APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Shephard.

1889.
February 13.
October 17.

NARASIMMA (DEFENDANT No. 1), APPELLANT,

v.

LAKSHMANA (PLAINTIFF), RESPONDENT.*

Rent Recovery Act (Madras)—Act VIII of 1865, s. 12—Surrender by abandonment.

In a suit to recover possession of certain land comprised in an unexpired lease granted to the plaintiff by the first defendant it was pleaded that the plaintiff had left the land waste, and had refused to pay rent or give a written relinquishment of the land, and that the first defendant had accordingly let it to the second defendant:

Held that, although the defence did not disclose a surrender by the plaintiff, recorded as prescribed in the Rent Recovery Act, s. 12, the Court should determine the issue whether there had been a surrender by the plaintiff.

SECOND APPEAL against the decree of Venkatarangayyar, Subordinate Judge of Ellore, in appeal suit No. 709 of 1887, confirming the decree of M. B. Sundara Rau, District Munsif of Masulipatam, in original suit No. 465 of 1886.

Suit by a tenant, alleging an unexpired lease for five years against his lessor and a subsequent lessee for recovery of possession of the land and for damages. The lessor in his defence pleaded a surrender, which was not in writing.

The District Munsif framed an issue (the second issue) on the question of surrender; but, holding that the surrender set up by the lessor was invalid by reason of the provisions of Rent Recovery Act (Madras), section 12, he passed a decree for the plaintiff without taking evidence. His decree was affirmed on appeal by the Subordinate Judge.

Rent Recovery Act (Madras), section 12, provides as follows:—

"The landholders specified in section 3 are not empowered to eject tenants from their lands except by a decree of a Civil Court or under the provisions of sections 10 or 41 of this Act. Tenants ejected without such due authority may bring a summary suit before the Collector to obtain reinstatement with damages:

* Second Appeal No. 1359 of 1888.

Provided always that tenants shall be allowed to relinquish their lands at the end of the revenue year by a writing to be signed by them in the presence of witnesses, or at any other time if the landholder is willing to accept the relinquishment."

The first defendant preferred this second appeal.

Mr. DeRozario for appellant.

Krishnasami Chetti for respondent.

The arguments adduced on this second appeal appear sufficiently for the purpose of this report from the judgments.

SHEPHARD, J.—The plaintiff sued to recover land of which, as he alleged, he had been in possession up to the end of fasli 1294 as tenant of the first defendant. The defendant in his written statement admitted the plaintiff's possession up to the end of fasli 1291, but averred that as "he (the plaintiff) neither executed a "khat, nor cultivated the lands, nor paid the rent for that fasli, "his (the defendant's) manager ordered the collection of the rent "in the jamabandi and acceptance of relinquishment from fasli "1292; that when called upon to do so, plaintiff neither paid the "rent nor presented a relinquishment in writing, but said that he "abandoned the lands in the beginning of that very fasli, and "that the land was therefore left waste, and subsequently in fasli "1295 was rented out to the second defendant."

Upon these averments which formed the subject of the second issue, the District Munsif ruled, as a matter of law, that they afforded no defence and accordingly gave judgment for the plaintiff without taking any evidence. The question argued on appeal, both in the Subordinate Court and in this Court, was whether such surrender, not being in writing, signed and attested in manner provided by section 12 of the Rent Recovery Act, could be held to be a valid surrender of the land. This question, which is one on which as far as I can see there is no authority, has been answered in the negative, as well by the District Munsif as by the Subordinate Judge. I think that the interpretation which has been put on the proviso of section 12 is an erroneous one. It is said that the proviso like the substantive part of the section is devised for the protection of the tenant, and that the security of the tenant requires that no surrender, not recorded in writing, should be treated as binding upon him. There is no doubt that the protection of the tenant against hasty eviction is the main object of the section, and the proviso may have been framed with the

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same view, for the written and attested record of the tenant's relinquishment would afford him protection against subsequent demands for rent. It is plainly to the interest of both parties that a surrender, when made and accepted, should be recorded in some such way as that provided. But, in my opinion, the section does not render wholly void and inoperative a surrender which, although not so recorded, has in fact taken place. If that was the intention it certainly has not been expressed in plain terms. Indeed, the substantive part of the section does not refer to cases in which a surrender has taken place, because a tenant who has surrendered the land cannot be ejected. If it is said that an intention to avoid oral surrenders, though not clearly expressed, must be inferred from the language of the section, it becomes important to consider the inconvenient consequence which would follow from the construction which the Courts below have put on this section. In this particular case, the tenant appears to have been invited to give a written relinquishment of the land but in vain, and about four years afterwards another tenant having meanwhile been placed in possession, he brings this suit. According to the construction contended for by the plaintiff, he might have waited even longer before instituting his suit. His surrender being invalid, he might have brought his suit at any time within the period allowed by the law of limitation. Again, if the construction is the correct one, what protection is there for the landlord whose tenant abandons the land with the declared intention of surrendering it, and refuses, as in fact the plaintiff did, to put his declaration in writing?

Having regard to the language of the section and to the above considerations, I am of opinion that a surrender by a tenant is not invalid, because it is not recorded in manner provided in section 12 of the Rent Act. No evidence having been taken, I think the case must be referred to the lower Appellate Court for a finding on the second issue, both parties being at liberty to adduce evidence thereon.

MUTTUSAMI AYYAR, J.—I am also of opinion that an oral relinquishment, followed by abandonment of the land for several years, is not inoperative under the proviso of section 12, Act VIII of 1865. That section first negatives any power in the landholder to eject his tenant except under the provisions of the Act. The power contemplated is obviously not a right arising from

a distinct contract between the parties. The proviso further declares a power in the tenant to relinquish the land in writing at the end of the revenue year, or at any other time if the landholder is willing to accept the relinquishment. The apparent intention is to give the tenant a facility which the landlord does not possess in terminating the tenancy of his own will. The words "at any other time if the landlord is willing to accept the relinquishment" are again intended to afford an additional facility subject to the landlord's consent. A writing is prescribed as evidence when the tenant chooses to relinquish the land as a matter of right and thereby to protect himself against continued liability for payment of rent, and the proviso was not intended to apply to cases where the tenancy is determined by mutual contract such as surrender or abandonment for several years under circumstances from which a surrender might reasonably be referred. In the case before us the respondent contended that the tenancy commenced with a lease for five years, commencing with fasli 1286 and ending with fasli 1290, that the tenant neither cultivated the land nor paid rent for 1291, that when questioned about it at the annual settlement, he orally relinquished the land from 1292, that the land lay unoccupied for 1293 and 1294, that the landlord therefore rented it out to the second defendant in 1295, and that he was entitled to do so. If this contention were well founded, it would amount to a plea of surrender or an abandonment for some years arising from a mutual contract expressed or implied. In such a case a writing does not seem to be necessary and the proviso is not applicable. Though the second issue raised the question of surrender, the Courts below recorded no distinct finding, but rested their decision on the fact that there was no written evidence of relinquishment. The case in *Dinabhandu* v. *Lokanadhasami*(1) only decided that the act of allowing the land to lie waste was not conclusive evidence of an intention to abandon.

I therefore concur in the order proposed by my learned colleague.

[In compliance with the above order, the Subordinate Judge returned a finding, which was in favor of the plaintiff. This finding was accepted by their Lordships on the rehearing of the second appeal which they accordingly dismissed with costs.]

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(1) I.L.R., 6 Mad, 322.