

(1912) 11 MAD CK 0061
In the Madras High Court

Randuparayil Kunhi Sou

APPELLANT

Vs

Ablukandiyil Parkum Mulloli Chathu

RESPONDENT

Date of Decision : 13-11-1912

Acts Referred:

Citation : (1915) ILR (Mad) 86

Hon'ble Judges : Sundara Ayyar, J; Sadasiva Ayyar, J

Bench : Division Bench

Judgement

1. This is a suit for rent for three years 1083 to 1085 (Malayalam year). Defendants Nos. 1 to 3 are sought to be made liable directly under the marupat or rental instrument, the first defendant and the manager of the family of defendants Nos. 2 and 3 being the executants of the marupat. The fourth defendant purchased the rights of defendants Nos. 1 to 3 in the land on 4th January 1909 during the currency of the year 1084 and assigned his rights to defendants Nos. 6 and 7 on the 29th April 1909 about 3 1/2 months after his purchase. The plaintiff's case is that the fourth defendant is also liable for the rent of the Malayalam year 1084 and that defendants Nos. 6 and 7 are liable for the rents of the years 1084 and 1085. The District Munsif passed a decree against the fourth defendant for the rent of the year 1084. He appealed to the District Court on the ground that he was liable only for the rent accruing from the date of his purchase up to the date of his assignment to defendants Nos. 6 and 7, i.e., from the 4th January to 28th April 1909. The District Judge upheld his contention.

2. The plaintiff has preferred this Second Appeal and his contention is that the fourth defendant is liable for the whole of the rent for the year 1084 inasmuch as the rent for that year became payable after his purchase. Exhibit A, the rental instrument, did not fix any specific date for the payment of the annual rent. A rent of Rs. 60 per annum was fixed to be paid from the 25th Meenam 1069. It is argued that this must be construed to mean that the rent should be paid on the 25th Meenam each year.

3. In the plaint the allegation is that the annual rent was payable in monthly instalments. We cannot say, on the construction of Exhibit A that the 25th of Meenam can be regarded as the date fixed for the payment of rent every year. The Malayalam year 1084 expired only after the fourth defendant's assignment of his rights under the lease. If the rent is regarded as payable at the end of each Malayalam year, the plaintiff can have no ground for holding fourth defendant liable for the whole rent of 1084. If the tenancy be regarded as running from the 25th Meenam each year to the 24th Meenam of the succeeding year, then the rent due for 1084 fell due during the period that the fourth defendant held the leasehold interest by virtue of his purchase. Assuming that the whole rent for the year was intended to be payable on the 24th or 25th Meenam, can it be held that the fourth defendant is bound to pay the whole of the rent for 1084? Section 108 of the Transfer of Property Act lays down that "a lessee may transfer his interest in the leasehold property," but that he shall not, by reason only of such transfer, "cease to be subject to any of the liabilities attaching to the lease." It does not enact any rule regarding the liability of the assignee but as the assignee becomes the lessee from the date of the assignment, according to the section, he must be held liable for the rent accruing after the assignment. The appellant's argument is that a covenant to pay rent being one running with the land, the assignee is bound to discharge all obligations under the covenant which mature after the assignment. It is no doubt the rule that an assignee is liable for all breaches of express covenants running with the land occurring after the date of the assignment. There is privity of estate between the lessor and the assignee and the latter is bound to perform the covenants of the lease after the assignment. If a covenant to keep the premises in repair or to do an act on a day which falls after the assignment is broken, subsequently, the assignee is undoubtedly liable. That a covenant to pay rent is one running with the land appears to be the established rule in England. See Woodfall's "Landlord and Tenant," page 189. The assignee is liable for rent even though he may not have taken possession. See page 296 of the same book. For possession is not the ground of his liability, but the privity of estate which is created by the assignment itself-24 American Cyclopaedia of Law and Procedure, page 1180. But the question for our decision is whether the liability on the covenant can be apportioned or not. According to Section 36 of the Transfer of Property Act, all rents are, upon the transfer of the interest of the lessor, to be deemed, as between the transferor and transferee, to accrue due from day to day to be apportionable accordingly but to be payable on the days appointed for the payment thereof. See *Lakshminaranappa v. Melothraman Nair* (1903) 26 Mad. 540. No rule of apportionment has been laid down in the Act with regard to liability for rent, as between the lessor and the transferee from a lessee. It is settled law that the privity of estate between the lessor and the lessee's assignee is terminated by the assignment to a third person by the assignee and the latter would not be responsible to the lessor for rent after he has assigned his rights under the assignment to himself. The question whether the assignee of a lease can claim as against the lessor an apportionment of the rent accruing

after the date of his assignment does not appear to have been definitely decided either in this country or in England in a case arising between the lessor and the assignee. But on principle there seems to be no reason why he should not be entitled to do so and why the rent should not be deemed as accruing due from day to day as between him and the lessor. The liability of the assignor of a lease continues notwithstanding the assignment and the lessor cannot be damnified in any manner by the apportionment of liability on the personal covenant for rent, so as to make the assignee liable only for the rent accruing after the assignment. Privity of estate being the ground of the assignee's liability, there is no reason why it should be made heavier than the extent of that privity would justify. If the lease contains any provision entitling the lessor, to any right in case of a breach of the covenant to pay rent on a day subsequent to the assignment, he should no doubt be entitled to exercise that right as against the assignee. But it does not follow from this that he should be liable to have a decree passed against him personally for the payment of more than the rent accruing after the assignment in his favour. If the assignment be of a portion only of the premises included in a lease, it is settled law that the assignee is not liable for more than the proportionate rent due on what is comprised in his assignment. Why should not the same principle apply where diminished liability is claimed, not on the ground that the whole of the premises has not been assigned, but on the ground that the assignment has been in operation only during a portion of the period for which rent is claimed. In Halsbury's "Laws of England," volume 18, page 483, it is stated that "an apportionment can be made not only as between the persons entitled to the rent, but also as against a tenant whose liability for rent ceases, or changes its character, between two rent-days; and after the day when the entire portion of rent has, or would have, fallen due, the proportionate rent is recoverable against the tenant as rent due under the lease. Consequently a lessee who surrenders his lease between two rent-days is liable for rent up to the surrender, and a lessee on whom a lessor lawfully re-enters is liable for rent up to the re-entry." In *Swansea Bank v. Thomas* (1879) 4 Ex. D. 94 a liquidator in whom the residue of a term under a lease became vested assigned over during a current quarter. In an action brought after the expiration of the quarter against the trustee by the lessor to recover a proportionate part of the quarter's rent up to the time of the assignment over by him, it was held that the lessor was entitled to apportionment. In England the law of apportionment has long been regulated by statutes and the case was decided on the construction of 33 and 34 Vict., c. 35 (sec. 2) which provided that "all rents, annuities, dividends and other periodical payments in the nature of income (whether reserved or made payable under an instrument in writing or otherwise) shall, like interest on money lent, be considered as accruing from day to day, and shall be apportionable in respect of time accordingly." According to the Common Law of England rent neither accrued due nor was payable except on the day on which it was reserved, although interest on money lent accrued due *de die in diem* although it might be payable on certain specified days. In India there is no reason for not applying to rent the principle adopted in England in the case of interest. There are other

cases in England which follow the rule laid down in *Swansea Bank v. Thomas* (1879) 4 Ex. D. 94. See *Re Johnson; Ex parte Blackett* (1894) 70 L.T. 381, *In re Wilson; Ex parte Hastings* (1893) 62 L.J. Q.B. 623, *In re South Kensington Co-operative Stores* (1881) 17 Oh.D. 161 and *In re Howell; Ex parte Mandle Breg & Co.* (1895) 1 Q.B. 844. If the lessor can claim apportionment as against the lessee assigning his right, there is no reason why the assignee should not have the right to make a similar claim against the lessor. Reason and equity seem to us to require that he should have such right. In *Glass v. Patterson* (1902) 2 Ir. R. 660, it was held that an assignee was only liable for the apportioned rent from the date of assignment. In America a different view appears to have been taken. Metden in his work on "Landlord and Tenant," volume I, page 801, says "when a covenant to pay rent becomes broken after an acceptance of an assignment and during actual possession, the assignee is liable for the whole rent then becoming due." It is not clear how the question of actual possession is material, seeing that privity of estate and not possession is the ground of the assignee's liability. The Irish decision in *Glass v. Patterson* (1902) 2 Ir. R. 660 seems to be more in accordance with the ratio decidendi of the English cases referred to above and with principle and justice.

4. We must therefore hold that the plaintiff's claim against the fourth defendant for the whole rent of the year 1084 should not be sustained and this Second Appeal must be dismissed with costs.