APPELLATE CIVIL.

Before Sir Charles Arnold White, Kt., Chief Justice, and Mr. Justice Oldfield.

NATESA GRAMANI (DEFENDANT), APPELLANT,

v.

TANGAVELU GRAMANI (PLAINTIFF), RESPONDENT.*

1914. February 10 and 17.

Indian Registration Act (III of 1877), sec. 17 (1) (b) and (d)—Lease of palmyra juice—Whether lease of immoveable property.

Where a document stated that the lessee had "taken for lease for two years, the palmyra trees" in a certain garden and . . . that "he would not cut the leaves of any of the trees on which he climbed except those whose leaves had to be cut,"

Held, that it was not a lease of immoveable property and that the interest conveyed by it, was not, for the purposes of the Registration Act, an interest in immoveable property.

Sukry Kurdeppa v. *Goondakull Nagireddi* (1871) 6 M.H.C.R., 71 and *Seeni Chettiar* v. *Santhanathan Chettiar* (1897) I.L.R., 20 Mad., 58 (F.B.), explained and distinguished.

APPEAL against the decree and judgment of C. V. KUMARASWAMI SASTRIYAR, the City Civil Judge of Madras, in Original Suit No. 561 of 1910.

The facts necessary for the purpose of this report appear from the judgment of the learned CHIEF JUSTICE.

T. Ethiraja Mudaliyar and *K. Balamukunda Ayyar* for the appellant.

C. K. Mahadeva Ayyar for the respondent.

WHITE, C.J.—The only point taken in appeal was that Exhibit A was a document which under the law should be registered but had not been registered and that consequently it was inadmissible in evidence. No objection was taken to the admissibility of the document in the Court of First Instance. The document states that the lessee had "taken for lease for two years . . . for enjoyment for toddy, palmyra fruit, etc., the palmyra trees" in a certain garden, that he had paid the amount of the lease for two years (*i.e.*, Rs. 140) and that he would not cut the leaves of any of the trees on which he climbed WHITE, C.J.

* City Civil Court Appeal No. 30 of 1912.

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except those whose leaves had to be cut. The question is, is the instrument a lease of immoveable property within the meaning of section 17 (1) (*d*) of the Indian Registration Act, or an assignment of an interest of the value of Rs. 100 or upwards in immoveable property within the meaning of section 17 (1) (*b*) of the Act? For the purpose of this case I am prepared to assume that the instrument is a lease, or, if it is not, that it is an assignment of an interest of the value of Rs. 140. The Act defines "moveable property" as including "standing timber, growing crops and grass, fruit upon and juice in trees, and property of every other description, except immoveable property."

On behalf of the appellant Mr. Ethiraja Mudaliyar has relied upon two decisions as bearing directly upon the point we have to decide. They are *Sukry Kurdeppa* v. *Goondakull Nagireddi*(1) and *Seeni Chettiar* v. *Santhanathan Chettiar*(2). *Sukry Kurdeppa* v. *Goondakull Nagireddi*(1), which was not decided until 1871 turned on the meaning of section 13 of the Registration Act of 1864. That Act contained no definitions of moveable and immoveable property. The Act of 1866 introduced the definitions of moveable and immoveable property. The Act of 1871 introduced into the definition of moveable property the words "juice in trees." This amendment of the definition would seem to be in consequence of a decision of the Calcutta High Court in *Janoo Mundur* v. *Hucha Mundur*(3) where the Court held, though with some doubt, that section 50 of the Act of 1866 had no application to a lease of a right to take the juice of date trees. In view of the definition to which I have referred I do not think the present case is governed by the decision of this Court in *Sukry Kurdeppa* v. *Goondakull Nagireddi*(1).

In *Seeni Chettiar* v. *Santhanathan Chettiar*(2) the interest assigned was a right to cut and enjoy for four years the trees, etc., and the grass, korai, gum, karunela nut, etc., which grow in a certain tank for a certain period. Under the instrument the party was entitled to cut and carry away the whole of the vegetable produce growing in the tank in question. The effect of

(1) (1871) 6 M.H.C.R., 71. (2) (1897) I.L.R., 20 Mad., 58 (F.B.).
(3) (1869) 12 W. R., 366.

the definition to which I have referred was not considered in that case because no question of the right to take the "juice in trees" arose. In that case the Court was of opinion that the instrument created an interest in immoveable property. Mr. Justice SUBRAHMANYA AYYAR in his judgment on page 66 observed that "the fact that the comparatively long period of a little more than four years was granted to the defendant for cutting and removing the trees is, to my mind, strongly in favour" of the view expressed in *Marshall* v. *Green*(1) that "it was contemplated that the purchaser should derive a benefit from the further growth of the thing sold, from further vegetation and from the nutriment to be afforded by the land." SHEPHARD, J., pointed out that under the instrument then in question it was not among the trees and grass then growing and ready to be cut that the defendant was to acquire. He was further to be at liberty to take all the trees which might grow on the ground within the period named.

The instrument in question in the present case only gives the right to take toddy and fruit for two years. No doubt any license under which a person is entitled to take toddy in a sense creates an interest in land since without land there would be no tree and without tree there would be no toddy. It may be that in this case there is an implied contract or covenant that the lessor should not cut down the trees in derogation of his own grant. But having regard to the definition to which I have referred it seems to me the right view is that the instrument in question is not a lease of immoveable property and that the interest conveyed by the document is not for the purposes of the Registration Act, an interest in immoveable property.

Accordingly I would dismiss the appeal with costs.

OLDFIELD, J.—The first of the two cases, on which the defendant has relied, *Sukry Kurdeppa* v. *Goondakull Nagireddi*(2) can be dismissed shortly, because at its date "moveable property" was not defined for the purpose of registration as it now is. OLDFIELD, J.

The second, *Seeni Chettiar* v. *Santhanathan Chettiar*(3) was decided after the amendment of the definition in 1871,

(1) (1875) L.R., 1 C.P.D., 35 at p. 39. (2) (1871) 6 M.H.C.R., 71.
(3) (1897) I.L.R., 20 Mad., 58, at p. 66 (F.B.).

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though without explicit reference to it; and it was held that an instrument authorising the enjoyment and removal of trees, grass, and other produce in a tank bed for a period of four years for a consideration of Rs. 3,400 required registration. Now, although a right to the juice of trees was not conveyed by that instrument, its terms indicating that no juice bearing trees were in question, yet it resembled Exhibit A in the present case to the extent that, the trees being referred to in the judgment as timber, it dealt with moveable property as it is at present defined. That however was not held to be decisive as to the necessity for registration. The ground, on which registration was required, was in the words of SUBRAHMANYA AYYAR, J., that "parties entering with such a contract may expressly or impliedly agree that the transferee shall enjoy for a long or short period, some distinct benefit to arise out of the land, on which the timber grows. In a case like that, the contract would undoubtedly be not one in respect of mere moveables, but would operate as a transfer of an interest in immoveable property." And in deciding whether the contract then in question fell under the latter description the learned Judge expressly attached importance to its duration, four years, and presumably also to the nature of the property, timber, grass and undergrowth which would be augmented by spontaneous growth. No doubt in the present case, in which plaintiff's right was to draw palmyra juice, cut such leaves as his doing so involved and take the fruits of the trees, his right to do so for two reasons entailed that he should benefit to adopt an expression from *Marshal* v. *Green*(1) by "the nutriment afforded by the land." This benefit however is not in my opinion such an interest in land as section 17 (3) (*b*) of the Registration Act contemplates. For it involves only a stipulation that the trees are to remain available during the currency of the contract for the use specified in it, not any limitation on the transferor's enjoyment of the land as such. In *Seeni Chettiar* v. *Santhanathan Chettiar*(2) there was such a limitation. Although, as observed in the judgment already referred to, there was no such transfer of possession as would constitute a lease, the contract was still subject to the implied proviso that the transferor's

(1) (1875) L.R., 1 C.P.D., 35. (2) (1897) I.L.R., 20 Mad., 53 (F.B.).

"action should not injuriously affect the special rights conferred upon the transferee with respect to the trees, etc.," and the enjoyment of those rights would evidently have been irreconcilable with the retention of any substantial enjoyment by the transferor. Here it has not been explained and it does not appear how any ordinary use of the land could affect the nutriment it afforded to the trees, their juice or their fruit. It is therefore possible to give unrestricted effect to the reference to the juice of trees in the definition of moveable property in section 2 of the Act and to hold that Exhibit A transferred no interest in immoveable property.

Concurring with the learned CHIEF JUSTICE I would dismiss the appeal with costs.

S.V.

APPELLATE CIVIL.

Before Mr. Justice Seshagiri Ayyar.

SUBBAROYA REDDIAR (PLAINTIFF), PETITIONER,

v.

RAJAGOPALA REDDIAR AND TWO OTHERS (DEFENDANTS), RESPONDENTS.*

1914. February 19 and 24.

Limitation Act (IX of 1908), arts. 62 and 97—Sale of land by one having a voidable title and putting purchaser in possession thereunder—Dispossession by person entitled to avoid—Cause of action for return of purchase money, only on dispossession.

A who had a title to certain immoveable property, voidable at the option of *C*, sold it to *B* and put *B* in possession thereof. *C* then brought a suit against *A* and *B*, got a decree and obtained possession thereof in execution.

Held, that *B*'s cause of action for the return of the purchase money arose not on the date of the sale but on the date of his dispossession when alone there was a failure of consideration and that the article applicable was article 97 of the Limitation Act.

Cases on the subject reviewed.

PETITION under section 25 of the Provincial Small Cause Courts Act (IX of 1887), praying the High Court to revise the decree of A. N. ANANTARAMA AYYAR, the Subordinate Judge of Tinnevelly, in Small Cause Suit No. 1934 of 1912.

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* Civil Revision Petition No. 390 of 1913.