

(1916) 03 MAD CK 0064
In the Madras High Court

Govindaswamy Pillai

APPELLANT

Vs

Ramaswami Aiyar and Another

RESPONDENT

Date of Decision : 07-03-1916

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 25

Citation : 34 Ind. Cas. 6 : (1916) 3 LW 408

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

Bench : Division Bench

Judgement

Sadasiva Aiyar, J.—This Latters Patent Appeal is against the judgment of a learned Judge of this Court, who dismissed the civil revision petition filed by the defendant (petitioner and appellant) against the decree of the Subordinate Judge of Kumbakonam in Small Cause Suit No. 1480 of 1913.

2. The defendant was lessee of a garden for five years under a registered lease-deed, Exhibit B. The lease term expired in 1908. Then he executed an unregistered lease-deed, Exhibit A, in June 1909. But that lease deed is inadmissible in evidence for want of registration. The rent reserved for the whole garden under Exhibit B seems to have been Rs. 260 per annum. The plaintiffs originally owned one-fourth share in the garden and they purchased the other three-fourths share on 2 3rd October 1912 from the then owner thereof.

3. The suit was brought for rent due from the 1st September 1911 till the 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 Judge 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 Exhibit 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 Exhibit A, till the end of August 1911. There is, however, the evidence of the plaintiffs' 2nd witness that the defendant used to pay the rent due to his master in whose favour Exhibit A was executed. Though Exhibit 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 establish a tenancy from year to year, the annual rent due under such tenancy being ascertain-able 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 alleged in the plaint and as seems to be suggested by the evidence of P.W. No. 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 Exhibit 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 Exhibit B, he was a tenant holding over. In that view, he was liable for compensation for use and occupation as regards one-fourth share in the property to the plaintiffs and as regards the other three-fourths share to the plaintiffs' predecessors-in-title in respect of the other three-fourths share between the 1st September 1911 and 23rd October 1912; and to the plaintiffs alone for the period from 23rd October 1912 till 14th November 1912. The plaintiffs 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 three-fourths share has been transferred to them under Exhibit 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 Metropolitan Railway Company v. Defries (1876) 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 contracts, 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 11 G. & D. 252 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 Halsbury's Laws of England, Volume 18, prge 487, note (o), 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 631, at the top of the page. The English Courts seem to make a distinction between 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 Krishnaswamy Aiyar, JJ., remarked in *Subbravati Ramiah v. Gundala Ramanna* 4 Ind. Cas. 1080: "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 *Subbravati Ramiah v. Gundala Ramanna* 4 Ind. Cas. 1080, 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 *Metropolitan Railway Company v. Defries* (1876) 2 Q.B.D. 387 : 25 W.R. 841 and *Anker v. Franklin* (1880) 43 L.T.R. 317]

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) a rent for one fourth share from 1st September 1911 to 8th December 1911 at Rs. 210, i. e., about Rs. 56; (b) rent from 8th December 1911 to 4th 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 one-fourth share between 1st September 1911 till 23rd October 1912 at Rs. 65 a year, i.e., about 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 three-fourths share between 8th December 1911 and 23rd October 1912 cannot, under the Indian Law, be validly transferred. See *Seetamma v. Venkataramanayya* 21 Ind. Cas. 387

7. Whether my view that there is sufficient evidence that the defendant paid rent after 1905 till 1st September 1911 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. Venkatakrislina 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 Vakil's gumashta, 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.