

(1910) 05 MAD CK 0019
In the Madras High Court

Ramasamy Ayyangar

APPELLANT

Vs

Shunmugam Pillai, Receiver and Manager, Palace Estate, and
Another

RESPONDENT

Date of Decision : 06-05-1910

Acts Referred:

Transfer of Property Act, 1882 — Section 108(i)

Citation : (1911) ILR (Mad) 179

Hon'ble Judges : Krishnaswami Ayyar, J;Benson, J

Bench : Division Bench

Judgement

1. The plaintiff was a usufructuary mortgagee of the tenant's interest in a holding under the Tanjore Palace estate, of which the defendant was the receiver. He sues for the recovery of a cow and calf distrained by the defendant for the rent of fasli 1314 and for damages. The mortgage was redeemed by one Raghaviengar, who was the purchaser of the equity of redemption, on the 3rd September 1904. The defendant tendered a patta to the plaintiff on the 22nd June 1905, and distrained on the 21st August 1905. The plaintiff contends that he was not the tenant under the Rent Recovery Act for the suit fasli, and that the distraint was, in consequence, illegal. The District Judge is of opinion that, as the plaintiff gave no notice of the termination of his tenancy to the landlord, the distraint was legal. It has been held by this Court that there is no warrant in Act VIII of 1865 for the view that a tenant, who has validly transferred his holding, continues to be liable for future rent if he has not given notice to his land lord of the transfer. See Vythilinga Pillai v. Natesa Mooppan Second Appeal No. 1218 of 1906 (unreported), Narasigadu v. Butcherreddi Second Appeal No. 735 of 1908 (unreported) and Kungayee v. Chinnasawmy Odayan Second Appeal No. 1714 of 1908 (unreported). A transfer of the holding puts, an end to the tenancy without notice to the landlord. Whether he may not be estopped from disputing the continuance of the tenancy under certain circumstances is another question. If the landlord has delivered the patta to the original tenant for the fasli in question and has been misled into not tendering it to the successor, the former tenant

may be bound to pay the rent though he has not taken the produce. But in the absence of estoppel, he ceases to be liable after the transfer of the holding. If the liability to rent is under a contract of lease the lessee would not by transfer cease to be subject to the obligations under the "lease, See Section 108, Clause (i) of the Transfer of Property Act. But the kudivaramdar who is the tenant under the Rant Recovery Act is not in the same position. Though only a mortgagee, the plaintiff had for many years received patta from the landlord and executed his muchilika. But when the mortgage was discharged he ceased to be the tenant. There is no room for the plea of estoppel, for Raghaviengar, who paid off the mortgage, gave notice of it to the landlord on the 3rd February 1905 (vide exhibit E), and it is immaterial that it did not emanate from the plaintiff. The respondent, however, argues that the plaintiff was the tenant for the fasli in question as the discharge of the mortgage was not until the month of September in the fasli. It is true the instalments of rent are only payable from November, but the dates of payment do not affect the fact of tenancy for the fasli in question. Such tenancy having commenced on the 1st July, and it being competent to the landlord to tender a pattah and take a muchilika on that very date, it is impossible to treat the plaintiff as no longer tenant for the fasli after the transfer of September. Mr. Srinivasa Ayyangar rightly contended that the Act contemplates the tender of pattah only to one tenant of a holding, and not to successive holders for the same fasli, If the plaintiff and not his successor would be liable in case the muchilika was executed by him at the commencement of the fasli, he would not cease to be liable if there was a mere tender of pattah early in the fasli or the tender was delayed till after the transfer of the holding. It is, however, pointed out that proceedings under the Act contemplate the subsistence of the relation of landlord and tenant when they are initiated, and some of the sections of the Act were relied on. We are not satisfied that this view is well founded. Sections 10, 12 and 41 presuppose, it was said, the tenant proceeded against being in possession of the holding. Sections 2, 8 and 9 were referred to as showing that, at the commencement of the proceedings, the parties occupied the relative position of landlord and tenant. Now this line of argument, if sound at all, proves too much. The parties are spoken of as landlord and tenant even when a fresh pattah in pursuance of the Court's decree has got to be tendered, or the latter institutes proceedings to set aside a dstraint, or for the recovery of damages, even though, at that time he may have parted with the holding. We think we are bound to reject this contention. A tenant is defined by the Act as including all persons bound to pay rent to the landholder. The obligation attaches to the person who is entitled to the holding during the fasli in question. If we are right in thinking that, when the fasli has commenced, the person entitled to the holding at the commencement of the fasli is bound to pay the rent without reference to the question of the time of payment, he is the tenant against whom proceedings may be instituted under the Act. Suppose a lessee, u/s 13, for a term of years assigns the lease after the expiry of some years of the term, and is in arrears in respect of those years, is it to be contended that no proceedings under the Act can be taken against him for the

arrears of those years because at the time of the institution of the proceedings he has parted with the remainder of the term? We must therefore hold that the transfer of the holding in September does not disentitle the landlord to distrain the plaintiff's cattle for the rent of fasli 1314,

2. The law with reference to distress in England appears to rest on a different footing and does not afford any assistance in determining a question falling under the Rent Recovery Act. At Common law a distress could only be made during the continuance of the demise, although the tenant continued in occupation afterwards. *Williams v. Stiven* 9 Q.B.R. 14, Section 6 of 8 Anne, Cap. 14, authorised the distraint after the termination of the lease provided it was made within six months thereafter but during the continuance of the landlord's interest and of possession by the tenant. Again, it is said the right to distrain depends upon the possession of the legal reversion. [See Foa's "Landlord and Tenant," page 485 and *Stavel v. Allcock* 16 Q.B.R. 636]. The goods distrained must be on the demised premises, *Encyclopaedia of the Laws of England*, Vol. IV, page 291 (1st edition), and the right of distress extends to the goods of a stranger, page 294. In this country there is no right so distrain under the Transfer of Property Act and, where it exists under the rent law, there is no limitation as to the situation of the goods. We think the question of the legality of the distraint in the present case is governed entirely by the provisions of the Rent Recovery Act. As we have already stated, we are of opinion that the distraint was legal, We must dismiss the second appeal with costs.