
(1910) 05 MAD CK 0013
In the Madras High Court

Parapurath Kalliani Amma

APPELLANT

Vs

A. Chinnan Alias Mammad Rowthen

RESPONDENT

Date of Decision : 04-05-1910

Acts Referred:

Transfer of Property Act, 1882 — Section 114

Citation : 7 Ind. Cas. 565

Hon'ble Judges : Ralph Benson, J; Krishnaswamy Aiyar, J

Bench : Division Bench

Judgement

1. The Subordinate Judge is of opinion that the 1st defendant is entitled to be relieved against forfeiture as a matter of course. Section 114 of the Transfer of Property Act, though it does not in terms apply, may be taken as a correct statement of the law even in case of forfeiture not governed by it. The cases of Narayana Kamti v. Handu Shetty 15 M.L.J. 210, refers to certain cases in which relief will not be given. If the facts found against the 1st defendant by the Munsif are accepted, we do not think there is any case for relief. The Subordinate Judge will return findings on issues Nos. 1 to 5, on the evidence of record. Findings should be submitted within six weeks from this date, and seven days will be allowed for filing objections.

2. In compliance with the order contained in the above judgment, the Subordinate Judge submitted the following

FINDINGS.

3. I am asked to submit findings on Issues Nos. 1 to 5. I will consider 1st to 3rd Issues separately, and 4th and 5th issues jointly.

2. 1st issue: I agree with the District Munsif that the Tank No. 6 mentioned in this issue belongs to the plaintiff.

3. 2nd issue: It cannot be said that there was valid tender of rent at all. The arrears of rent due to the plaintiff amounted to 173 paras of paddy. The 1st

defendant sent to the plaintiff the value of 113 paras of paddy only. The plaintiff was not bound to accept it. Exhibits II and II-a prove the tender and the refusal. The issue is found for the plaintiff.

4. 3rd issue: The District Munsif has given good reasons for holding that the trespass referred to by the 1st defendant was an act of collusion, and that it was the 1st defendant and plaintiff's cousin Ravunni Panikar that instigated the commission of it by the 2nd defendant.

There can be no doubt under such circumstances that the trespass was a mere sham, and that Ravunni Panikar was responsible both for prosecution and the defence, and that his object was to cause loss to the plaintiff by getting the rent reduced, and by securing at the same time for the 1st defendant the full period of 12 years allowed to him. There is also the fact that no rent is fixed for the tank in Exhibit A. The rent stipulated in it is for the paddy lands. I find this issue also for the plaintiff.

5. 4th and 5th issues: Exhibit A expressly provides that the lands should be surrendered irrespective of the period allowed, if rent is in any year at all left in arrears. It is clear from the evidence in this case that the 1st defendant failed to pay to the plaintiff the full rent for 1080 (1904-1905).

4. We accept the findings, and in modification of the decrees of the lower Courts we decree the plaintiff's claim with costs throughout.