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movable property which is capable of physical possession, the Legislature indicated that intention by the word "tangible." In Act I of 1877 there is neither a special definition of immovable property nor other indication of an intention to restrict the summary remedy to tangible immovable property. We are of opinion that the District Munsif had jurisdiction to entertain the suit and to deal with it under section 9 of the Specific Relief Act and dismiss this petition with costs.

## APPELLATE CIVIL.

*Before Mr. Justice Muttusami Ayyar and Mr. Justice Shephard.*

1889.  
August 9, 15.

RAMAKRISHNAMMA (DEPNDANT), APPELLANT,

v.

BHAGAMMA (PLAINTIFF), RESPONDENT.\*

*Court Fees Act—Act VII of 1870, s. 7, cl. 5—Civil Courts Act—Act III of 1873, ss. 12, 14—Suit to enforce registration—Jurisdiction.*

Suit in the Court of a District Munsif to enforce registration of two instruments of gift. The property purported to be conveyed was the same in each instrument and its value was found to be less than Rs. 2,500, but the earlier instrument comprised also an assignment of the right to manage a charity. The later instrument was found to have been executed in supersession of the former, and the District Munsif passed a decree directing its registration alone:

*Held*, that the District Munsif had jurisdiction to entertain the suit.

SECOND APPEAL against the decree of V. Srinivasacharu, Subordinate Judge of Cocanada, in appeal suit No. 20 of 1888, affirming the decree of Y. Janakiramayya, District Munsif of Cocanada, in original suit No. 81 of 1887.

The plaintiff was the widow of Srinivasa Rau, who, on the day of his death, executed two documents, filed as exhibits B and A, respectively, by which he conveyed certain land by way of gift to the plaintiff. The property expressed to be conveyed was the same in exhibits A and B, but exhibit B (unlike exhibit A) purported further to assign to the plaintiff the right to manage a

\* Second Appeal No. 1548 of 1888.

certain charity. The plaintiff in this suit sought to enforce the registration of these documents.

The defendant denied the genuineness of the documents and pleaded that, as each document purported to deal with property of the value of Rs. 2,000, the District Munsif had not jurisdiction to try the suit.

The District Munsif overruled the plea to his jurisdiction and he held that both documents were genuine, but that as exhibit A superseded exhibit B, exhibit A alone should be registered, and passed a decree accordingly. The Subordinate Judge, on appeal, affirmed this decree.

The defendant preferred this second appeal.

*Subba Rau* for appellant.

*Bashyam Ayyangar* for respondent.

The further facts of this case, and the arguments adduced on this second appeal, appear sufficiently for the purpose of this report from the judgment of Muttusami Ayyar, J.

MUTTUSAMI AYYAR, J.—The appellant is the son of one Srinivasa Rau and the respondent is his widow. On the 5th January 1887, Srinivasa Rau executed two documents, exhibits A and B, in favor of the respondent, and died on the same day. Shortly after his death, the respondent presented exhibit A to the Registrar at Cocanada for registration, which however was refused by that officer. Thereupon she brought the present suit to enforce its registration and that of exhibit B in the Court of the District Munsif of Cocanada. The appellant denied the genuineness of those documents and the jurisdiction of the District Munsif. Both the Courts below found that exhibits A and B were genuine and held that the suit was cognizable by the District Munsif. They were also of opinion that both were not intended to have independent operation and that exhibit A superseded B. On this ground they passed a decree declaring that exhibits A and B are genuine, but directing the registration of A alone; hence this second appeal.

It is urged on behalf of the appellant that the inquiry, as regards the execution of exhibit A was imperfect, and that there is no evidence to show that the interpolations in exhibit B were made *bona fide*. Exhibit A, which is found to be genuine, is, though signed and attested, but a copy of exhibit B as corrected and interlined, and there is ample evidence to the effect that

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Srinivasa Rau executed exhibit A, in which the corrections and alterations to be found in exhibit B are adopted. The next objection is that the Court of first instance declined to summon certain witnesses and issue warrants for others as requested by the appellant in C. W. P. No. 1713. It appears that nine witnesses were examined for him, and that the District Munsif refused his application for additional witnesses by reason of laches on his part. It appears likewise that the Lower Appellate Court refused to admit certain documents tendered in evidence on appeal on the ground that they might have been produced in the Court of first instance if the appellant had exercised due diligence. It is not shown that the grounds on which the additional evidence was refused are not tenable. Nor is there any affidavit to the effect that the evidence was not offered in time from circumstances over which the appellant had had no control. On the merits, this second appeal must fail.

The substantial question for determination is whether the District Munsif had jurisdiction to entertain the suit with reference to its value. On this point the contest in the first Court was whether the value of the property affected by the documents should be taken to be Rs. 2,000, as mentioned in exhibit A, or computed with reference to section 7, clause 5 of the Court Fees Act of 1870. The District Munsif observed (1) that the property comprised in the documents was *not* the subject-matter of the suit, and that its value did not depend on the value of the property; (2) that, if it did, by analogy to suits for the specific performance of a contract of sale, Rs. 2,000 should be treated as the proper value; and (3) that, even if it were computed in the mode urged for the appellant, it would not be more than Rs. 2,012½. On appeal, the Subordinate Judge remarked that, if the two exhibits, A and B, were independent of each other and were both intended to have legal operation, each of them must be taken to be an instrument of Rs. 2,000, but that as exhibit A superseded B, the District Munsif had jurisdiction. It is argued before us that there is no evidence that Rs. 2,000 was interlined in exhibit B as the proper value, that each document being for Rs. 2,000, the proper value of the suit is Rs. 4,000, and that in computing the value of the inam land the market value should have been taken, instead of 15 times the annual produce as prescribed by section 7, clause 5 of the Court Fees Act. As to the first

contention, the insertion of Rs. 2,000 in exhibit A, which is found to be genuine, is evidence that the value was interlined in exhibit B by Srinivasa Rau's direction, when he decided to execute a fresh document on a stamped paper in accordance with exhibit B as altered. As to the mode of valuing the suit, regard should be had to the provisions of the Civil Courts Act—Act III of 1873. It is provided by section 12 that the jurisdiction of District Munsifs shall extend to all suits of which the value of the subject-matter does not exceed Rs. 2,500, and by section 14, that, when the subject-matter is land or house or garden, the value shall, for the purposes of the jurisdiction conferred by the Act, be fixed in manner provided by the Court Fees Act, section 7, clause 5. What is the subject-matter of this suit? Is it the transaction evidenced by the document, or the interest in property created by it, or its usefulness as evidence of the transaction? In ordinary parlance registration is but a form of authentication, and its value is nothing more than that of pre-appointed evidence, but its juridical value is higher. As regards instruments of which registration is compulsory, it is of the essence of the transaction, since though it may be valid in other respects, it cannot acquire without registration legal efficacy or the power of affecting the property comprised therein. It is important here to bear in mind the distinction between a registered document and the act of registration, the former is only evidence, and, if it is lost, the transaction may be proved otherwise, but without the latter there can be no legal transaction at all. The object of the suit is to secure legal efficacy to the transaction evidenced by the documents and not simply a mode of proving them, and the value of the transaction must therefore be taken to be the value of the suit. As exhibit A is a deed of gift, it can bear no analogy to a contract of sale of which specific performance is claimed, there being no consideration in the one case whilst there is consideration in the other. The value of the present suit is in my judgment that of the interest created by the document sought to be registered. Both Courts concur in finding that it is below Rs. 2,500. It is then urged that the plaintiff prayed that both documents be registered, and that as each relates to property of Rs. 2,000 value, the value of the suit is Rs. 4,000. Both Courts find that the appellant's father superseded exhibit B by exhibit A, and the circumstances to which they refer warrant the

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finding. Though the postscript found in B relating to the right of managing Nallacheruvu choultry and its endowment is not to be found in exhibit A, yet it may be that Srinivasa Ran changed his mind about it when he executed exhibit A in supersession of B. I must hold that, when two documents are executed by one and the same person and they create the same interest in the same property standing to each other in the relation of an operative and a superseded document, the value of the suit for the purposes of jurisdiction is the value of the interest intended to be created by the operative instrument. The only contention which remains to be noticed is that, in determining the value of the subject-matter when it is land, house or garden, the market value should be considered instead of the value prescribed by section 7, clause 5 of the Court Fees Act. I do not think that the value of a suit to have a document registered and thereby give it legal efficacy can be higher for purposes of jurisdiction than that of a suit to recover the property itself.

I am of opinion that this second appeal cannot be supported, and I would dismiss it with costs.

SHEPARD, J.—I concur.

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## APPELLATE CIVIL.

*Before Mr. Justice Muttusami Ayyar and Mr. Justice Wilkinson.*

APPA RAU (PLAINTIFF), APPELLANT,

v.

SUBBANNA AND OTHERS (DEFENDANTS), RESPONDENTS.\*

*Transfer of Property Act—Act IV of 1882, ss. 106, 108—Landlord and tenant—Assignability of tenancy—Suit by zamindar to set aside a court-sale of his raiyat's interest—Burden of proof.*

A zamindari raiyat mortgaged the land comprised in his holding, and the mortgagee, having sued and obtained a decree on his mortgage, attached the mortgagor's interest in the land and purchased it at the court-sale held in execution of his decree. The zamindar, who had intervened unsuccessfully in execution, now sued to set aside the sale and to eject the decree-holder and the judgment-debtor from the land. Neither party adduced evidence:

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\* Second Appeal No. 1086 of 1888.