
(1926) 04 MAD CK 0044
In the Madras High Court

(Rangaraju) Venkatachalamayya Pantulu	APPELLANT
Vs	
Gedala Simhadri Naidu	RESPONDENT

Date of Decision : 29-04-1926

Acts Referred:

Transfer of Property Act, 1882 — Section 116

Citation : AIR 1926 Mad 1071 : 97 Ind. Cas. 933 : (1926) 24 LW 564

Judgement

1. The facts briefly are these. The defendant had taken a lease of certain land from the plaintiff for a period of 5 years, which ended at about the beginning of 1914. In 1918 the plaintiff brought a suit against the defendant. Phillips, J., describes it as being a suit for rent, but that is, we think, not a correct description, for what was asked for was not in terms rent, but damages an account of loss of profits. The trial Court found that the defendant had held over for a certain sum "either as rent or damages for use and occupation " The first appellate Court came to much the same conclusion and dismissed the appeal. Phillips, J., in second appeal, disagreed. He found that by Exhibit II the defendant had intimated that he was no longer a tenant and there was therefore no question of holding over. Treating him as a trespasser, the suit had, he thought, not been properly framed as a suit for damages. In the result, he dismissed the suit with costs throughout.

2. As to Exhibit II, we cannot agree with him. If the one sentence in it on which he relies, is to be treated as a notice terminating the tenancy, the notice was waived by the conduct of the defendant in remaining in possession of the leased land. We think that this is certainly a case in which the principle of Section 116 of the Transfer of Property Act should be applied: vide Vadapalli Narasimham v. Dronamraju Seetharamamurthy [1908] 31 Mad. 163 and that the lower Courts rightly decreed the suit.

3. Nor can we agree with him on the other point. Assuming that the suit had been framed as one for rent, which it really had not been, it was possible for the Court to pass, in the alternative, a decree for damages for Use and occupation;

Chengiah v. Raja of Kalahasti [1912] 24 M.L.J. 263. We allow the appeal with costs throughout.