
(1917) 11 MAD CK 0002
In the Madras High Court

N. Venkatachari

APPELLANT

Vs

Ramalinga Tevan and Another

RESPONDENT

Date of Decision : 23-11-1917

Acts Referred:

Contract Act, 1872 — Section 74

Citation : AIR 1918 Mad 36 : 45 Ind. Cas. 417 : (1918) 7 LW 404

Hon'ble Judges : William Ayling, J;Phillips, J

Bench : Division Bench

Judgement

1. Plaintiff's suit is for arrears of rent and for a declaration that the amount deposited by defendants under the rental agreement has been forfeited.

It is in effect a suit for rent coupled with a claim for the damages provided in the contract, if a forfeiture of a deposit can be styled damages. Both

the lower Courts appear to have treated the suit as one for damages alone and have allowed the defendants to set off the amount deposited by

them under the rental agreement against the rent due, although no set-off was pleaded in the written statement and not only has the lower Appellate

Court awarded nothing by way of damages for breach of contract, but has mulcted the plaintiff in the costs of the suit.

2. We think they were wrong in the view that they took and in applying the ruling in Vellore Taluq Board v. Gopalasami Naidu 26 Ind. Cas. 226 in

support of it. It was clearly held by a Full Bench in Natesa Aiyar v. Appavu Padayachi 19 Ind. Cas. 462 : 13 M.L.T. 391 : (1913) M.W.N. 341

that in the case of a sale, Section 74 of the Contract Act was not applicable and that a stipulation for forfeiture in case of breach is not a penalty.

The same view was held by Seshagiri Aiyar, J, in the case of a lease Orr v. Chitha Chinna Yagapaa Chetty (1915) M.W.N. 249 and it is not

contended before us that any distinction can be drawn between the case of a sale and that of a lease.

3. In determining whether the sum of Rs. 150 agreed to be forfeited was a deposit or not, we must be guided by the reasonableness or

unreasonableness of the amount. The point has not been considered by the lower Courts, but, taking all the circumstances into consideration, we

must certainly hold the amount to be reasonable, being, as it is, one-half year's rent in a rental agreement for 5 years. Following the Full Bench

ruling in *Natesa Aiyar v. Appavu Padayachi* 19 Ind. Cas. 462, we think plaintiff is entitled to retain the deposit.

4. Plaintiff is also entitled to his rent, and that is not disputed.

5. Plaintiff has made a further claim, i.e., for interest at 24 per cent, from date of suit until realization. This is clearly in the nature of a penalty and as

his Vakil says he does not press the claim, we disallow it, and reduce the rate to 6 per cent. The second appeal is accordingly allowed and plaintiff

will have a decree as prayed for, except in regard to the penal interest claimed with costs throughout.