

(1934) 05 MAD CK 0010
In the Madras High Court

Sripada Satyanarayana Sarma	APPELLANT
Vs	
Ravikanti Venkataramamurthy and Others	RESPONDENT

Date of Decision : 07-05-1934

Acts Referred:

Transfer of Property Act, 1882 — Section 111

Citation : AIR 1935 Mad 454 : 157 Ind. Cas. 801

Hon'ble Judges : Jackson, J

Bench : Division Bench

Judgement

Jackson, J.—This appeal coming on for hearing, upon perusing the grounds of appeal, the judgment and decree of the lower Court and the

material papers in the suit and upon hearing the arguments of Mr. Y. Suryanarayana, Advocate for the appellant, and of Mr. B. Jagannadha Das

Advocate for respondents 1 to 3 and Mr. G. Lakshmanan Advocate for respondent 1 and respondent 5 not appearing in person or by pleader, it

is ordered that the District Judge of Ganjam do within two months from the date of the receipt of this order submit findings on the following issues,

namely:

(1) Whether the receipt of rent on 14th December 1926, by defendant 1 as set forth in Ex. I-A amounts to waiver by defendants 1 to 3 of the right

of forfeiture within the terms of Ex. A.

(2) Whether the failure to pay instalments due upon 15th January 1927 and 15th February 1927, amounts to a failure to pay consecutively for

three years within the terms of Ex. A, and entails forfeiture and that the parties be at liberty to adduce fresh evidence thereon and it is further

ordered that the parties be at liberty to file objections, if any, to the said finding

within 10 days after notice of the receipt of the same shall have been posted up in the notice board of the High Court.

2. In obedience to the above order the District Judge of Ganjam submitted the (following findings:

3. I have been directed by the High Court to submit findings on the following issues:?

(1) Whether the receipt of rent, on 14th December 1926, by defendant 1 as set forth in Ex. 1-A amount to a waiver by defendants 1 to 3 of the right of forfeiture within the terms of Ex. A.

(2) Whether the failure to pay instalments due upon 15th January 1927 and 15th February 1927 amounts to a failure to pay consecutively for three years within the terms of Ex. A and entails forfeiture.

Issue 1. - I find therefore that on issue 1 that the receipt of rent on 14th December 1926, by defendant 1 as set : forth in Ex. I-A amounts to a waiver by defendants 1 to 3 of the right of forfeiture within the terms of Ex. A.

Issue 2. - It is clear that, as the forfeiture incurred by the end of Fasli; 1336 has been waived, no forfeiture can be Incurred until three years after

that date. The failure to pay instalmanta duo on 15th January 1927 and 15th February 1927 does not therefore amount to a failure to pay

consecutively for three years within the terms of Ex. A. In relation to the question of forfeiture it amounts only to a failure to pay for one year within the terms of Ex. A.

4. My answer to issue 2 is therefore in the negative. This appeal coming on for final hearing after the return of the finding of the lower Court on the

issue referred by this Court for trial and respondents I to 4 having filed memorandum of objections to the said finding, the Court delivered the following:)

5. The learned District Judge has now submitted findings on the issues framed by this Court. We see no reason to differ from his finding on issue 1

of waiver and therefore it will be unnecessary to canvass his second finding on the question whether there was actual default. Assuming that there was default nevertheless there was waiver.

6. It is not disputed that an acceptance of rent by the lessor after default involving forfeiture is any the less a waiver because it is conditional George

Henry Davenport v. The Queen (1877) 3 AC 115 but it is argued that at the time of the acceptance the forfeiture was incomplete and hence there

could be no waiver. To constitute forfeiture there must not only be default but (under the old Transfer of Property Act, Section 11J) some overt

act on the part of the lessor terminating the lease. In para. 6 of the written statement of defendants 1 to 3 it is stated

even at the time (of the acceptance of rent) the leasees were informed that owing to their default the lease was forfeited.

7. Such information need not have been in writing, and was sufficient to constitute forfeiture. Finally it is argued that an acceptance by defendant 1

was not an authorized acceptance by all the trustees; but as pointed out by the learned Judge defendant 1 was held out by his co-trustees as having

authority to receive payments. This is clear from the evidence of P.W. 2 taken after remand and the exhibits filed by him D. E, E-1, F. G, G-1 H

and J, On the authority of Nethiri Menon v. Gopalan Nair 1916 Mad 692, defendant 1's acceptance then binds the trustees. Accordingly the

appeal must be allowed with costs throughout. The suit is decreed as prayed in the plaint. The trustees can pay costs out of the estate.