

(1925) 03 MAD CK 0055
In the Madras High Court

Nilambur Thacharakavil Manavadan Thirumalpad	APPELLANT
Vs	
Messrs. Parry and Co.	RESPONDENT

Date of Decision : 06-03-1925

Acts Referred:

Transfer of Property Act, 1882 — Section 105

Citation : (1925) ILR (Mad) 815

Hon'ble Judges : Spencer, J;Ramesam, J

Bench : Division Bench

Judgement

Spencer, J.—This suit was brought by Nilambur Raja for recovery of possession together with damages for use and occupation of 20 acres of land and for value of buildings and machinery removed by the defendant upon a certain area which had been granted on lease by the Plaintiff's predecessor on 14th August" 1879 to Mr. Minchin for gold washing for a period of 36 years which expired on 14th August 1915.

2. In 1862 the plaintiff's predecessor granted a lease of 500 cawnies in the same locality for a rent of Rs. 500 to be paid annually for coffee cultivation to the same Mr. Minchin for a period of 91 years. That lease has not expired and will not expire till 1953. Messrs. Parry & Co., who are the defendants in this suit, obtained an assignment from Mr. Minchin of all his rights in both leases. The contention on the part of the plaintiff, who is the appellant in this Court, is that the grant of a mining lease implied a surrender of the lease for coffee cultivation for the area over which goldwashing operations were conducted. This contention is based upon the English rule of law that the acceptance of a new lease operates as a surrender of a prior lease. In Woodfall on Landlord and Tenant the learned author explains this rule as being founded upon estoppel. He says that as a lessee is estopped from saying that his lessor has no power to give him the lease and as the lessor cannot grant a new lease during the continuance of the old lease, it follows that the acceptance of the new lease implies a surrender of the first lease. An exception to this rule occurs if what is accepted by the lessee is

the grant of a thing collateral to, and consistent with, the lease of the land. Instances are given in which the grant of a new thing does not imply the surrender of the thing first granted. Mr. Ramachandra Ayyar argues that the two operations, coffee planting and goldmining, cannot be carried on simultaneously, as one operation would interfere with the peaceful enjoyment of the other right over the soil. We must therefore see what was the intention of the parties when they gave and received the two lease deeds, Exhibits I and II. In the first place it is noteworthy that the lessee in both the leases is the same person, and therefore the lessee is in a position to make arrangements for the two operations of coffee planting and goldwashing being carried on side by side in such a way as not to interfere with each other. Next it is noticeable that the rent under the two agreements was agreed to be paid simultaneously and that under Clause 4 of Exhibit A, which is a counterpart executed by the lessee in favour of the lessor, he agreed that he would not ask for any diminution of the rent due under the lease for cultivation on account of the execution of the gold sifting works in the same area, thus showing that the two operations might go on side by side and that the raining lease was not intended to involve a surrender of any portion of the land leased for coffee planting. Taking all the circumstances into consideration I feel clear that the grant of the second lease was not inconsistent with the continuation of the first, and that it is only in cases where there is some such incompatibility between the enjoyment under the now lease and the enjoyment under the prior lease that the second will involve a surrender of the first.

3. As regards the removal of machinery, etc., under the cultivation lease the lessee is entitled to keep the machinery upon the land leased to him until that lease expires, and the fact that under Clause 7 of Exhibit A his landlord was expressly exempted from liability to pay compensation for machinery and buildings left upon the land itself indicates that the property in them was regarded as remaining with tenant who erected them. Thus whether the gold mining plant is removed or left standing, the landlord cannot now demand to be paid anything on that account. In this view the plaintiff has no legal claim against the defendant and his suit was rightly dismissed in the lower Court. The appeal must be dismissed with costs.

Ramesam, J.

4. I agree. The learned vakil who argued the case for the appellant relied in support of his proposition on Woodfall on Landlord and Tenant, page 363, Red man on Landlord and Tenant, page 561, Foa on Landlord and Tenant, page 697, Bacon's Abridgment of the law, Volume IV and Halsbury's laws of England, Volume XVIII, 1061. These references no doubt lay down that when there is a second lease by the same lessor to the same lessee there is an implied surrender of the first lease. In England at one time it was necessary for the validity of the lease that the lessor should be in possession of the lands leased. See Wood-fall, p. 368, (it has not been changed by the Real Property Act of 1845). It seems to

follow from this that when a second lease was made, the lessee admitted that the lessor was in possession, or at any rate, was estopped from questioning that the lessor was in possession. The result is that the surrender of the first lease was implied, but it does not seem to me that this implication is necessary in the law as it stands now in India. Section 105 of the Transfer of Property Act defines a lease as a transfer of the right to enjoy certain property. Section 107 says, that a lease for any term can be made only by a. registered instrument and no delivery of possession is necessary. Section 108A(b) says that the lessor is bound to put the lessee in possession of the property only at the lessee's request; so that delivery of possession is not a necessary part of the transaction of a lease in India. Where the land is in possession of a trespasser, the owner can lease the land to a lessee and the lessee can file a suit to recover it. Section 111 says, "A lease of immovable property determines by implied surrender." But I do not see why where there are two leases to the same person the surrender of the first lease should be implied. Even where the leases are of the same kind,, they are overlapping and the terms of the second are somewhat inconsistent with the terms of the first, all that is necessary to imply is a cancellation of the first, only for the period which is overlapped by the second. In the present case even assuming that the mining lease is not totally consistent with coffee plantation, it seems to me that all the necessary implication is a cancellation of the first lease for a period of 36 years and no more. All the passages in the references relied on by the learned vakil for the appellant seem to refer to leases of the same kind and it is admitted by him that there is no case available where the second lease is of a different kind from the first. It is an a fortiori case where the second lease is of a different kind. On this point I need not deal with the case in detail as it has been discussed by my learned brother with whose conclusion I agree, viz., that the two leases are of an entirely different kind. Clause 54 of the documents, Exhibits A and I, which are practically identical, seem to imply that the 20 acres covered by the second lease are not necessarily excluded from the first lease. Clause 7 relied on by Mr. Ramachandra Ayyar no doubt seems at first to support his contention ; but all that it says is that in the case of eviction by the lessor compensation shall not be payable. Under what circumstances such an eviction is going to happen, the clause does not state, and there is nothing to compel us to infer that eviction should necessarily be under the terms of the second lease and irrespective of the conditions of the first lease. I do not think therefore that Clause 7 necessarily supports the appellant.

5. The English Law seems to have been laid down in very wide terms. It is sometimes said that even if the intention of the parties is not to cancel the first lease the law will imply a surrender. This does not seem to have been adopted in America, and I. do not see why such a rule of law should be adopted in India.

6. For all these reasons I agree to the order proposed by my learned brother.