

(1914) 04 MAD CK 0022
In the Madras High Court

Ranga Ramanujachariar and Another	APPELLANT
Vs	
Srinivasa Aiyangar and Others	RESPONDENT

Date of Decision : 30-04-1914

Acts Referred:

Transfer of Property Act, 1882 — Section 108(j), 55(j)

Citation : AIR 1915 Mad 34 : (1914) 27 MLJ 397

Hon'ble Judges : Tyabli, J;Sadasiva Aiyar, J

Bench : Full Bench

Judgement

1. The only arguable ground in this revision petition relates to the contention that as defendants 1 and 2 had sold their occupancy rights on lands

Nos. 67 and 68 to the 4th defendant in the beginning of Fasli 1321 (1-8-1911) and gave notice of that sale at once to the plaintiff, the defendants

1 and 2 are not liable for the rent of Fasli 1321.

2. Both sides admit that the Estates Land Act does not apply to the relations between the parties. So, Section 146 Clause (1) and Section 145 of

that Act cannot govern the rights of the parties. Nor can Section 108. Clause (j) of the Transfer of Property Act apply as agricultural tenancies are

outside the scope of that Act--(see, Section 117) unless the Local Government notifies to that effect.

3. Dr. Rash Behari Ghose in his argument as the Appellant's Advocate in Sasi Bhushun Raha v. Tara Lal Singh Deo Bahadur ILR (1895) C. 494,

contended that in the case of a tenant with rights of permanent occupancy the tenant is entitled to sell the holding and that ""it is the common law of

India that on transfer of a tenure with notice, the lessee ceases to be liable for rent."" The validity of that contention was not decided upon by the

Court in that case as it was unnecessary to do so. I am inclined to agree with that contention and I think that that principle of the common law of

India is practically adopted in the Estates Land Act with a slight variation in favour of the landlord. If it is a correct principle to apply, the

defendants 1 and 2 will be liable only for about one month's rent (between 1st July and 1st August 1911) due proportionately on lands, Nos. 67

and 68, so far as Fasli 1321 is concerned the 4th defendant, being liable for the balance of the rent due on those lands in that Fasli.

4. As the question of law above discussed is, however, an important one, let the case be posted before a Bench.

5. The petition coming for hearing again on 22nd July 1914 in accordance with the above direction, the Court delivered the following

Sadasiva Aiyar, J.

6. I have already given some 1 reasons (while admitting the petition) for holding that an agricultural tenant owning the Kudivaram right ceases to be

liable for subsequent rent after he gives notice to the landlord of the sale of his interest. The decision in Monica Kithiria v. Subraya Hebbara ILR

(1907) M. 410 turned upon the existence of privity of contract between the landlord and the mulgeni tenant in that case but the relationship of

landlord and tenant with permanent occupancy right was not created by any contract in this case. Section 55 Clause (J.) of the Transfer of

Property Act also makes it clear that the vendee becomes liable for rent due on the property sold from the date of his acquisition of title by

purchase. In the result the Lower Court's decree will be modified by making defendants 1 and 2 liable for only 78 Rupees of the amount decreed

and three-fourths of the costs of the suit. The petitioners must pay three fourths of the respondents' costs here.

Tyabli, J.

7. The question involved in this petition is whether the original tenant is responsible for rent on the holding, after he has transferred his holding to a

third person and given notice of the transfer to the melwaramdar (landlord).

8. The Madras Estates Land Act does not apply in terms but the provisions of Sections 146(2) and 147(3) supply analogy. The other rules of

statutory law that may possibly be applied, are the transfer of property Act Section 55(1)(j). Section 101 Clause (j) of the Transfer of Property

Act however refers to relations arising out of contract. In the case of tenants with occupancy rights those rules do not, it seems to me, furnish a

sufficiently close analogy. The law has, it may also be posited out, always leaned in favour of allowing transfers of interests in land. This may be

exemplified by the attitude of English Judges towards underleases even in cases where there are covenants not to underlet See *West v. Gwynne*

(1911) 2 Ch. 1. On the whole therefore it seems to me that the rule of law which is indicated as being applicable in the present case is that an

occupancy tenant is not any more liable for rent after he has transferred his holding and given notice of the transfer to his landlord.

9. I agree therefore in the order proposed by my learned brother.