
(1931) 11 MAD CK 0003
In the Madras High Court

Appasami Ayyangar

APPELLANT

Vs

Krishnasami Padayachi

RESPONDENT

Date of Decision : 04-11-1931

Acts Referred:

Citation : 138 Ind. Cas. 119

Hon'ble Judges : Curgenven, J

Bench : Single Bench

Judgement

Curgenven, J.—The defendant leased some property to the plaintiff of a period of 7 years, to run from 1st July, 1920 to 30th June, 1927.

The lessee gave the lessor an advance of Ra. 200 which under the terms of the lease was to be adjusted towards the last year's rent that of 1926

1927. The plaintiff in point of fact was not given possession of the property and he accordingly sued for the return of the advance and for damages.

We are only concerned with the advance, in respect of which the learned Judge of the Small Cause Court has given the plaintiff a decree. The plea

of limitation was raised and was decided in his favour, though upon what grounds is not clear, as the learned Judge of the Small Cause Court has

merely given his decision to the effect without reasons. In this revision petition the point is taken that the claim was barred by limitation, it being

urged that there was a breach of the covenant to lease as soon as failure occurred to let the plaintiff into the land, and accordingly that whether

Article 97 or 116, of the Limitation Act applies, time began to run from that date, 1st July, 1920, and the suit which was brought on 27th June,

1927, is accordingly out of time.

2. In Secretary of State for India v. Venkayya 35 Ind Cas.254 : 40 M. 910 : 3 L.

W. 443 : 19 M.L.T. 318; (1916) 1 M.W.N. 342 : 30 M.L.J.

675, the question has been discussed by the late learned Chief Justice and Mr. Justice K. Srinivasa Ayyangar as to the effect of a failure on the

part of the lessor to give possession to his lessee upon the due date, and it was held that the breach of a covenant so to give possession is not a

continuing breach, as for instance would be the breach of a covenant for quiet enjoyment; but that it occurs once and for all at the inception of the

terms and as soon as failure to comply with the terms of the lease in this respect takes place. That case related to a claim for damages. But I am

unable to see in what respect a claim for the return of an advance made in the circumstances above stated would differ from such a claim, and it

appears to me that as soon as the lessor failed on the 1st July, 1926, to give possession to his lessee it was open to the latter to sue for the return of

the advance made, and accordingly that time would run against him in this respect as much as if his suit were one for damages. I have been asked

to hold that Section 39 of the Contract Act enables a promise to put an end or not to put an end to a contract which he promise has refused to

perform, and it is true that if the plaintiff here had produced evidence that he had agreed to take delivery of the land on some later date he probably

could not have sued either for damages or for the return of the advance and time accordingly might not have run against him until it appeared that

he had given up any express intention to take over the land. No such consideration arises in the present case, and I must accordingly conclude that

time ran against him from the date of the inception of the lease and that the claim is accordingly time-barred. I, therefore, allow the Civil revision

petition and set aside the decree of the lower Court and dismiss the suit with costs in both courts.