

REVISIONAL CIVIL.

1905
December 2.*Before Mr. Justice Aikman.*MATHURA DAS AND ANOTHER (PLAINTIFFS) v. JADUBIR THAPA
(DEFENDANT).**Act No. III of 1877 (Indian Registration Act), section 17—Registration—
Sale of standing timber—Immovable property.*

Held that a document which purported to be a "theka" of a certain portion of a forest "for all kinds of trees" for two years was not a document conveying an interest in immovable property and did not require to be registered. *Seeni Chettiar v. Santhanathan Chettiar* (1) distinguished.

THE plaintiff in this case brought his suit to recover Rs. 800 paid under a contract as upon failure of consideration. The terms of the contract were contained in a document to the following effect:—"I (the defendant) have given a theka of forest Gumlas, portion 2, for all kinds of trees for two years from 23rd November, 1902, to 2nd November, 1904, to Ramji Das, son of Tuki Ram and Mathura Das, son of Bhana Mal, for Rs. 800, which have been paid and acknowledged by separate receipt, on these conditions:—(1) Possession of the forest abovementioned has been given from the date of execution of this deed. Cutting will begin from to-day. (2) The contractors are entitled to cut from this forest for two years. After the expiry of the two years, they may remove wood already cut for six months." The Court (Small Cause Court Judge of Dehra Dun) held that this document conveyed an interest in immovable property and therefore required to be registered, and, as it was not registered and there was no other evidence of the contract, dismissed the suit. The plaintiff's applied in revision to the High Court under section 25 of Act No. IX of 1887.

Munshi *Haribans Sakai*, for the applicants.

Dr. *Satish Chandra Banerji* (for whom *Babu Sarat Chandra Chaudhri*), for the opposite party.

AIKMAN, J.—The appellant's suit was based on a document, dated the 23rd November 1902. It was thrown out by the learned Judge of the Court of Small Causes at Dehra Dun on the ground that the document the basis of the suit was inadmissible

* Civil Revision No. 42 of 1905.

(1) [1896] L. L. R., 20 M. d., 58.

1905

MATHURA
DAS
v.
JADUBIE
THAPA.

in evidence owing to want of registration. An application has been made to this Court to deal with the case under section 25 of the Provincial Small Cause Courts Act, 1887. It is contended on behalf of the applicant that the document is not one which is compulsorily registrable under the provisions of section 17 of the Indian Registration Act, 1877. The decision of this point turns on this question whether the document can be considered to be one conveying an interest in immovable property. In my opinion it is nothing but an agreement by the opposite party whereby he sold the trees standing in a certain area of land. These trees were sold, not that the produce thereof might be enjoyed, but simply with a view to their being cut down and removed. The document provides that the cutting was to begin from the day of execution. The fact that the applicants were to be allowed to cut down and remove the timber for a space of two years would not in my opinion render the transaction a transfer of an interest in immovable property. The terms of the lease in the case relied on by the learned Judge, namely, *Seeni Chettiar v. Santhanathan Chettiar* (1) differ materially from the terms of the document in this case. In the Madras case the lease gave a right to the enjoyment of the forest produce, grass, &c., for a term of four years as well as a right to cut the timber. The definition in section 3 of the Indian Registration Act shows that the Legislature intended to exclude standing timber from the category of immovable property. In my opinion the document in question was nothing but the sale of standing timber giving the petitioners a somewhat extended period for its removal. I therefore hold that it was not inadmissible for the want of registration. I set aside the decree of the lower Court dismissing the plaintiff's suit with costs and remand the case to that Court with directions to re-admit the case under its original number in the register and dispose of it on the merits. As the opposite party raised the plea as to the document being inadmissible for want of registration, which plea has now been overruled, the appellants are entitled to their costs in this Court. Other costs will abide the result.

Appeal decreed and cause remanded.

(1) (1896) I. L. R., 20 Mad., 58.