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**(1916) 03 MAD CK 0031**  
**In the Madras High Court**

Govindasawmi Pillai

APPELLANT

Vs

Ramasawmi Aiyar and Another

RESPONDENT

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**Date of Decision :** 07-03-1916

**Acts Referred:**

Transfer of Property Act, 1882 — Section 111, 116

**Citation :** (1916) 30 MLJ 492

**Hon'ble Judges :** Sadasiva Aiyar, J; Moore, J

**Bench :** Full Bench

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**Judgement**

Sadasiva Aiyar, J.—This Letters Patent Appeal is against the judgment of a learned Judge of this Court who dismissed the Civil Revision

Petition tiled by the defendant (petitioner and appellant) against the decree of the Subordinate Judge of Kumbakonam in S.C.S. No. 14S0 of

1913.

2. The defendant was lessee of a garden for live years under a registered lease-deed, Ex. B. The lease term expired in 1908. Then he executed an

unregistered lease-deed, Ex. A in June 1909. But that lease-deed is inadmissible in evidence for want of registration. The rent reserved for the

whole garden under Ex. B seems to have been Rs. 280 per annum. The plaintiffs originally owned one-fourth share in the garden and he purchased

the other one-fourth share on 23rd October 1912 from the then owner thereof.

3. The suit was brought for rent due from the 1st September 1911 till 14th November 1912 at Rs. 210 per annum with interest and costs and also

Rs. 50 damages for the alleged injury caused to the land by the defendant's acts. The Subordinate Judge gave a decree for Rs. 290, and

proportionate costs disallowing the claim for the Rs. 50 damages.

4. The defendant denied that he was a tenant of the lands but it is found by the Subordinate that he did pay rent as tenant and that he has been enjoying the lands all along. It is a pity that the learned Subordinate Judge did not give a definite finding as to whether the defendant paid rent after the expiry of the term in Ex. B and, if so, at what rate he was paying rent and whether as mentioned in the plaint " the rent was paid as mentioned in the unregistered-deed Ex. A. till the end of August 1911, There is however, the evidence of the plaintiff's 2nd witness that the defendant used to pay the rent due to his master in whose favour Ex. A. was executed. Though Ex A. is inadmissible to prove the tenancy or its terms, the fact of payment of rent by the tenant after 1908-and the receipt of rent by the landlord will not establish a tenancy from year to year the annual rent due under such tenancy being ascertainable from the amount of rent paid and received.

5. If then the landlord was receiving Rs. 210 rent a year from 1908 till 1st September 1911 as in the plaint and as seems to be suggested by the evidence of P.W. 2 in cross-examination, that fact establishes the tenancy from year to year at the yearly rent of Rs. 210, and we need not, as we should not, resort to Ex. A to find out the terms of the yearly tenancy. Taking it, however, that it is not proved that the defendant paid rent after the expiry of the term in Ex. B, he was a tenant holding over. In that view, he was liable for compensation for use and occupation as regards 1/4th share in the property to the plaintiffs and as regards the other 3/4ths share to the plaintiff's predecessors in title in respect of the other 3/4 ths share, between the 1st September 1911 and 23rd October 1912 till 14th November 1912. The plaintiff's claimed that under their sale deed the rent or compensation due to their predecessors in title between the 8th December 1911 and 23rd October 1912 for the said 3/4 ths share has been transferred to them under Ex. E. Mr. V.C. Seshachariar contends that such a transfer was a transfer of a mere right to sue and is therefore invalid. If, as I hold there is evidence to prove the defendant's payment of rent at Rs. 210 a year after 1908, he is a tenant from year to year at that rate and the transfer of a claim for rent due is not a transfer of a mere right to sue but a transfer of an actionable claim. If, however, he was not a tenant from year to year but what is called a "tenant by sufferance," then the question arises as to whether the right to sue such a person for

compensation for use and occupation is an actionable claim or a mere right to sue. The compensation for use and occupation is, in English cases,

loosely, called "rent or 'fair rent' or 'occupation rent.'" See the Metropolitan Railway Co., v. Deffries 2 Q.B.D. 387. The English Courts look

upon it as based on an implied contract to pay a fair rent. But it is inadvisable to extend to India the whole of the English Law of implied contract.

Under the Indian contract Act, many cases of implied contracts under English Law are dealt with specially under the head of "Relations resembling

those created by contract." See Gibson v. Kirk 113 E.R. 1359 for the report of a case which speaks of an implied contract to pay rent by a party

who is in, what is called, permissive occupation). In 18 Halsbury's Laws of England, 487, note (6) the action for use and occupation is said to be

one based on implied contract. Under the English Law, a tenant holding over is usually called a tenant by sufferance. See also Woodfall's Landlord

and Tenant (19th Edition) page 031 at the top of the page. The English Courts seem to make a distinction between a claim for compensation for

use and occupation against a person who is in permissive occupation and a claim for mesne profits against a trespasser. (See also Foa on Landlord

and Tenant pages 389 to 394). As Benson and Krishnasawmy Aiyar, JJ. remarked in Subbraveti Ramiah v. Gundala Ramanna ILR (1909) M.

260, "it seems doubtful whether the fiction of a tenancy by sufferance should be kept up after the Transfer of Property Act, according to which a

lease is determined by the efflux of the time limited thereby (see section 111." u/s 116 of that Act the tenant holding over becomes a tenant from

year to year, only, "if the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in

possession as lessee." I take it that mere passive failure to take steps to eject will not by itself constitute an assent to the tenant's continuing in

possession as tenant from year to year. It may be that such a tenant holding over need not necessarily be credited with an intention to hold land

adversely though as pointed out in Subbraveti Ramiah v. Gundala Ramanna ILR (1909) M. 260, the running of time under Article 139 of the

Limitation Act against the landlord will not be interrupted. I think that the claim for use and occupation against a person who has ceased to be the

lessee owing to the lease term having expired and owing to no new relationship of lessor and lessee having been created u/s 116 is not a claim

based on contract express or implied and is one sounding in damages due to the owner by a person in possession without rightful claim to remain in

such possession. It is therefore a mere right to sue which cannot be transferred under the Transfer of Property Act whatever may be the English

law as to such rights to. compensation coming under the head of ""profits"" which might be transferred along with the land. See the Metropolitan

Railway Co. v. Deffries 2 Q.B.D. 387 and Anker v. Franklin (1880) 40 L.T.R. 370.

6. If, then, the defendant was a tenant from year to year from 1st September 1911, he ought to pay the following amounts to the plaintiffs; (a) rent

for 1/4th share from 1st September 1911 to 8th December 1911 at Rs. 210 (i.e.) Rs. 56; (b) rent from 8th December 1911 to 14th November

1912 on the whole garden at the same rate (i.e.)(about Rs. 196, total Rs. 252). If, however, he was not a tenant from year to year, the plaintiff will

be entitled to (a) damages for use and occupation as regards 1/4th share between 1st September 1911 till 23rd October 1912 at Rs. 65 a year,

i.e., Rs. 75--; (b) damages for use and occupation of the whole garden from 23rd October 1912 to 14th November 1912, i.e. about Rs. 20, total

Rs. 95; because according to my view the damages for use and occupation of the 3/4ths share between 8th December 1911 and 23rd October

1912 cannot under the Indian Law be validly transferred. See Seetamma v. Venkataramanayya ILR (1913) M. 308.

7. Whether my view that there is sufficient, evidence that the defendant paid rent after 1908 till 1st September. 1910 as alleged in the plaint and

that therefore the defendant became a tenant from year to year on an annual rent of Rs. 210 is correct or not, I have held that a revision u/s 25 of

Act IX of 1887 is a matter of discretion in this Court. See Gopala Iyengar v. Venkatakrishna Iyengar (1912) M.W.N. 1227 and I am clearly of

opinion that this is not a case in which it is, at all, desirable to exercise the High Court's powers of revision. The defendant who is a vakils

Gumasta had no merits whatever in the case set up by him, and he advanced (according to the Sub-Judge) false defences on the facts. I would

therefore dismiss the Letters Patent Appeal with costs.

Moore, J.

8. I agree.