1869 : Aug. 28

Before Mr. Justice Norman and Mr. Justice E. Jackson.

JALU NAMDAR AND ANOTHER (DEFENDANTS) *v.* BEJOHA NAMDAR (PLAINTIFF.)*

Act XX. of 1866, ss. 2, 50—Registration—Priority of Unregistered Deed—Lease to take Juice from Date-Trees.

The right to take juice from date trees is not, according to section 2, Act XX of 1866, a right to immoveable property, but falls under the definition of moveable property.

A registered lease to take juice from date-trees cannot, under section 50 Act XX. of 1866, have priority over an unregistered one of a prior date.

Baboo *Ambika Charan Banerjee* for appellant.

None for respondent.

THE judgment of the Court was delivered by

NORMAN, J.—In this case the appellants, who are the defendants, claim a right under a lease granted by the proprietor to take the juice of 320 date-trees in Mauza Sunhowli. The plaintiff claims under a similar lease of an earlier date, which is unregistered. The appellants contend that their lease, though later in date, is entitled to priority over that of the plaintiff, inasmuch as it is registered. Section 50 of Act XX. of 1866 enacts as follows:—"Every instrument of the kinds mentioned in clauses 1, 2, and 3 of section 18 shall, if duly registered, take effect, as regards the property comprised therein, against every unregistered instrument relating to the same property."

Now the right to take the juice of the date-trees will not fall within section 18, clause 1, unless it is a right or interest to immoveable property. Looking to the definition of immoveable property, in the second section of the Act, it excludes "standing timber and growing crops." The definition of moveable property in the same section includes "growing crops, grass, fruit upon

* Special Appeal, No. 2755 of 1868, from a decree of the Subordinate Judge of Bhagulpore, dated the 6th July 1868, affirming a decree of the Moonsiff of that District, dated the 23th February, 1868.

trees, and property of every other description, except immoveable property."

The question is, does the right to cut date-trees, and take the juice produced by them, fall within the description of immoveable property, as the term is limited in the second section.

The definition is as follows:—"Immoveable property includes land, buildings, right to ways, lights, fisheries, or any other benefit to arise out of land, and things attached to the earth, or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops, nor grass." The juice of date-trees, from which sugar is made, being produced annually at the season of growth, falls nearly within the description of a growing crop. The right to take the juice in future years from standing trees, from which it is produced without cultivation, is more nearly described as a right to or benefit arising out of standing trees or timbers, than a right or benefit to arise out of land, such as is described as immoveable property. On the whole, therefore, though not without some doubt, we think, that the 50th section has no application to a lease of a right to take the juice of date-trees.

We therefore affirm the decision of the lower Court. The appeal must be dismissed with costs.