

**T.S.R.M. Ramaswami Chettiar represented by his Agent C.T.A.  
Swaminathan Chetty alias Arunachallam Chettiar Vs K.T. Abdul Kuddus  
Sahib**

**Court:** Madras High Court

**Date of Decision:** March 24, 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 Subbarania 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.