

## APPELLATE CIVIL.

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

KRISHNA AND OTHERS (DEFENDANTS NOS. 1—4), PETITIONERS,

*v.*

AKILANDA AND ANOTHER (PLAINTIFFS), RESPONDENTS.\*

*Specific Relief Act — Act I of 1877, s. 9—Immovable property—Right of ferry.*

A right of ferry is immovable property or an interest therein within the meaning of Specific Relief Act, s. 9.

PETITION under section 622 of the Code of Civil Procedure praying the High Court to revise the decree of T. Dorasami Pillai, District Munsif of Salem, in original suit No. 2 of 1887.

Suit to recover the use of a certain ferry. The plaint alleged that the right of ferrying boats from the Pallipalayam inam agraharam on the bank of the Cauvery to the opposite bank belonged to the agraharamdars from time immemorial, that the plaintiffs leased the said right from the agraharamdars and enjoyed it up to 12th September 1886, and that while the plaintiffs were plying boats on that date, the defendants unlawfully interfered with them, prevented their boats from plying, and that since then the defendants continued to ply their own boats.

The District Munsif passed a decree in favor of the plaintiff; and the defendants preferred this petition.

*Rama Redu and Sadagopacharyar* for petitioners.

*Subramanya Ayyar and Bhashyam Ayyangar* for respondents.

The further facts of the case appear sufficiently from the judgment of the Court.

JUDGMENT.—There is a ferry established from time immemorial across the river Cauvery within the limits of the Pallipalayam agraharam in the Sankagiri division of the Salem district. It is conceded by both parties that the agraharamdars have by custom the exclusive right of managing the ferry, of maintaining and providing necessary ferry boats, and of taking the nett collections of tolls to their own use. Under a registered

\* Civil Revision Petition No. 280 of 1888.

lease (exhibit A) granted by the agrapharamdars on 6th October 1875 for a term of 10 years, the counter-petitioners had enjoyed that right for 10 years. In September 1888 the petitioners dispossessed them and set up a subsequent lease from the agrapharamdars in their own favor for the next 10 years. On the other hand, the counter-petitioners asserted that there had been an extension of the prior lease for 10 years and instituted the present suit under section 9 of the Specific Relief Act to recover the use of the ferry. The District Munsif finding upon the evidence in the case that petitioners dispossessed the counter-petitioners of their ferry otherwise than in due course of law, decreed the claim and directed that the use of the ferry be restored to them. The petitioners contend that the right of ferry is neither immovable property nor an interest therein within the meaning of section 9 of the Specific Relief Act, and that the decree passed by the District Munsif was one which he had no jurisdiction to pass. We are unable to accede to this contention. According to the General Clauses Act, the term 'immovable property' includes land, benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth. It includes as well *incorporeal* rights in immovable property as *tangible* immovable property.

In *Maharana Futehsangji Jaswantsangji v. Desai Kullianraji Hakoornutrajji*(1) the Privy Council say: "Immovable property comprehends certainly all that would be real property according to English law and possibly more. In some foreign systems of law in which the technical division of property is into movables and immovables, as *e.g.* the Civil Code of France, many things which the law of England would class as incorporeal hereditaments fall within the latter category." In *Bhundaal Panda v. Pandol Pos Patil*(2) the exclusive right of fishing in a creek within certain limits between high and low water mark was held to be immovable property within the meaning of section 9 of Act I of 1877. The Registration Act III of 1877 includes ferries in the definition of immovable property and places them in the same category with fisheries and ways and other benefits to arise out of land. The Code of Criminal Procedure, section 145, shows that, whenever the intention was to designate im-

(1) 13 B.L.R., 265.

(2) I.L.R., 12 Bom., 221.

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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.*

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.