

(1931) 11 MAD CK 0031
In the Madras High Court

Appasami Ayyangar

APPELLANT

Vs

Krishnaswami Padayachi

RESPONDENT

Date of Decision : 04-11-1931

Acts Referred:

Contract Act, 1872 — Section 39

Citation : AIR 1932 Mad 225 : (1932) 35 LW 68

Hon'ble Judges : Curgenven, J

Bench : Division Bench

Judgement

Curgenven, J.—The defendant leased some property to the plaintiff for a period of seven years, to run from 1st July 1920 to 30th June 1927. The lessee gave the lessor an advance of Rs. 200 which under the terms of the lease was to be adjusted towards the last year's rent, that of 1926-27. 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 plaintiffs 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 that 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 Article 116, Limitation Act applies time began to run from that date (1st July 1.920), and the suit which was brought on 27th June 1927 is accordingly out of time.

2. In Secy. of State v. Venkayya [1917]40 Mad.910, the question has been discussed by the late learned Chief Justice and Srinivasa Iyengar, J., 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 term 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 1st July 1920 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 of damages. I have been asked to hold that Section 39, Contract Act, enables a promisee to put an end or not to put an end to a contract which his promisor 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 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.