

(1912) 04 MAD CK 0030
In the Madras High Court

M. Chengiah

APPELLANT

Vs

Rajah of Kalahasti and Others

RESPONDENT

Date of Decision : 25-04-1912

Acts Referred:

Citation : (1913) 24 MLJ 263

Hon'ble Judges : Charles Arnold White, C.J.;Wallis, J;Benson, J

Bench : Full Bench

Judgement

Charles Arnold White, C.J.—I cannot accept the view of the District Judge that what was done by the lessor's agents was done with the

intention of bringing pressure to bear upon the lessees and should be treated as an intimation by the lessor to the lessees that he intended to

determine the tenancy.

2. I agree with Munro J. and I am of opinion that the lessor in this case by an unequivocal act intimated that he had elected to avail himself of the

forfeiture. This intimation of the lessor's election having been communicated to the lessees was irrevocable and the parties could not by a

subsequent agreement revive the old tenancy. See Jones v. Carter (1846) 15 M.& W. 718, Evans v. Wyatt (1862) 43 L.T. 176, and Smith's

Leading cases notes to Dumpor's case Vol. I p. 32.

3. I also agree with Munro J. that the 2nd defendant is liable to the plaintiff for use and occupation. It may be that during the subsistence of the

lease the plaintiff notwithstanding that the 2nd defendant was in occupation with the plaintiff's permission could only look to the 1st defendant, the

lessee, for rent and could make no claim for use and occupation as against the 2nd defendant.

4. But as has been pointed out the lease was determined. The occupation by the 2nd defendant for which the plaintiff now claims compensation for use and occupation was after the determination of the lease. There appears to be evidence that after the determination, of the lease the 2nd defendant was in occupation with the express permission of the lessor. But even if this were not so it is not disputed that the 2nd defendant was in possession before the determination of the lease with the permission of the lessor and the evidence is that after the determination of the lease all parties were desirous that the status quo ante should be restored. From this I am prepared to infer a fact that after the determination of the lease the 2nd defendant was in possession with the plaintiff's permission. As regards the amount of compensation the fact that all parties appear to have been desirous that after the determination of the tenancy, the tenancy should be treated as subsisting goes to show that the rent reserved under the lease may be taken as a fair criterion of the amount payable by way of compensation for use and occupation.

5. Mr. S. Srinivasa Aiyangar has contended that it is not open to us in this suit to award compensation for use and occupation against his client. I think it is. I agree with the decision of the Allahabad High Court in Sheokaran Singh v. Maharaja Parbhu Narain Singh ILR (1909) A. 276 and am prepared to follow it.

6. I set aside the decree of this Court and the District Court and I give a decree in the terms of judgment of Munro J. The plaintiff must pay to the Appellant (2nd defendant) the costs of the Letters Patent Appeal. As regards the costs in the court of first instance there will be proportionate costs one set. As regards the costs of A.S. No. 203 there will be proportionate costs of the appeal and the memorandum of objections.

Benson, J.

7. I agree.

Wallis, J.

8. I agree and will only add, I do not think that the framers of the Transfer of Property Act intended to depart from the well established rule of English Law that where a right of forfeiture accrues to the lessor¹ he is put to his election and if he manifests his intention to enforce the forfeiture that is an election to determine the tenancy and the election is irrevocable. See

Jones v. Carter (1846) 15 M.& W. 718, Dendy v. Nicholl (1858)

27 L.J.C.P. 220 Grimwood v. Moss (1872) L.R. 7 C.P. 360, Evans v. Wyatt (1862) 43 L.T. 176, Clough v. London & North Western Railway

Co. (1851) L.R. 7 Ex. 26. Similarly if he elects not to enforce the forfeiture and manifests his intention that is an election to waive the forfeiture and

his election is also irrevocable. The case of an election to determine is dealt with in Section 111(g) and the case of election to waive in Section

112.

9. In this case the lessor elected to determine, the election was irrevocable and the lease was at an end and could not be revived. If the tenants had

been left in possession, a tenancy from year to year might have arisen u/s 116, but here the evidence is that they were put out of possession and re-

admitted subsequently. There is evidence that both defendants subsequently had the use and occupation of the land with the permission of the

lessor and the only remaining question is whether they can be made liable in the present suit. I think they can.