
(1919) 08 MAD CK 0011
In the Madras High Court

Subramania Pattar

APPELLANT

Vs

Kattamballi Rama

RESPONDENT

Date of Decision : 01-08-1919

Acts Referred:

Transfer of Property Act, 1882 — Section 108B(e)

Citation : (1920) ILR (Mad) 132 : (1919) 10 LW 367 : (1919) 37 MLJ 654

Judgement

1. The finding of the Courts below is that a portion of the demised premises became unfit for paddy cultivation, because it was inundated by sea-

water. The question therefore arises whether the tenant can plead as a defence to a suit for rent that he is entitled to proportionate abatement.

There is not much authority on the subject. Mr. Ananthakrishna Aiyar contended that the principle of Section 108 clause B(e) of the Transfer

Property Act was applicable, and that the only remedy open to the tenant was to have avoided the lease in toto. Mr. Lakshmana Rao for the

Respondent argued that the Transfer of Property Act not being in terms applicable to agricultural tenancies, the application of the principle

underlying the section must depend upon whether there are recognised preexisting rules on the subject which render the application of the principle

inequitable. He drew our attention to Sheik Enayatoolah v. Sheik Elahibuksh (1864) (Supp). W.R. 42 and Salimullah v. Kaliprosonno (1915)

Cri.L.J. 562 and contended that prior to the enactment of the Transfer Property Act, the principle of rateable apportionment was recognised in this

country. We may say that the idea is in accordance with the notions of natural justice and unless we are compelled to apply the provisions of the

Act, there is no ground for not following the judgment of Sir Barnes Peacock in Sheik Enayatoolah v. Sheik Elahibuksh (1864) (Supp). W.R.42.

2. Even if the principle of Section 108 clause B(e) is to be invoked, it is not clear that the present case is covered by the accidents enumerated.

From the earliest times flooding by sea-water has not been recognized in England as standing on the same footing as destruction by fresh water

floods. It is explained in 18 Halsbury 481 that whereas deterioration by fresh water flooding is reparable, flooding by sea-water would render the

land practically unfit for all time to come. Whatever may be the reason, it was laid down in Bacon's Abridgment Vol. VII page 63 that the tenant

can claim abatement when the leased land was flooded by sea-water and this view has been accepted as good law by all text writers. Woodfall

page 479; Foa, 112 and Halsbury Vol. XVIII page 481. Therefore even under the Transfer Property Act, following these authorities, the word

flood may have to be restricted to sea-water flooding. Further it is open to argument whether Section 108 B(e) is exhaustive of the right of the

tenants. Avoidance of tenancy is no doubt one mode of relief. But does it exclude the notion that the claim for abatement is available to him ? The

English law seems to countenance the view that avoidance is the only remedy : Baker v. Holtpzaffal (1811) 4 Taunton 45. In Siddick Haji

Hoossein v. Banel & Co. ILR (1911) Bom. 333 and Dhuramsey v. Ahmedabhai ILR (1898) Bom. 15 the principle has been accepted. However

that may be, in our opinion, as the Act is not in terms applicable, there is no reason for importing by way of analogy these technical considerations

in discussing rights between landlord and tenant in respect of agricultural tenancies. We think the learned Judge was right.

3. The Second Appeal is dismissed with costs.