

(1924) 09 MAD CK 0026
In the Madras High Court

Elagan		APPELLANT
	Vs	
Nanjappan and Others		RESPONDENT

Date of Decision : 16-09-1924

Acts Referred:

Citation : AIR 1925 Mad 919 : 85 Ind. Cas. 964

Hon'ble Judges : Madhavan Nair, J

Bench : Division Bench

Judgement

Madhavan Nair, J.—The 3rd defendant, father of the 2nd defendant, and father of the plaintiff and defendants Nos. 4 and 5 were three

brothers. Plaintiff's uncle the 3rd defendant took a lease of the suit land in the year 1878. After the lessor's death the 3rd defendant and the 4th

defendant took a lease of the same land from the lessor's widow in the year 1897. After the death of the widow, the reversioner who is the 1st

defendant collected the rents for some years and then sold his rights as landlord of the suit land to the plaintiff. The plaintiff, then determined the

tenancy as if it was a tenancy-at-will but the lessees who were his own relations declined to quit. The plaintiff accordingly sued to recover the land

together with mesne profits and damages. The suit was decreed to him but without damages by the District Munsif, but this decree was set aside

and the suit was dismissed with costs by the District Judge. This second appeal has been filed by the plaintiff's legal representative against the

decree of the District Judge dismissing the suit.

2. The District Judge held (a) that the later lease Exhibit I, dated 1897, was not merely a tenancy-at-will but one under which the lessees could

hold on so long as they paid the rent, (b) that it was a mere confirmation of

Exhibit III the granting of which was within the powers of a Hindu

widow, and (c) that the lease was forfeited by the lessees on account of nonpayment of rent. He, however, held that in the circumstances of the

case the lessees were entitled to be relieved against forfeiture. These various findings of the District Judge have been vigorously attacked here in

second appeal.

3. It has been argued on behalf of the appellant that Exhibit I is merely a tenancy at-will which the landlord could put an end to at any time he likes,

that, if it is construed as anything more than a tenancy-at will, then the taking of it by defendants Nos. 3 and 4 implied a surrender of the old lease

by the lessees and the creation of a new permanent lease which it is incompetent for a Hindu widow to grant, that at any rate the lease was

forfeited by non-payment of rent and that the District Judge was wrong in relieving against forfeiture in the circumstances of the case. If any of

these contentions are upheld in appellant's favour, he is entitled to succeed in second appeal. I will now proceed to deal with each one of these

contentions.

4. Exhibit I runs in these terms : Patta for gutha lease dated 13th March, 1897 executed and given in favour of defendants Nos. 3 and 4 by

Anantabattu's wife Achamma. ***** You shall yourselves cultivate this inam dry land from this time forwards until you yourselves give up the

same, you shall plough the same and raise the crops which you intend to raise and yourselves shall enjoy both the varams in the produce therefrom

* * You should deliver gutha ragi grain to me (by way of rent) in this manner until you deliver possession of the said land to me * * * If you do not

act in the above said manner, if you make any delay and if you fail to measure gutha grain to me on Sivaratri day in any year, I shall take

possession of my land immediately without obtaining your consent and lease out the land for cultivation to persons to whom I am pleased to lease

out the same. This is the gutha lease patta executed and given with my consent. Achamma." Reading the document as a whole it seems to me that

Exhibit I does not evidence a tenancy-at-will; but, on the other hand, the intention of the parties seems to have been to create what may be called a

permanent lease in favour of the lessee which could be put an end to only in one circumstance, viz., the nonpayment of rent by them. If so, the

lease cannot be said to have been terminated by simply giving a notice to quit.

5. The next argument that Exhibit I implies a surrender of the old lease and the creation of a new one by the widow is a little more difficult to deal

with. It is pointed out that the circumstances in which the new lease was taken show that Exhibit I must be considered to be a new lease and this

partaking of the nature of a permanent lease, is one which a Hindu widow cannot grant. Even otherwise, it is argued that since Exhibit III is

inadmissible in evidence. Exhibit I is the only lease we have to deal with and is, therefore, certainly a new one. In my opinion, the circumstances of

the case do not show that Exhibit I is a new lease granted ""by the widow. As regards the circumstances, what is emphasised is this, namely, that

the original lease was taken by the 3rd defendant while Exhibit I was taken by defendants Nos. 3 and 4 which fact, it is suggested, will show that

the new lease must be considered to be a fresh one. It may be mentioned here that except in this one single circumstance both the leases are

absolutely identical in their terms; and this circumstance which is now emphasised does not mean much in view of the fact that the 3rd defendant in

whose name the first lease was taken was considered as the manager of the family. The 4th defendant who is D.W. No. 1 says that Kempe

Gowdu, the 3rd defendant is Ejaman. There is an utter lack of evidence on the plaintiff's side to show that the lease was taken in favour of the

lessees individually. In this view, the leases must be considered to have been taken for the family on both the occasions, and the fact that the 4th

defendant's name is added to the second lease cannot in any way support the argument that the second lease is a new one. In view of the decision

in Ramaswamy Ayyar v. Thirupathi Naik (1904) 27 Mad. 43 I must hold that Exhibit III is admissible in evidence. It, therefore, follows that there

is no substance in the argument that Exhibit I is to be considered as a new lease granted by the, widow.

6. Further, it appears to me that in a case of this kind, there can be no implied surrender at all. As regards the implied surrender, the law is thus

stated in Halsbury's Laws of England, Vol. 18, page 549, para. 1061: ""There is no implied surrender by the acceptance by the lessees of any

lease which is void or which is voidable and is in fact avoided,"" and in the note it is stated that ""the implied surrender is subject to an implied

condition that the surrender is to be void if the new lease is made void."" See Doe v. Courtenay (1848) 11 Q.B. 702 and also Morris v. Baron &

Co. (1918) A.C. 1 and Zich v. London United Tramways (1908) 2 K.B. 126. Accepting this view of law, if the lease by the widow is made void

in this case, then certainly the prior lease will at once come into force. I, therefore, think that Exhibit I does not imply a surrender of the old lease

and a creation of a new one. On the other hand, the circumstances show that it is to be considered as a confirmation of the old lease. At observed

by the District Judge, the parties might have thought the a registered document is always safer than an unregistered one. A confirmation by a

widow of a past alienation by her husband is no alienation by her. The argument that Exhibit I is a new lease which a widow is not competent to

grant therefore, cannot avail the appellant.

7. The next question to be considered is whether there has been a forfeiture of the lease on account of the non-payment of rent. The question is

dealt with by the learned District Judge in para. 14 of his judgment. It is true that the respondents did not pay to the plaintiff rent due for 1913 and

1914, but they made a tender in November, 1913 after the institution of this suit. It seems to me that the reason for the non-payment of rent was

the fact that the plaintiff himself purchased the landlord's rights in the year 1912; and there seems to have been trouble between the parties as to

the amount of rent payable to the plaintiff who himself was a joint lessee prior to his purchase. The plea for non-payment in 1913 is that it was the

plaintiff's duty to contribute his share of the rent to himself. The same plea is made for 1914. I agree with the District Judge that there was no

justification for the non-payment of rent by the respondents; but, in the circumstances of the case, I agree with him that the forfeiture should be

relieved against. The lease was held by the lessees on behalf of the joint family. While so, one of the members purchased the landlord's right. The

first failure to pay rent was on account of the fight between the brothers as regards the contribution of the plaintiff's share. By the time the failure

for second time happened, the tenant's right had been denied by the landlord; and as, pointed out above, a tender also was made by the lessees.

Under these circumstances I cannot say that the relief against forfeiture was wrongly granted to the lessees in this case. The parties are all members

of the same family and are related to each other. In this view it is not necessary to consider the argument of the respondent that there was no forfeiture. I dismiss the second appeal with costs.