

(1891) 09 MAD CK 0028
In the Madras High Court

Vaguran and Others

APPELLANT

Vs

Rangayyangan

RESPONDENT

Date of Decision : 04-09-1891

Acts Referred:

Citation : (1892) ILR (Mad) 125

Hon'ble Judges : Wilkinson, J;Muttusami Ayyar, J

Bench : Division Bench

Judgement

1. It is argued that upon the true construction of Exhibit C, the last clause which relates to forfeiture does not apply to the failure to pay rent, but to failure to comply with the other terms of the lease. We have no doubt that the last clause does refer, inter alia, to the covenant for payment of rent on the due date. The words "further" and "as per terms of the abovementioned lease" leave no room for doubt on this point.

2. We agree, however, with the appellant's pleader that the clause is a penal one which should be relieved against. There is a series of cases in this and in the Bombay High Court in which the right of relief against forfeiture in leases like the present has been recognised and acted on. The Transfer of Property Act does not apply to agricultural leases and the landlord had, prior to the institution of this suit, obtained a decree for the payment of rent for fasli 1294.

3. As to the right of re-entry we are of opinion that the decisions of the Courts below are right. What was transferred was not the right of re-entry by itself, but the reversion as based on the clause for forfeiture. Though the lease has expired since the suit was instituted, in dealing with this second appeal, we must be guided by the status of the parties at the date of the institution of the suit. The result will be that we set aside the decree of the Courts below and dismiss the plaintiff's suit with costs of defendants Nos. 3 to 11 throughout.