswami Ayyar, J;Kuppuswami Aiyar, J

Bench : Division Bench

Judgement

Kuppuswami Ayyar, J.—The appellant is the plaintiff and he had obtained a license from the Government to prospect for red oxide of iron

in some lands in Janikunta village, Bellary taluk. His case was that the defendant also had obtained a license for prospecting the same ore in the

vicinity and had carried away ore taken from the area for which he held a license. He sought to recover 65 tons of mineral ore alleged to have been

so removed by the defendant from his field, and he prayed for an injunction restraining the defendant from entering the plaintiff's land or removing

any material therefrom. The defendant pleaded that the suit was not maintainable, that the plaintiff had no title to the land and that he was not

entitled to the injunction sought. The learned District Munsiff dealt with two issues, namely, whether the suit as framed was not maintainable and

whether the plaintiff had title to the suit plot and if so, was not entitled to the injunction claimed for (issues 1 and 8). But he gave a finding on the

first issue and without any specific findings on the eighth issue dismissed the suit. On appeal the learned District Judge also dismissed the suit

agreeing with the District Munsif that the suit was not maintainable as the license granted in favour of the plaintiff was not registered and also on the

ground that there was no prayer for possession. Hence this second appeal.

2. The original license was granted to the appellant on 28th May, 1941. A renewal of the same was applied for and it is clear from Ex. P-3 that it

was granted on 29th May, 1942 for another year. The contention was that it is not valid as it was not registered. The lower appellate Court

observed that no authority had been shown for the view that it need not be registered. The contention of the appellant was that under the Crown

Grants Act, this need not be registered and registration was not compulsory. Reliance was placed upon Section 107 of the Transfer of Property

Act, which exempted these from registration. One authority of this Court and another of the Patna High Court have been cited for the appellant

and they are to the effect that such licenses need not be registered as they are in the nature of a Crown grant (Vide Hallingal Moosa Kutti Vs. The

Secretary of State for India, , and The Secretary of State for India in Council v. Nistarini Annie Mitter (1926-27) ILR 6 Pat. 446. Both the Courts

are therefore wrong in finding that the license Should be registered, and not being registered is not valid.

3. The next point urged was that the learned Judge was wrong in having found against the appellant with regard to his prayer for injunction. Both

the Courts have proceeded on the basis that the plaintiff had admitted that he was not in possession of the suit land. No evidence was taken and

there is nothing in the plaint to indicate that the plaintiff denied that he was in possession. All that was stated was that he did not commence the

mining operations on account of some domestic difficulties. But nowhere was it stated that he was not in possession or that he did not get into the

land which he was put in possession of. Further it is also significant that no plea was raised in the written statement that the plaintiff was not in

possession, nor was any issue framed on that point. Therefore both the Courts were not justified, in the absence of definite issues, in having gone

into that question without calling upon the parties to let in the necessary evidence.

4. The lower Court has dealt with two other points. One of them was that the plaintiff had no title because a license in respect of the very same

property had been subsequently given to the defendant. No evidence was let in except the two licenses and the license granted to the defendant

does not include any land in the village in which the plaintiff has obtained his license. Consequently that finding of the learned District Munsiff cannot

be allowed to stand and the dismissal of the suit on that ground has to be set aside. The decree of the lower appellate Court is set aside and the

suit is remanded to the first Court for trial and disposal in the light of the findings and observations made above. The respondent will pay the costs

of his appeal.

5. There will be a refund of the Court fee paid on the memorandum of second appeal. (No leave).