

APPELLATE CIVIL,

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Shephard.*

RAMAKRISHNA (PLAINTIFF), APPELLANT,

and

KURIKAL AND ANOTHER (DEFENDANTS), RESPONDENTS.*

1888.
Apl. 19, 20.

Transfer of Property Act, s. 136—Purchase of elephant with authority to recover the same from a stranger.

The owner of certain land, in consideration of a sum of money, transferred to the plaintiff, a pleader, the right to elephants caught in pits in the owner's land, and the right to sue for the recovery of such elephants from any person in possession of them. The plaintiff sued the defendants to recover possession of an elephant which had been trapped and was in defendant's possession at the time of the transfer to plaintiff. The suit was dismissed on the ground that the plaintiff had bought an actionable claim within the meaning of s. 136 of the Transfer of Property Act, 1882:

Held that the section was not applicable.

APPEAL from the decree of F. H. Wilkinson, District Judge of South Malabar, reversing the decree of A. Annasami Ayyar, District Munsif of Ernad, in suit No. 607 of 1885.

The plaintiff in this case was a second-grade pleader, practising in the Court of the District Munsif of Ernad, and the defendant No. 1 was an Inspector of police of Ernad taluk, defendant No. 2 being his son.

Plaintiff sued to recover possession of an elephant and Rs. 100 damages.

The Munsif decreed plaintiff's claim for possession of the elephant and dismissed the rest of the claim.

On appeal the District Judge found that the owner of the land on which the elephant had been captured by the defendant had, in consideration of a sum of money, authorised the plaintiff "to remove by means of suits the opposition of any one who interfered with the elephant-pits on the owner's land and the elephants trapped therein and to get possession of the elephants" for himself.

* Second Appeal No. 899 of 1887.

RAMAKRISHNA
v.
KURIKAL.

His judgment then proceeded as follows :—

“But can it be said that plaintiff purchased an actionable claim? I think so. The Elaya Tirumulpad acknowledges the receipt of Rs. 1,000 as the consideration for the license (paragraph 5, exhibit F). Sale is the exchange of property for a price. Prior to the execution of exhibit F, plaintiff had, as I have shown, no right to any elephant which fell into any pit in the Punnapula forest, whether such pit had been prepared by his agents or otherwise. The ownership of the elephant, which was trapped on the 8th November, vested in the Kovilagam. By exhibit F the Elaya Tirumulpad, in consideration of the receipt of Rs. 1,000, transferred to the plaintiff, *inter alia*, the right to the elephant then standing in Kader's stable, and authorised him to obtain possession of it by suit. Both plaintiff and his assignor were aware that the elephant was then in the possession of the defendants and that plaintiff would have to enforce his claim by filing a suit in the Ernad District Munsif's Court. The transaction was opposed to law.

“I reverse the decree of the Lower Court and dismiss plaintiff's suit. Each party will bear his own costs throughout.”

The plaintiff appealed.

Subramanya Ayyar and *Sundara Ayyar* for appellant.

The mere transfer of ownership is not a transfer of an actionable claim within the meaning of s. 130 of the Transfer of Property Act. It could not have been meant that the subject matter of the several chapters of this Act should be governed by this section. The mere ownership of a movable is not an actionable claim—*Modun Mohun Dut v. Futtarunnissa*(1). An observation of Lord Blackburn seems to favour this view: “If property is transferred, the right to sue for it passes as an incident.” It has also been held in *Makath Unni Moyi v. Malabar Kandapunni Nair*(2) that the owner of the land in which the pit is dug is in law the captor of the elephant if it falls into the pit.

Narayana Rau for respondents.

The Court (Collins, C.J., and Shephard, J.) delivered the following

JUDGMENT :—This suit is brought to recover an elephant of which the defendants are in possession, having captured it on the land belonging to the Kovilagam. It is found by both Courts that

(1) I.L.R., 13 Cal., 297.

(2) I.L.R., 4 Mad., 268.

the defendants have no right to the elephant, inasmuch as the licenses under which they claim were given by one who had long previously been dismissed from the management of the Kovilagam property. RAMAKRISHNA
v.
KURIKAL.

The plaintiff claims under a document dated the 10th November 1885, which, while giving him the liberty to trap elephants, appears to vest in him the property in the particular elephant now in dispute. The ownership in the elephant, originally in the Kovilagam, was transferred to the plaintiff, and as the transfer was made for good consideration, the transfer was by way of sale. The only ground on which the suit was dismissed was that the transaction was vitiated by s. 136 of the Transfer of Property Act, inasmuch as the plaintiff is a pleader in the District Munsif's Court. We cannot agree with the District Judge in thinking that there has been a transfer of an actionable claim in this case. The thing transferred was movable property belonging to the grantor, though not actually in his possession. No doubt by acquiring ownership in the elephant, the plaintiff acquired the right to sue for its recovery, but he acquired that right of action only as incidental to his right of ownership. It has been held with regard to s. 135, in which the same phrase "actionable claim" is used, that the section does not affect cases in which there has been a transfer of ownership of immovable property by an owner not in possession at the time, *Modun Mohun Dut v. Puttaramnissa*(1). The same reasoning must apply to a transfer of movable property. We concur with that decision and hold that the plaintiff was not the transferee of an actionable claim so as to be affected by the provisions of s. 136.

We must, therefore, reverse the decree of the District Judge and restore that of the District Munsif.

The plaintiff must have his costs throughout.

The memorandum of objections is dismissed with costs.

(1) I.L.R., 13 Cal., 297.