
(1920) 12 MAD CK 0004
In the Madras High Court

Adyapadi Vasudeva Udpa and Others	APPELLANT
Vs	
Krishna Udpa and Others	RESPONDENT

Date of Decision : 01-12-1920

Acts Referred:

Transfer of Property Act, 1882 — Section 114

Citation : AIR 1921 Mad 418 : (1921) ILR (Mad) 629 : (1921) 13 LW 420 :
(1921) 40 MLJ 460

Judgement

1. The only question argued before us is whether the appellant who is the landlord should not have been allowed the full arrears of rent as a condition for relieving the defendants against forfeiture which they had incurred according to the terms of the lease by non-payment of the rent. The Subordinate Judge has allowed only 3 years rent and disallowed the rest on the ground that it could not be recovered owing to the law of limitation. Section 114 of the Transfer of Property Act says that relief against forfeiture can be given "if at the hearing of the suit the lessee pays or tenders to the lessor the rent in arrear together with interest thereon etc." There is nothing to show that what the legislature meant was only such rent as could be recovered if the landlord was suing for rent, that is, such rent as was not barred. The English rule seems to be that the tenant will be relieved against forfeiture only on his paying full arrears of rent. (See Halsbury's Laws of England Vol. 19, Page 100, foot note, and Lightwood on Time Limit of Actions Page 177). The principle is that under the Limitation Act only the remedy is barred and not that the right of the land-lord to rent beyond the period specified in the Act is extinguished. Besides the proviso for forfeiture is really a security for rent. Therefore as the land-lord has enforced payment of arrears within 12 years, the tenant should not be

given any relief until the full arrears are paid, the full arrears being probably limited to 13 years. In this case, the arrears cover a period of only 5 years. The Subordinate Judge must be asked to submit a finding as to whether any arrears beyond 3 years before the suit were due, how much of the arrears of rent beyond 3 years prior to the suit has been paid and how much was due on account of assessment to the defendant. Costs will abide the result. Time one month.

2. In compliance with the order contained in the above Judgment the Subordinate Judge of South Kanara submitted the following

FINDING :--The question for decision is whether any and if so, what arrears of rent are due for the years 1911 and 1912 from the defendants to

plaintiffs. The parties are agreed that the rent for those years has not been paid and have put in separate statements showing the amount which

according to each is actually due. The rent per annum is 17 muras of rice and Rs. 13-3-9 cash. The defendants say that in: 1911, 6 muras of rice

was distrained for arrears of revenue and sold by the revenue authorities and the sale-proceeds thereof were remitted to the treasury. They

therefore contend that the aforesaid 6 muras of rice should be deducted from the rice rent due for the year 1911 and that the balance due for the

same year is 11 muras which valued at Rs. 4-4-0 per mura comes to Rs. 46-12-0. The cash rent for the same year is Rs. 13-3-9; total for the

year 1911 is thus Rs. 59-15-9. The fact that there was a distraint of 6 muras of rice as alleged by the defendants is not denied but the plaintiffs

contend that they are not liable to give credit for the same but only for the amount of revenue actually due for the said year. It appears from the

statement put in by them that that amount is Rs. 14. I think their contention is right. The defendants as mulgeni tenants were interested in seeing that

the revenue was paid in proper time and they could have very easily paid the correct amount from out of the rent due to the plaintiffs and claimed a

deduction thereof at the time of the settlement of accounts with the latter. I am therefore of opinion that the correct amount due for the year 1911 is

Rs. 71-7-9 (17 muras of rice valued at Rs. 4-4-0 per mura plus Rs. 13-3-9 cash rent, minus Rs. 14 revenue).

2. The next contention is whether the plaintiffs are entitled to claim interest on the principal rent due. The plaintiffs claim it at 12 per cent per annum

from the date of default up to the date of plaint and the amount comes to Rs. 38-10-10 for the arrear of 1911. The 1st defendant says that he is

not liable for it. I am of opinion that this contention is not valid. The plaintiffs are clearly entitled to the interest on the arrears of rent and the rate of

12 per cent is not excessive.

3. The rent due for the subsequent year 1912 is, as stated above, 17 muras of rice valued at Rs. 5-8-0 per mura plus Rs. 13-3-9 cash; total Rs.

106-11-9. No assessment was paid in this year by any of the defendants. The interest on the aforesaid arrear amounts to Rs. 46-1-9 from 31-5-

1912 up to the date of plaint at 12 per cent. The total amount for 1912 is Rs. 152-13-6.

4. Thus the total arrears due for 1911 and 1912 is Rs. 263-0-1 I find the issue accordingly.

[This Second Appeal coming on for final hearing after the return of the findings submitted by the Lower Appellate Court upon issues referred.]

3. The Court delivered the following

4. As regards six muras of rice distrained for the arrears of revenue, the tenant respondent in this appeal is entitled to deduct the value of it from the

rent payable to the appellant. Section 11 of the Revenue Recovery Act makes it clear that the revenue was payable by the pattadar the, appellant;

and according to Section 11 of the Revenue Recovery Act the tenant is entitled to deduct the value of the rice seized in distraint.

5. As regards interest on the value of the rent due to the appellant, there can be no doubt that the appellant was entitled to interest. The defendant

denied the right of the landlord to the rent. The mere fact that he had written a postcard saying that he was ready to pay would not deprive the

appellant of interest on the arrears of rent.

6. The decree of the lower Appellate Court will be modified by disallowing the value of 6 muras of rice deducting the price of the rice i.e, Rs. 71-

7-9 instead of Rs. 59-15-9 from the amount. That is to say the amount due to the plaintiff will be Rs. 246-14-1 with interest on Rs. 160-11-2

from date of plaint up to date of payment at 6 per. Each party will bear his own costs.