

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Wilkinson.

VAGURAN AND OTHERS. (DEFENDANTS NOS. 3 TO 11), APPELLANTS,

1891.
September 4.

v.

RANGAYYANGAR (PLAINTIFF), RESPONDENT.*

*Landlord and tenant—Forfeiture for non-payment of rent—Transfer of reversion—
Transfer of Property Act—Act IV of 1882, s. 6, cl. (b).*

A condition in a lease providing that the landlord may re-enter on non-payment of rent is penal and will be relieved against, apart from the provisions of the Transfer of Property Act.

Scmble. The transfer of the reversion based on clause for forfeiture is not invalid by reason of Transfer of Property Act, s. 6, cl. (b).

SECOND APPEAL against the decree of C. Venkobachariar, Subordinate Judge of Madura (West), in appeal suit No. 2 of 1890, modifying the decree of T. B. Vasudeva Sastri, District Munsif of Tirumangalam, in original suit No. 91 of 1886.

Suit for ejection and damages.

The lands in question belong to a religious endowment attached to a temple, of which defendant No. 1 is trustee. Defendant No. 1 leased these lands by exhibit C, dated 4th May 1881, to defendant Nos. 2 and 3 for a term of six years on an annual rent of 71 kalams of paddy payable on or about 11th April of each year. Defendants committed default in payment of rent due for faslis 1292 and 1293, but these defaults were condoned or waived by acceptance of rent subsequently. Defendants Nos. 2 and 3 again failed to pay rent in fasli 1294, whereupon defendant No. 1 proceeded to enforce the condition of forfeiture reserved to him by the lease and gave notice to defendants on 13th June 1885, cancelling the lease and intimating that if the rent due was not paid he would recover it by suit. The rent not having been paid as demanded, defendant No. 1 sued and obtained a decree for the amount. On 20th June 1885, defendant No. 1 leased the lands to the plaintiff, and gave notice of the fact to defendants Nos. 2 and 3, calling upon them not to interfere with

* Second Appeal No. 1055 of 1890.

VAGURAN
v.
RANG-
AYYANGAR.

the plaintiff's entry on and enjoyment of the lands. Defendants Nos. 2 to 15, who were all members of one family, failed to give up possession of the land, the plaintiff accordingly sued as above.

Defendants Nos. 2 to 15 pleaded, *inter alia*, that the condition for re-entry was penal and not enforceable, and that the right of re-entry could not be validly transferred under clause (b), section 6, Transfer of Property Act.

The Lower courts overruled both of these pleas and passed decrees for the plaintiff.

Defendants 3—11 preferred this second appeal.

Parthasaradhi Ayyangar for appellants,

Ramachandra Ayyar for respondent.

JUDGMENT:—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 above-mentioned lease" leave no room for doubt on this point.

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 cases 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.

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.
