

(1926) 03 MAD CK 0005

Madras High Court

Case No: None

T.S.R.M. Ramaswami
Chettiyar

APPELLANT

Vs

K.T. Abdul Kuddus
Sahib

RESPONDENT

Date of Decision: March 24, 1926

Acts Referred:

- Transfer of Property Act, 1882 - Section 107

Citation: AIR 1926 Mad 978 : (1926) 24 LW 340

Hon'ble Judges: Krishnan, J

Bench: Division 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 5 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. Section 117 excluded the application of Section 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* [1897] 20 Mad. 58 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 Subrahmanya Aiyar, J., in that Full Bench shows clearly that such a document could not be treated as a lease at all. What the learned

Judge says on page 64 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, is not a lease.

2. In this case 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.

3. In the Full Bench case in *Seeni Chettiar v. Santhanathan Chettiar* [1897] 20 Mad. 58 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. 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 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 of 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.