
(1935) 03 MAD CK 0040
In the Madras High Court

Nandi Reddi Rama Govinda Reddi

APPELLANT

Vs

Karrepu Lakshmi Reddi

RESPONDENT

Date of Decision : 04-03-1935

Acts Referred:

Transfer of Property Act, 1882 — Section 68(d)

Citation : AIR 1935 Mad 973 : 158 Ind. Cas. 851 : (1935) 42 LW 358 : (1935) 69 MLJ 461

Hon'ble Judges : Varadachariar, J

Bench : Division Bench

Judgement

Varadachariar, J.—The plaintiff (appellant) had taken from a widow a document which is described as a Munigutta on 9th June, 1922, for a

term of 15 years for a stated consideration of Rs. 1,500. Munigutta is described in Mr. Brown's Telugu Dictionary as " forestalled rent" or

"usufruct of land in satisfaction of debt." The learned Subordinate Judge has proceeded on the footing that the sum of Rs. 1,500 was given not as a

loan but only as a premium for the lease. The document related to properties which the grantor had inherited from her son. She died in August,

1923, and shortly thereafter the reversioners dispossessed the plaintiff, contending that the transaction was not binding upon the reversion. Hence

the suit by the plaintiff claiming that either the reversioners should pay up the unsatisfied portion of the Rs. 1,500 with interest thereon by way of

damages, or that the like compensation should be paid to him out of the private estate of the grantor. Both the Courts have found that the ninth

defendant is in possession of the private properties of the grantor. They have also held that the transaction was not one binding upon the reversion

and that therefore the plaintiff could not claim any compensation from the

reversioners. The first Court gave a decree to the plaintiff for a sum of Rs. 946 against the ninth defendant. The lower appellate Court agreed that, if the plaintiff was entitled to compensation, the sum of Rs. 946 represented a fair compensation; but it was of opinion that the plaintiff was not entitled to compensation and hence dismissed the suit.

2. There has been some little discussion before me as to whether the document should be understood to amount to a usufructuary mortgage or to a lease. For the purpose of the present case, the difference seems to me immaterial because, in the one case the plaintiff's claim would be supported by Section 68(d) of the Transfer of Property Act and in the other, by Section 108(c) of the Act. The argument has accordingly proceeded upon the basis that the transaction was one in the nature of a lease particularly in view of the Subordinate Judge's observation that the sum of Rs. 1,500 was paid not as a loan but as premium.

3. The Subordinate Judge disallowed the plaintiff's claim, on the authority of the decision of the Bombay High Court in *Parshottam Veribhai v. Chhatrasangji* I.L.R.(1916) 41 Bom. 546 and of certain observations of Dr. Gour in his Transfer of Property Act, when commenting on Section 108(c). The Bombay case and another case in that Court referred to by Mr. Sampath Aiyangar here, namely, *Krishnaji Sakham v. Kashim* I.L.R.(1919) 44 Bom. 500 may be briefly disposed of. In *Parshottam Veribhai v. Chhatrasangji* I.L.R.(1916) 41 Bom. 546 a usufructuary mortgagee from a Talukdar resisted a claim for possession by the Talukdar's successor and insisted that he must be paid the mortgage amount before the successor could get possession. The transaction was governed by a Bombay statute, Act XXI of 1886, under which such a mortgage was invalid beyond the life-time of the mortgagor. To a case of that kind, the learned Judges, if I may say so with respect, rightly held that Section 65 of the Contract Act had no application. They accordingly refused to make it a condition precedent that the plaintiff should pay the mortgage money before recovering possession. What they would have said to a claim by the mortgagee to recover the money out of the private estate, if any, of the mortgagor, I cannot guess. In *Krishnaji Sakham v. Kashim* I.L.R. (1919) 44 Bom. 500 a mortgagee from a vatandar who had been dispossessed by the successor of a mortgagor sued for payment of the mortgage

money. Prima facie his suit was brought after the period of limitation had expired but he relied upon an indemnity clause to save time and contended that it gave him twelve years from the date of obstruction or dispossession. The learned Judges construed that indemnity clause as intended to be applicable only to obstruction or dispossession taking place during the life-time of the mortgagor. This they derived from their view of the circumstances of the case. It is not for me to say anything as to the correctness or otherwise of that interpretation. It is sufficient to state that it turned upon the interpretation of a particular clause and not upon any general principle of law.

4. Coming next to the passages cited from Dr. Gour's Commentaries on the Transfer of Property Act, I must observe that they relate to the operation of what under the English law used to be described as implied covenants for quiet enjoyment, that is, a covenant implied from the mere use of the word "demise". Text writers as well as the authorities draw a distinction between implied covenants for quiet enjoyment and express covenants for quiet enjoyment. In the former case, they are held to be prima facie limited to the duration of the lessor's own interest, though the term may not come to an end within that time. But in the case of express covenants for quiet enjoyment, it is recognised that they are available for the whole term, independent of the termination of the interests of the grantor. Accordingly the question for consideration in the present case is whether in respect of statutory covenants enacted by the Transfer of Property Act, the principle governing implied covenants under the English law is to be followed or that relating to express covenants. The language of Section 108(c) of the Transfer of Property Act seems to me clear enough to show that the Indian Legislature has not adopted the English law as to implied covenants. The provision is that the lessor shall be deemed to contract with the lessee that he may hold the property during the time limited by the lease without interruption; and the next sentence provides that the benefit of such contract shall be annexed to and go with the lessee's interest as such. It has been held that this corresponds to what is known as the absolute covenant in the English law and not to the qualified covenant which will be available only in the event of dispossession by the grantor or those claiming under him, but not available in respect of dispossession by a

person claiming by title paramount. I have therefore no reason to assume that the Indian Legislature intended to reproduce only the implied covenant of the English law, when I find nothing to indicate that the covenant was to be limited to the term of the lessor's interest. Reference may in this connection be made to the observations of the Judicial Committee in 8 CWN 41 (Privy Council) where they point out that these statutory covenants enacted by the Transfer of Property Act do not stand on the same footing as implied obligations or liens known to English Equity. A similar question has often been considered in this Court in connection with the application of Article 116 of the Limitation Act to actions claiming compensation for breaches of such covenants and, as pointed out in Arunachella Aiyar and Others Vs. T. Ramaswami Iyer and Others, many decisions of this Court have dealt with the case on the footing that these statutory covenants must be read as embodied in the deed itself, that is, as though they are express covenants. I am therefore unable to agree with the learned Subordinate Judge that the plaintiff cannot claim compensation even from the ninth defendant, in respect of his dispossession during the term of the lease.

5. A point was raised before me whether the plaintiff was entitled to the amount of Rs. 946, because it includes interest upon the sum of Rs. 700 which is plaintiff's unsatisfied share of the amount advanced by him to the widow. I do not think it necessary to deal with the question of the maintainability of the claim for interest in respect of a claim for damages, because though the plaint indicated the way in which this amount was arrived at, the plaintiff was undoubtedly entitled to damages and both the Courts agree that this amount represents a fair compensation. The decree of the learned Subordinate Judge is accordingly set aside and the decree of the District Munsif restored with costs here and in the lower Appellate Court.