

APPELLATE CIVIL.

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

SUBRAMANIAM (PLAINTIFF), APPELLANT,

v.

PERUMAL REDDI AND ANOTHER (DEFENDANTS), RESPONDENTS.*

Registration Act—Act III of 1877, ss. 17, 18—Transfer of Property Act—Act IV of 1882, ss. 8, 54—Assignment of debts secured on land—Unregistered instrument of assignment.

In 1879 the defendants executed a hypothecation deed, which was registered to secure the repayment with interest of a loan of Rs. 87. In 1884 the obligee transferred his rights to the plaintiff in consideration of Rs. 70 under an instrument which was not registered. At the date of the transfer the debt amounted with interest to Rs. 137. The plaintiff now sued to recover Rs. 129 being the principal and interest due on the hypothecation bond at the date of suit:

Held, that the plaintiff was not precluded from proving the instrument of transfer and establishing his rights thereunder to a personal decree and to a charge on the land by reason of its not having been registered.

SECOND APPEAL against the decree of E. J. Sewell, District Judge of North Arcot, in appeal suit No. 209 of 1891, confirming the decree of V. Kuppasami Ayyar, District Munsif of Sholinghur, in original suit No. 388 of 1891.

Suit to recover principal and interest due on a registered hypothecation bond, dated the 30th of June 1879, and executed by defendant No. 1 and his deceased father to Ayyasami Mudali to secure the repayment of a loan of Rs. 87, together with interest at 12 per cent. The plaintiff sued as the assignee of Ayyasami Mudali under an instrument, dated 17th May 1884, under which the secured debt then amounting, together with interest, to Rs. 137-14-0, had been assigned to him for Rs. 70. The last-mentioned instrument was not registered and the District Munsif held that it was invalid for that reason and dismissed the suit. The District Judge affirmed his decree.

The plaintiff preferred this second appeal.

Parthasaradhi Ayyangar for appellant.

Narasimhachariar for respondents.

JUDGMENT.—We are of opinion that what was sold by exhibit A was a debt secured by a charge upon immovable property.

* Second Appeal No. 1551 of 1894.

Such a debt is an actionable claim and the assignee will be entitled to a personal decree for the debt as well as to the charge. Under section 8 of the Transfer of Property Act, the operation of the transfer of the debt is to pass to the transferee the securities for the debt, but what is sold is primarily not the charge, but the debt. So far as the sale creates a charge in favour of the plaintiff it is a charge for Rs. 70 only, and falls within the provisions of section 18 of the Registration Act. See *Satra Kumaji v. Visram Hasgavda*(1).

SURRAMANIAM
v.
PERUMAL
REDDI.

Though it is true that the term "other intangible thing" in section 54 of the Transfer of Property Act might include a charge, the expression must be construed with reference to its context and to the heading of the chapter. The chapter relates to "sales of immovable property," and the context classes "other intangible things" with "reversions" in contradistinction to tangible immovable property.

Though the language is not very clear it seems to us probable that the Legislature intended to distinguish between vested and contingent interests in immovable property. In the case of the latter all sales were made compulsorily registrable, but in the case of the former only sales of the value of Rs. 100 and upwards. The effect of this was to preserve the distinction created by sections 17 and 18 of the Registration Act, and section 54 was no doubt enacted with reference to those provisions.

It would be very anomalous if the transfer of an hypothecation should require registration when the original hypothecation did not require it.

Taking this view, we are of opinion that the registration of exhibit A was not compulsory. We reverse the decrees of the Courts below and remand the suit to the Court of first instance to be heard on the merits. The District Munsif will provide for all costs hitherto incurred in his final decree.

(1) I.L.R., 2 Bom., 97.