

APPELLATE CIVIL

Before Mr. Justice Iqbal Ahmad and Mr. Justice Bajpai

SAVITRI DEVI (PLAINTIFF) *v.* DWARKA PRASAD BHATYA 1938
November, 29
AND ANOTHER (DEFENDANTS)*

Copyright—Movable property—Assignment—Registration not necessary—Transfer of Property Act (IV of 1882), section 54—“Intangible thing”—Transfer of Property Act, sections 3, 130—“Actionable claim”—English Copyright Act, 1911 (1 and 2 Geo. 5, ch. 46), section 5(2)—Copyright Act (III of 1914)—Interpretation of statutes—Headings to groups of sections—Preamble.

A sale deed assigning a copyright does not require to be registered.

Though copyright is an “intangible thing”, it is movable property and not immovable property, and therefore it cannot come within the operation of section 54 of the Transfer of Property Act which has no application to the sale of movable properties. The headings of chapters III, IV and V of the Act put it beyond doubt that provision has been made in those chapters only with respect to sales, mortgages and leases of immovable properties. Further, in section 54 the words “or other intangible thing” are preceded by the word “reversion” and this shows that the words “intangible thing” have been used *ejusdem generis* with the word “reversion”, which denotes some right in immovable property; it follows that the words “intangible thing” in section 54 have reference only to immovable property.

There is no provision in the Indian Copyright Act, 1914, which requires a deed of transfer of copyright to be registered, nor was there any such provision in the earlier Act of 1847. That Act was replaced by the English Copyright Act of 1911, and certain modifications and additions to the latter were introduced by the Indian Copyright Act of 1914; but no modification was made with respect to section 5(2) of the English Act of 1911 in which registration is not mentioned as a requirement of a valid deed of assignment of a copyright.

Copyright hardly comes within the purview of “actionable claim” as defined in section 3 of the Transfer of Property Act, and the argument is untenable that as it is an actionable claim it can be assigned by an unregistered instrument as provided by section 130 of the Act.

*First Appeal No. 142 of 1937, from a decree of Shamsul Hasani, District Judge of Aligarh, dated the 18th of December, 1936.

1938

SAVITRI
DEVI
v.
DWARAKA
PRASAD
BHATYA

The preamble of a statute has always been regarded as a good means of finding out its meaning, and the headings prefixed to sections or sets of sections in statutes are regarded as preambles to those sections and therefore a safe guide in interpreting those sections.

Messrs. *S. K. Das* and *M. L. Chaturvedi*, for the appellant.

Mr. *S. C. Das*, for the respondents.

IQBAL AHMAD and BAJPAI, JJ.:—The dispute in the present litigation is about the copyright of a Hindi book named *Abhinava Nighanto*, a book on the Indian materia medica. The book was written in the nineties of the last century by a resident of Muttra District, named *Chaubey Datt Ram*, the predecessor in title of *Savitri Devi* plaintiff appellant. The first edition of the book was printed and published by *Datt Ram* in the year 1893 and a second and enlarged edition of the book was printed and published by him in the year 1899. *Datt Ram* died in the year 1907 leaving *Narain Datt*, his son, as his sole legal representative.

The suit giving rise to the present appeal was filed by *Narain Datt* and he prayed for a perpetual injunction restraining the defendants from printing and publishing the book, for accounts and for damages etc., on the allegation that the defendants had infringed his copyright in the book.

Narain Datt died during the pendency of the suit in the court below, leaving a will by which he bequeathed all his properties, movable and immovable, to *Savitri Devi*, and *Savitri Devi* was accordingly substituted as plaintiff in place of *Narain Datt*.

There were two defendants in the suit. The first defendant was one *B. Kishan Lal* who was the proprietor of a press in Muttra called *Bombay Bhushan Press*, and the second defendant was "*Shridhar Shiv Lal, Gyan Sagar Press*", a firm of printers and publishers in Bombay. This firm was sued through one *Pt. Janak*

1938

 SAVITRI
 DEVI
 v.
 DWARKA
 PRASAD
 BHATYA

Prasad Bajpai on the allegation that Janak Prasad had been appointed receiver of the firm by a court of law. Kishan Lal died during the trial in the court below and his son Dwarka Prasad was substituted in his place.

It is a matter of admission that in the year 1929-30 a fresh edition of the book was printed by Kishan Lal in his press and was published either by him or by the second defendant. The plaintiff's case was that the printing and the publication of this edition constituted an infringement of the copyright that he had in the book.

The suit was contested by both the defendants mainly on the allegation that Datt Ram had assigned the copyright in the book in favour of Shridhar Shiv Lal, defendant No. 2, by means of an unregistered sale deed dated the 4th of September, 1905. The defendants, therefore, maintained that the plaintiff had no copyright left in the book and was not entitled to sue. Both the defendants alleged that Kishan Lal had printed the book in pursuance of an order given by defendant No. 2 and that the book was published by defendant No. 2, the assignee of the copyright.

The plaintiff denied the alleged assignment of the copyright by Datt Ram and maintained that the sale deed relied upon by the defendants was "fraudulent and fictitious" and "without any consideration". Further the plaintiff contended that the assignment of the copyright could in law be effected only by means of a registered instrument and as the sale deed relied upon by the defendants was unregistered it was inoperative and ineffectual to convey the copyright.

The court below found that the sale deed relied upon by the defendants was executed by Datt Ram and that its registration was not compulsory. It accordingly held that the copyright in the book was validly assigned by Datt Ram to defendant No. 2 and on that ground dismissed the plaintiff's suit.

1938

SAVITRI
DEVI
v.
DWARAKA
PRASAD
BHATYA

This brings us to the consideration of the question whether the sale deed relied upon by the defendants was proved and whether the copyright in the book was validly assigned by that deed.

[The judgment then discussed the evidence and proceeded as follows.]

The court below was, therefore, right in holding that the execution of the sale deed by Datt Ram was proved, and that the sale deed was acted upon.

It is, however, necessary to examine the contention of the plaintiff that the copyright could be assigned only by means of a registered instrument. In support of this contention reliance is placed on section 54 of the Transfer of Property Act which *inter alia* provides that a sale "in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument."

It is argued that copyright is an "intangible thing" and, therefore, it can be assigned only by a registered instrument. In our judgment there is no substance in this contention. There is no doubt abundant authority in support of the assertion that copyright is an intangible thing; vide Holland's Jurisprudence, twelfth edition, page 213, and Salmond's Jurisprudence, 6th edition, page 395. But it is equally clear that copyright is movable and not immovable property, vide Salmond's Jurisprudence, page 393, and in our judgment section 54 of the Transfer of Property Act has no application to the sale of movable properties. That this is so is manifest from an examination of the headings and sub-headings of the various chapters of the Transfer of Property Act.

Chapter II deals with the "Transfer of Property by act of parties", and is sub-divided into two portions. Sub-heading (A) deals with the "Transfer of Property,

whether movable or immovable" and under this sub-heading are sections 5 to 37. The next sub-heading (B) is with respect to "Transfer of immovable property" and under this sub-heading are sections 38 to 53A. The heading of chapter III is "Of sale of immovable property" and this chapter comprises of sections 54 to 57. The heading of chapter IV is "Of mortgages of immovable property and charges". Similarly chapter V deals with "Leases of immovable property". Chapter VI provides about "Exchanges" and chapter VII deals with "Gifts". The headings of chapters III, IV and V put it beyond doubt that provision has been made in those chapters only with respect to sales, mortgages and leases of immovable properties. The headings of these chapters stand in special contrast to the heading of chapter VII which deals with gifts. By that chapter the legislature has made provision not only with respect to gifts of immovable but also with respect to gifts of movable properties.

The preamble of a statute has always been regarded as a good means of finding out its meaning, and the headings prefixed to sections or sets of sections in statutes are regarded as preambles to those sections, and, therefore, a safe guide in interpreting those sections; vide Maxwell on the Interpretation of Statutes, seventh edition, pages 37 and 44, and *Janki Singh v. Mahant Jagannath Das* (1). But the headings or sub-headings cannot either restrict or extend the scope of the sections when the language used is free from ambiguity. In section 54 the words "or other intangible thing" are preceded by the word "reversion" and this shows that the words "intangible thing" have been used *ejusdem generis* with the word "reversion". The word "reversion" is ordinarily used to denote some right in immovable property. It, therefore, follows that the words "intangible thing" in section 54 have reference only to

1938

 SAVITRI
 DEVI
 V.
 DWARKA
 PRASAD
 BHATTA

(1) (1918) 3 Pat.L.J. 1.

1938

SAVITRI
DEVI
v.
DWARAKA
PRASAD
BHATTYA

immovable property. This conclusion becomes irresistible when one proceeds to consider the terms of sections 55, 56 and 57 of the Transfer of Property Act. Sections 55 and 57 deal specifically with sales of immovable property and section 56 provides about marshalling by subsequent purchaser. The doctrine of marshalling can be applied only when there is a mortgage of immovable properties. If the legislature had intended to provide for sales of movable properties also by chapter III one would have expected some provision in that chapter as regards the rights and liabilities of the buyer and seller of such properties, but that chapter is conspicuous by an absence of any such provision. We have, therefore, no hesitation in holding that section 54 has no application to the present case and that the copyright in dispute could be validly assigned by an unregistered instrument.

In England copyright is regarded as a "chose in action"; vide Halsbury's Laws of England, second edition, volume 4, paragraphs 785 and 787, and *Colonial Bank v. Whinney* (1). It was observed in this case that "There being no word to denote incorporeal personal property, the meaning of the expression 'chose in action' was gradually extended for the purpose of denoting it, and Mr. Joshua Williams in his work on Personal Property treats it as including even copyrights and patents". On the basis of these authorities it was urged by the respondents' counsel that copyright falls within the category of actionable claims and can, therefore, in view of the provisions of section 130 of the Transfer of Property Act, be assigned by an unregistered instrument. It is doubtful if these authorities will apply in India to "actionable claims" which have been defined by section 3 of the Transfer of Property Act as meaning *inter alia* "any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant" Copyright is no

doubt beneficial interest in movable property but the owner of the right has actual or constructive possession of the same and, therefore, copyright hardly comes within the purview of "actionable claim" as defined by the Act.

But the conclusion arrived at by us that copyright can be assigned by an unregistered instrument is supported by the provisions contained in the Acts dealing with copyrights. The first Act that dealt with such right was Act No. XX of 1847. The right to assign copyright was implied in that Act and though provision was made by sections 3 and 5 of that Act about entries being made in a book of registry there was nothing in the Act to suggest that copyright could not be assigned except by a registered instrument. Till the year 1847 there was no law in this country providing for compulsory registration of documents of transfer though there were Regulations that gave the option of getting such documents registered. For the first time in 1864 provision was made by an Act about certain kinds of transfer being made only by means of registered instruments, but there was nothing in that Act that made the assignment of copyright compulsorily registrable. Act XX of 1847 was replaced by the English Copyright Act of 1911 and certain modifications and additions were introduced in the Act of 1911 by the Indian Copyright Act (III of 1914). Section 5 (2) of the English Act provides about the assignment of copyright by "writing signed by the owner of the right . . . or by his duly authorised agent." There is no provision in the English Act making the registration of a deed of assignment compulsory. If the Indian legislature had intended to depart from the provisions of the English Act one would have expected some provision as to compulsory registration being made by Act III of 1914, but there is no such provision in that Act. We have, therefore, no hesitation in holding that the registration of a deed of assignment of copyright is not compulsory.

Accordingly we dismiss this appeal with costs.

1938

 SAVITRI
 DEVI
 v.
 DWARKA
 PRASAD
 BHATYA