

(1927) 10 MAD CK 0078
In the Madras High Court

Hanumantha Goundan and Others

APPELLANT

Vs

T.V. Doraiswami Pillai and Others

RESPONDENT

Date of Decision : 14-10-1927

Acts Referred:

Citation : AIR 1928 Mad 380 : (1928) 27 LW 798 : (1928) 54 MLJ 354

Hon'ble Judges : Phillips, J

Bench : Division Bench

Judgement

Phillips, J.—The history of this case is somewhat complicated. The facts necessary for the decision of this appeal are as follows: One Bommi Achi, the mittadar of Thiriyalam, granted a permanent lease to defendants' predecessors in October, 1874, of the villages of Kudiyanakuppam, Kaveripattu and Ellapalle. The lease was to take effect from the 1st of July, 1875. Before that date the mittadar executed a usufructuary mortgage deed on the 27th February, 1875, Ex. E-I, in favour of Narayanaswami Reddiar, and this was executed in discharge of a prior hypothecation of 1865, Ex. A. As the result of these transactions the lessees under the permanent lease, Ex. D, were unable to obtain possession of all the three villages and only obtained possession of one, namely Kaveripattu. Subsequently, in 1876 the lessees obtained an assignment of the mortgage right over the village of Kudiyanakuppam and finally, at a later date, he obtained possession of Yellapalle, but not under the permanent lease. A suit was brought for the redemption of the mortgage on Kudiyanakuppam in 1914 and a decree was obtained, but that decree so far has not been executed, and plaintiff now seeks to enforce his claim to rent in respect of the village of Kaveripattu. He claims in his plaint to be reimbursed the peishcush payable on that village and also to receive a proportionate amount of the rent fixed for the three villages jointly.

2. The appellants-defendants contend that at the time that they were let into possession of Kaveripattu and the mittadar failed to give possession of the other two villages there was an arrangement under which it was agreed that no rent at

all should be paid for Kaveripattu. There is no documentary evidence of this agreement modifying the provisions of the registered documents, Exs. D and D-I, and the only documentary evidence that is at all relevant is the recital in Ex. E-I, an usufructuary mortgage of Kudivanakuppam in favour of Narayanaswami Reddi, in which it is said that arrangement had been made with the lessees that the mortgagee and not the lessees should enjoy possession of the land until the mortgage amount had been paid off. Apart from that there is only the oral evidence of an old man who wrote some of these documents, but he is not very clear, and the Subordinate Judge has not believed the oral evidence. In view of the great improbability that such an arrangement completely modifying the terms of the permanent lease should have been entered into orally, we are unable to disagree with the conclusion arrived at by the Subordinate Judge. Plaintiff alleges that there was no separate agreement and, in view of the fact that defendant has failed to prove his agreement, it remains to consider what is the result of what has transpired. The lease is for three villages and when the mittadar failed to give the lessee possession of the whole leasehold it was open to him to repudiate the entire contract. He did not do that but remained in possession of a portion of the property. As he has chosen to remain in possession of this portion of the property, he is under certain obligations to his landlord the owner of the land. This obligation has been recognised on various grounds, such as the doctrine of apportionment of the old lease, or an implied new contract of lease or else a liability to pay a reasonable sum for use and occupation. On whatever ground it is put, such obligation was recognised in *Meenakshi Sundara Nachiar Vs. Sa. Rm. Ct. Chidambaram Chetty and Others*, and is applicable here. The English doctrine which lays down that when a lessee is evicted owing to default of his landlord he can suspend payment altogether although he remains in possession of a portion of the property does not appear to have been applied in this country and the observation of the Privy Council in *Kalyayani Debi v. Uday Kumar Das* (1924) LR 52 IA 160 : ILR 52 C 417 is no authority to the contrary. It remains then to consider what is the amount payable by the lessee. In the lease deed a rent of Rs. 1181 was fixed, of which Rs. 781 were to be paid on behalf of the lessor to Government as peishcush, the balance being payable to the lessor himself. Plaintiff's contention that this is a contract for payment of the peishcush on each of the villages cannot be upheld for that is not one of the terms of the contract. There was merely a direction by the landlord that a portion of the rent should be paid to Government in discharge of the peishcush due by the lessor. That in no sense involves a contract by the lessee to pay the amount of peishcush on each of the three villages. It is therefore not material to ascertain what would be the exact peishcush on each of the three villages if they were separately registered. Documents have been filed in which statements have been made mentioning the respective peishcush of each village but they need not be considered now. We have to take the rent as a whole and the income of the whole property and then calculate what the proportionate rent would be on the income derivable from Kaveripattu, the portion in the lessee's possession. Accounts have been filed, Exs. III to X, and, applying the figures of the income

therein contained without deducting the remissions granted each year we find that the proportionate amount of rent due on Kaveripattu is Rs. 452. It would be therefore equitable to fix the amount at Rs. 450 per annum. The plaintiff has also claimed interest on the arrears at 12 per cent. per annum and this has been allowed by the Subordinate Judge. It is contended in appeal that the facts do not justify the claim for interest under the Interest Act, and there has been no demand made before suit. This is correct, but there is a condition in the lease that the lessee shall be bound in the case of default by the provisions of Act VIII of 1865. On arrears of rent interest would be payable under that Act, and the rate fixed by the Estates Land Act, which is now in force, is 6 per cent. We think therefore that plaintiff is entitled to 6 per cent. interest on the rent from the date of accrual to the date of decree and after that on the total decree amount. Plaintiff also claims road cess paid by him which is also provided for in the lease. It is agreed that the annual amount due for road cess is Rs. 43-4-0 and that will be provided for in the decree, and it will also carry interest at 6 per cent. from date of payment by plaintiff. The lower court's decree will be modified accordingly and the parties will pay and receive proportionate costs throughout.