

APPELLATE CIVIL.

Before Mr. Justice Parker and Mr. Justice Best.

RAMAKRISHNA (PLAINTIFF), APPELLANT,

v.

UNNI CHECK (DEFENDANT), RESPONDENT.*

Easements Act—Act V of 1882, ss. 52, 56—License—Permission to capture elephants.

The owner of a forest, in 1883, executed an instrument whereby he gave to the other party thereto permission to trap fifty elephants in the forest, and stipulated for a certain payment in respect of each elephant which was captured. In 1884, without the knowledge of the owner of the forest, the other party, by a similar instrument, gave permission to the defendant to trap ten elephants. The instrument of 1883 was expressed to be in force for six years, that of 1884 for four years. The latter instrument was not ratified by the owner of the forest, who, in 1885, granted the exclusive right of trapping elephants to the plaintiff. The plaintiff now sued the defendant for possession of two elephants which had been captured by him :

Held, that the instrument of 1883 was a license merely, and that, since the owner of the forest had never consented to or ratified the instrument of 1884, the plaintiff was entitled to a decree.

SECOND APPEAL against the decree of Lewis Moore, District Judge of South Malabar, in appeal suit No. 51 of 1891, confirming the decree of E. K. Krishnan, Subordinate Judge of South Malabar, in original suit No. 38 of 1889.

Suit to recover possession of two elephants captured by the defendant in 1886 and 1887 in forests belonging to the Edamana Tirumalpad, who had granted to the plaintiff the exclusive right of capturing elephants there for three years from 10th November 1885. It appeared that in 1883 the Tirumalpad had executed in favour of a Nambudiri an instrument, filed as exhibit III, which was (omitting formal portions) in the following terms :

“Permission is hereby given to you for digging 50 elephants’ pits from this day by spending your money in any place in the hills whose boundaries are mentioned in the subjoined schedule which are the jenm of the said Kovilakam and in its possession for removing and taking the elephants from the pits at your expense when they fall into them and for felling the trees necessary for taking the elephants out of the pits, and for

* Second Appeal No. 1639 of 1891.

“covering up the pits. But you shall pay as a jenmabhogam of ^{RAMAKRISHNA} one-sixth of the value, then estimated by four persons, of each ^{U.} UNNI CHECK. of the elephants that fall into the pit, and take receipt. This agreement shall be in force and in effect for six years from this date, and it will become invalid subsequently.”

On 13th January 1884 the Nambudiri executed in favour of the defendant an instrument, filed as exhibit VII, which was (omitting formal portions) in the following terms :

“Permission is given to you hereby for digging 10 elephants’ pits in any places you please by spending your money in the hills mentioned in the subjoined schedule and included in the mukhtiar karar registered as No. 266 of 1883, in the Sub-Registrar’s Office of Vandur, on 20th Menom 1058 (1st April 1883) granted by Kutti Etan *alias* Vikramanichan Third Raja, guardian and brother of Sri Devi Lakshmi Kolapad (minor) of Edamannakovilakam for removing and taking the elephants at your expenses, if elephants are trapped and for felling from the hills the trees necessary for removing these elephants and for closing the pits. But you shall pay me as jenmabhogam one-fourth of the value, estimated then by four persons, of each of the elephants falling in those pits, and take receipt. This agreement shall be in force and effect for four years from this date, and it will be invalid subsequently.”

The defendant pleaded that, in capturing the elephants in question, he was acting within his rights under the above instruments.

The Lower Courts adopted the view that exhibit III was not a mere license and dismissed the suit.

The plaintiff preferred this second appeal.

Sundara Ayyar for appellant.

Sankaran Nayar and *Achyutha Menon* for respondent.

JUDGMENT.—We are of opinion that the Courts below are in error in holding that exhibit III is more than a license. The ground of decision apparently is that, whereas the grant of the right to trap elephants upon the plaintiff’s land is a mere license, the right to carry away the elephants and reduce them to possession is something more. In coming to this conclusion, the Court have, we think, overlooked the definition of “license” contained in section 52 of the Indian Easements Act. The right granted is not more than a license, unless it amounts to an

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UNNI CHECK. easement or an interest in the property, *i.e.*, in the immoveable property. The right to carry away the elephants and reduce them to possession is not an interest in immoveable property, nor does it amount to an "easement" as defined by section 4, since it is not attached to the ownership of any immoveable property for the better enjoyment of that property.

In *Doe v. Wood*(1), it was held in a case of grant of mining rights that the grant of a power to search for and get and carry away tin within a certain term was a mere license, no more than the grant of a right to a personal chattel, and that it did not amount to a grant of an estate or property in the land itself or any part of the ore or metals ungot therein.

The licensee may have a right under section 56 of the Easements Act to employ his servants to dig the pits and aid in capturing the elephants, but this will not carry with it the right to transfer his license or any part of the rights contained therein.

It was found by the Subordinate Judge that the sub-karar VII had been executed by the licensee with the knowledge and consent of the plaintiff. The District Judge gives no finding upon this point, but observes that exhibit IV shows that the Tirumalpad made no objection to the transfer of his rights by the licensee to the defendant. In this observation we are not able to concur. Exhibit IV makes no mention of the sub-karar, but is a receipt given to the Nambudiri. It is true that it mentions the elephants were in possession of Unni Check and were caught in pits dug by him, but this is consistent with the defendant having acted as an employé under the Nambudiri. There is no finding on the evidence that the plaintiff either consented to or subsequently ratified the sub-karar VII.

We must, therefore, reverse the decree of the Lower Appellate Court and remand the appeal for rehearing. The appellant is entitled to the costs of this second appeal and the costs in the Courts below will abide and follow the result.

(1) 2 B. & Ald., 724.