

(1935) 08 MAD CK 0028
In the Madras High Court

Gurpur Vamana Pai

APPELLANT

Vs

Venkatu (Venkatesh) Naika

RESPONDENT

Date of Decision : 29-08-1935

Acts Referred:

Citation : AIR 1936 Mad 116

Hon'ble Judges : Venkataramana Rao, J

Bench : Division Bench

Judgement

Venkataramana Rao, J.—The plaintiff as usufructuary mortgagee from the mulgar of the plaint land has instituted this suit to recover arrears

of mulgeni rent and for possession of the land on the ground that the defendants who are the mulgeni tenants have incurred forfeiture by

nonpayment of rent and by alienation contrary to the terms of the lease. The forfeiture on the ground of alienation is not pressed before me. Mr.

Adiga for the plaintiff-appellant has argued three points : (1) that the lower Courts ought to have decreed to him rent at the rate of Rs. 27 instead

of at Rs. 20-4-0; (2) that "as usufructuary mortgagee he will be entitled to enforce the forfeiture clause in the lease; and (3) that if it be held that the

defendants are entitled to be relieved against the forfeiture, he must be paid the rent for the year 1921 which has been disallowed to him on the

ground that the claim in respect thereof is barred by limitation. The first point arises in this way. Ex. A is the mulgeni chit executed by the ancestors

of the defendant's family in favour of the predecessor-in-title of the plaintiff's mortgagor. The document provides that a cash rent of Rs. 20-4-0

has to be paid. The property in the deed has been described as bearing an assessment of Rs. 10. The case for the plaintiff is that long subsequent

to the execution of Ex. A and after the re-settlement in the district there was an oral arrangement come to between the plaintiff's mortgagor and defendants' family that they should pay the enhanced assessment of Rs. 7 imposed at the re-settlement in addition to the rent of Rs. 20-4-0. Both the lower Courts have disallowed that amount on the ground that it is not open to the plaintiff to rely on this oral agreement as it contravenes the terms of Section 92, Evidence Act. The document is silent as to who should pay the assessment. The agreement as to the payment of enhanced assessment would be a term in addition to the terms of the contract and therefore evidence relating thereto would come within the prohibition of Section 92. The payment has been rightly disallowed.

2. The next question is whether the appellant can enforce the forfeiture. As usufructuary mortgagee of the lessor's right, he would be a lessor's

transferee and entitled to do so. Vide *Havu Ravlu Padti v. Ganapati Venkataraman* 1930 Bom 329 and *Kanuyan Baduvan v. Alikutti* 1920 42

Mad 603. The construction placed by the lower Court on Ex. C, that the appellant is only entitled to collect rent is wrong. This point is conceded

by Mr. Srinivasa Rao who appears for the respondents. The next point is whether the defendants are entitled to be relieved against the forfeiture,

and if so, on what terms. Mr. Adiga's contention is that as a condition of relief against forfeiture the defendants must be directed to pay rent for the

year 1921. Mr. Srinivasa Rao contends that the claim to the rent of 1921 is not based on the usufructuary mortgage, Ex. C, but on another

document Ex. B which was executed on 11th February 1925, fifteen days earlier than the usufructuary mortgage in and by which the right to

recover the rents for the years 1921 to 1924 was transferred to the plaintiff. Mr. Srinivasa Rao concedes that if the original, lessor has sought to

enforce the forfeiture, the Court would have decreed the claim to rent for 1921 even though it is barred as a condition of relieving forfeiture. But he

contends that the same indulgence cannot be granted to the plaintiff who is only a transferee from him. The provision relating to relief against

forfeiture in the Transfer of Property Act is Section 114, which is in these terms:

Where a lease of immovable property has determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, $\frac{1}{2}$ at the

hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear,

together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within 15 days,. the Court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against forfeiture; and thereupon the lessee-shall hold the property leased as if the forfeiture had not occurred.

3. What the section says is as a condition of relief against forfeiture the lessee-should pay or tender to the lessor the rent in arrear. The lessor

would certainly include his transferee who gets all his rights u/s 109 T.P. Act. The words rent in arrear" are wide enough to include the rent which

the lessor may be unable to recover by reason of the bar of limitation. It is immaterial how the" right to recover the said rent is vested in him

whether under one document or two documents. The only question is whether the lessor"s transferee is entitled to the rents in arrear. That being so

applying the principle laid down in the said section the defendants can claim relief against the forfeiture only on payment of all the rent in arrear

including the rent of 1921. I modify the decree of the lower Court by decreeing to the plaintiff all the arrears of rent from 1921. With this

modification the second appeal is dismissed. I direct each party to bear his own costs in this appeal.