
(1935) 04 MAD CK 0011
In the Madras High Court

Patruni Lakshmu Naidu and Another APPELLANT
Vs
Gandham Venkayya and Another RESPONDENT

Date of Decision : 03-04-1935

Acts Referred:

Evidence Act, 1872 — Section 116
Transfer of Property Act, 1882 — Section 111(g)

Citation : AIR 1935 Mad 943 : (1935) 42 LW 362

Hon'ble Judges : Venkatasubba Rao, J

Bench : Division Bench

Judgement

Venkatasubba Rao, J.—The suit out of which the Civil Revision Petition arises, was brought virtually for the recovery of rent for the years

1922 to 1924. The lands in question were service imams held by the plaintiffs under the Madgole zamindar; the defendants were in actual

possession as the plaintiffs' tenants. The zamindari was being managed by the Court of Wards and it was alleged that the plaintiffs committed

default in the rendering of the service. After some correspondence between certain officers to which I need not refer, the lands were resumed by

Ex. 12, an order made by the Board of Revenue on 24th September 1925. Subsequently on 11th October 1925 patta was issued to the

defendants and they paid to the estate the rent due for the suit period. The following passage from the learned District Judge's judgment clearly

sets out the true position:

The respondents were not informed that the resumption of this inam was to take effect from any earlier date than the Board's order, and it is plain

that the action taken by the Estate after receipt of the Board's order was most unusual, if not irregular. Normally in a case where a service inam is

resumed patta is issued to the late service holders, and this was not done. Normally again rent will only be collected from the fasli in which the patta was issued, and this was not done. The result of this, unusual procedure is that the appellants have got land which some years before they were in negotiation to buy without paying a penny for it; and it is obvious that they made the payments to the Estate not because they genuinely believed themselves to have been evicted at any prior date but as an answer to the suit filed against them by the respondents and because they wished to have pattas issued to them before respondents could raise their claim to them.

3. The defendants contend that the person who became entitled to the rent for the period in question was the zamindar, that they paid the rent to him and thus their liability came to an end. The lower Courts have negated the defendants' contention, holding that till the lands were actually resumed, the plaintiffs would be entitled to the rent. The argument for the defendants (the petitioners) is put thus : the lands were held by the plaintiffs on service tenure and. they committed default in the rendering of the service as early as 1922 and immediately the lease became forfeited; secondly, in any event, the plaintiffs repudiated the zamindar's title somewhere in 1923, and this caused an immediate forfeiture of the lease. The rule of estoppel contained in Section 116, Evidence Act, prevents a tenant from denying his landlord's title at the beginning of the tenancy, but it is competent to the tenant to show that the landlord's title has since expired : Valia Muhammad v. Savakutti Keyi 1934 Mad. 197. For the defence it is urged that the plaintiffs' lease became determined by forfeiture (which amounts to saying that their title to the lands came to an end) prior to the period for which the rent is claimed. The real question to decide is, whether without an act on the part of the zamindar showing an intention to determine the lease, the forfeiture became complete on the occurring of either of the events relied on by the defence. Section III(g), T.P. Act, (as it stood before the recent amendment) ran thus:

A lease of immovable property determines by forfeiture, that is to say, (1) in case the lessee breaks an express condition which provides that on breach thereof the lessor may reenter or the lease shall become void; or (2) in case the lessee renounces his character as such by setting up a title

in a third person or by claiming title in himself; and in either case the lessor does some act showing his intention to determine the lease.

4. Under the section there must be some act on the part of the landlord showing his intention to determine the lease; a breach of a condition by the

lessee or his repudiation of the landlord's title does not ipso facto entail a forfeiture. But Mr. Govindarajachari argues that the service tenure in

question having come into existence long previous to the passing of the Transfer of Property Act, this provision does not apply. I am not prepared

to accede to this contention. In *Maharaja of Jeypore v. Rukmini Pattamma Devi* 1919 P.C. 1, the Judicial Committee has clearly laid down : (1)

Section 111(g) is in substance the placing in a statutory form of the rule of law which had been already adopted by the Courts in India; (2) the

Courts in India must proceed where the law is silent, in accordance with justice, equity and good conscience; and the rules of English law as to

forfeiture of tenancy may be held and have been held to be consonant with these principles and to be applicable to India.

5. This judgment declares in unmistakable terms that the rule contained in Section 111(g) applies to tenancies created before the Transfer of

Property Act, as a rule of justice, equity and good conscience. To me the matter seems self-evident for, I cannot imagine why it is in consonance

with justice to hold in the case of a breach, for instance, however slight or trivial it may be, that it automatically works a forfeiture, although the

lessor does nothing to show that he treats it as producing that result. Is the lessee, who has broken a condition, to be in perpetual doubt whether

the landlord had condoned it or means to take advantage of it? Mr. Govindarajachari cites a number of cases in support of his contention, such as

Padmanabayya v. Ranga (1911) 34 Mad 161; *Ramakrishna Mallay Vs. Baburaya alias Venkatesha Hegade and Others*, ; *Korapalu v. Narayana*

1915 Mad. 813; *Abbakka Shetti v. Seshamma* 1915 Mad. 85; *Rama Ayyangar v. Guruswami Chetty* 1919 Mad. 897 and *Venkatachariar v.*

Rangaswami Iyengar 1919 Mad. 266. In *Korapalu v. Narayana* 1915 Mad. 813, *Sadasiva Ayyar, J.*, refers to the provision in Section 111(g),

T.P. Act, requiring an act manifesting the landlord's intention, as being

a relic brought over into that Indian Statute from the antiquated technicality of the old English Common Law.

6. In my opinion, the rule that requires a further act on the part of the landlord, far from being a bare technicality, is imminently in consonance with

justice, equity and good conscience. To another observation of Sadasiva Ayyar, J. I may refer in this connexion, though it has no immediate

bearing on the point that has now arisen. In *Abbakka Shetti v. Seshamma* 1915 Mad. 85, while holding that under the Indian law, "to constitute a

disclaimer there must be a distinct and unequivocal renunciation of the tenancy," he seems to think that the law on the point in England is more

primitive and more technical. I am afraid he is mistaken in regard to his view as to the English law, for in the case already cited *Maharaja of*

Jeypore v. Rukmini Pattamma Devi 1919 P.C. 1 their Lordships of the Judicial Committee state:

Now the rule of English law is that a tenant will forfeit his holding if he denies his landlord's title in clear, unmistakable terms, whether by matter of

record, or by certain matters in pais.

7. The Privy Council decision is subsequent to each one of the cases relied on by the defence, and I must take it as authoritatively settled now, that

even in respect of leases prior to the Transfer of Property Act, for the forfeiture be, complete there must be a further act on the part of the

landlord showing his intention to determine the tenancy. It was open to the Estate to say clearly and unequivocally that the lands would be

resumed; but, as the lower Courts rightly pointed out, in not a single letter "was its intention clearly expressed. I therefore hold that the plaintiffs"

tenancy of the suit lands did not determine or, what amounts, to the same thing, their title to them did not come to an end, prior to the period for

which the rent is claimed. The lower appellate Court's decree is confirmed and the Civil Revision Petition is dismissed with costs.