

(1926) 08 MAD CK 0009
In the Madras High Court

Ramakrishna Martoba Rao Kasbekar	APPELLANT
Vs	
I. P. Fernandez and Others	RESPONDENT

Date of Decision : 16-08-1926

Acts Referred:

Citation : AIR 1927 Mad 239

Hon'ble Judges : Venkatasubba Rao, J

Bench : Division Bench

Judgement

Venkatasubba Rao, J.—The question to be decided in this second appeal relates to relief against forfeiture. The lease is what is known as a

mulgeni lease executed by parties in South Kanara. The lessees have been in possession of the land in question for nearly three quarters of a

century. It is not denied that the defendants made default in payment of rent and under the terms of the lease this default entail forfeiture. The Court

of first instance relieved against forfeiture absolutely, that is to say, no time was fixed for the payment of the arrears of rent. The learned

Subordinate Judge modified the Munsif's decree by providing that the rent shall be paid in two months: thus, although there has been some

difference in a matter of detail, both the Courts have granted relief against forfeiture.

2. For the plaintiff-appellant it is contended that the forfeiture cannot be relieved against. The argument is put in this way: Section 117 of the

Transfer of Property Act provides that the act does not apply to agricultural leases and it is urged that the present lease which is an agricultural

lease is not consequently governed by Section 114. It is, of course, true that Section 114 does not apply but it does not follow that the Court does

not possess a power to relieve against forfeiture independently of that section. Where the lease does not come within the purview of the Transfer of

Property Act, the Court exercising the power which it possessed even previous to that Act will relieve against forfeiture for non-payment of rent on

such conditions as may appear equitable on the facts of each particular case.

3. Another contention has been advanced, viz., that if relief is to be afforded at all, the Court must consider itself bound by the conditions laid

down in Section 114. In the present case, the terms on which the lower Court has relieved against forfeiture are not strictly the terms which are laid

down in that section. As I have said, the lease in question is outside the purview of the Act; and in the face of Section 117, which specifically says

that the Act does not apply to agricultural leases, I fail to see how it can be held that the conditions of Section 114 should be strictly complied with.

The learned vakil for the appellant has cited Krishna Shetti v. Gilbert Pinto [1919] 42 Mad. 654 in support of his view. This case, in my opinion,

does not touch the question. The point there decided was, whether the Courts possessed jurisdiction to relieve against forfeiture or"" leases

generally and not merely as regards forfeiture for non-payment of rent. It was held on the analogy of the Transfer of Property Act, that even in

respect of agricultural leases, it would not be right to recognise such a general right of relief. The question I have to decide is altogether different

and the case has no bearing on the point at issue.

4. I am satisfied that the decision of the lower Court is correct; and as this is the only point taken, the second appeal fails and is accordingly

dismissed with costs.