APPELLATE JURISDICTION. (*a*)

Regular Appeal No. 75 of 1870.

SUKRY KURDEPPA and another..... *Appellants.*

GOONDAKULL NAGIREDDI and 3 others..... *Respondents.*

A document creating and transferring a right of use of growing trees for a term of years is a document which purports to create or transfer an interest in immoveable property within the meaning of Section 13 of the Registration Act of 1864; and therefore such document, if not registered, is inadmissible in evidence.

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THIS was a Regular Appeal against the decision of O. B. Irvine, the Acting Civil Judge of Bellary, in Original Suit No. 25 of 1869.

The plaintiffs sued to have their right established to, and to be put in possession of, and to draw toddy from certain toddy trees specified in the plaint, for a term named in a lease alleged to have been executed in their favor on the 15th October 1869 by the 2nd defendant. The plaint set forth that the 2nd defendant derived his title from a previous lease executed in his favor by the 1st defendant, the proprietor of the trees, on the 16th February 1866, under the terms of which lease the 2nd defendant was to enjoy the trees for a period of five years, from Fusly 1276 to 1280.

The 1st defendant denied having executed the lease in favor of the 2nd defendant, and pleaded that he had created a right to the 3rd and 4th defendants.

The 2nd defendant supported the plaintiff's title, claiming to have obtained a lease of the trees for a period of five years, from the 1st defendant; that for three years of this period he had himself enjoyed the trees, and for the remaining two years had leased them to the plaintiffs.

The 3rd and 4th defendants admitting that the 2nd defendant had obtained an agreement from the 1st defendant, under which the latter was to hold the trees, affirmed that the 2nd defendant had subsequently broken his contract with the 1st defendant, and that the latter had consequently executed a lease deed in favor of these defendants and put them in possession of the trees.

(*a*) Present: Holloway, Acting C. J. and Kindersley, J.

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At the settlement of issues, the Civil Judge held that the document purporting to have been executed by the 1st defendant to the 2nd defendant was of a nature requiring registration, under the terms of Section 13, Act XVI of 1864, and that it did not come within the provision of that Section, and that the document not having been registered was inadmissible in evidence. That the 1st defendant having denied the document, the 2nd defendant's title was defective unless the document could be admitted and proved. That the plaintiff's case being dependent upon the 2nd defendant's title, fell with it, and the suit must be dismissed.

The plaintiffs preferred a Regular Appeal to the High Court on the ground

That the decree of the Civil Judge was wrong in law in holding that the suit was not sustainable for want of registration of the document sued on.

Mayne, for the appellants, the plaintiffs.

Miller, for the 1st respondent, the 1st defendant.

O'Sullivan, for *Gould*, for the 3rd respondent, the 3rd defendant.

The Court delivered the following judgments :—

HOLLOWAY, Acting C. J.—The question is, whether 2nd defendant's document has been rightly rejected because unregistered, and the solution of this question depends upon whether it purports to create or transfer an interest in immoveable property, within the meaning of Section 13 of the Registration Act of 1864.

The document recites a lease of palm and date-trees for five years, for 2,000 Rupees per annum, for the enjoyment of the lessee by drawing toddy from them, the Government tax to be paid by the lessee, and in acknowledgment of the receipt the lessor says " I have received the full amount " of the lease of the said date-trees."

There is clearly here a transferring of the right of use of growing trees for a period of five-years, and the creation of that right of use for that period. Is this an interest in immoveable property?

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Moveability may be defined to be a capacity in a thing of suffering alteration of the relation of place. Immoveability incapacity for such alteration. If, however, a thing cannot change its place without injury to the quality by virtue of which it is, what it is, it is immoveable.

Certain things, such as a piece of land, are in all circumstances immoveable. Others, such as trees attached to the ground, are, so long as they are so attached, immoveable: when the severance has been effected they become moveable. A document, therefore, evidencing an interest in land, must always require registration. One with respect to trees may or may not require it, according to the character of the transaction. If the parties contemplate the interest passing after the conversion of the immoveable to a moveable, it will not; if the interest passed contemplates the continuance of the quality of immoveability, it will. The present document passes not only a right of user for five years in trees rooted in the soil, but a right of user which demands for its exercise that they shall continue as growing trees. I can entertain no doubt that it both creates and transfers an interest in immoveables. If it had passed a five years' right of taking all palms of a certain age for planks, I should have thought otherwise, because it would then be manifest that the thing to pass was a moveable. According as a transaction contemplates them as in a state of attachment to, or of detachment from, the soil, the interest passed will be moveable or immoveable

I am equally clear that the transaction is not within the exception as creating the relation of landlord and tenant. It would be quite open to the lessor to pass the land to another, or to keep it in his own hands, as he appears to have done. There is no interest in land, but in certain immoveables which are so as an accessory to the land. I am of opinion that the appeal must be dismissed with costs.

Note, Unger I, 381.

KINDERSLEY, J.—I am of the same opinion. It is impossible to maintain, in this case, that the trees were not treated by the parties as immoveable property. This differs from the case of trees sold with a view to their being cut down

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as timber ; for, in this case it was necessary for the enjoyment of the lease that the trees should remain rooted in the ground for the long period of five years. There is, perhaps, more difficulty in distinguishing this case from those in which a particular crop of fruit, such as apples or mangoes, not yet matured, is sold. But if the sap of the tree be not more essentially a part of the tree itself than the fruit of it, the length of time over which the lease in this case was to extend certainly conveyed an interest in the preservation of the trees. It seems clear that the lease by the 1st defendant to the 2nd defendant purported to convey an interest in the trees, and that the trees were immoveable property. I think it equally clear that the case does not come within the proviso to Section 13 of the Registration Act, 1864, since it was not executed between landlord and tenant relative to land. It is quite a usual arrangement in the Madras Presidency to let the land separately from the trees standing upon it. And, though it may have been necessary for the lessee to enter upon the land for the limited purpose of tapping the trees, and removing the sap, and though a license to do so may be implied in the lease, that circumstance did not make him in any sense a tenant of the land. It follows that the lease in question required registration ; and, not having been registered, it was rightly rejected.

Appeal dismissed.