

VELU PILLAY
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chased from defendants are also credited merely as items received in partial discharge of defendants' debt to the plaintiffs. We cannot accede to the contention that they are evidences of reciprocal demands. They are casual merely and not such as would imply a regular course of reciprocal dealings.

The lower Court's decision is, therefore, correct, and this appeal must be dismissed with costs.

Objection has been filed by respondent against that part of the lower Court's decree which awards to plaintiffs costs on the whole amount sued for, instead of limiting the same to the amount decreed. The general rule is that if a plaintiff recovers a less amount than he claimed in the plaint, his costs should be apportioned according to the amount recovered and not to the sum claimed. *Mudhan Mohan Doss v. Gopal Doss*(1). The Judge has given no reason for departing from this rule. The decree will be modified by awarding costs to plaintiffs only on the amount decreed. The circumstances of the case are such as to justify disallowance of costs to the second defendant (respondent).

In allowance of this objection the lower Court's decree will be modified as above.

There will be no order as to costs of this memorandum of objections.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar.

KUNHANUJAN (DEFENDANT No. 8), PETITIONER,

v.

ANJELU (PLAINTIFF), RESPONDENT.*

Transfer of Property Act (Act IV of 1882), s. 108, cl. (j)—Lessor's right to sue both lessee and his transferee.

The provision in section 108 of the Transfer of Property Act that a lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and that the lessee shall not, by reason of such transfer, cease to be subject to any of the liabilities attaching to the lease, does not prevent the transferee being also liable to the lessor, who may at the same time sue the

lessee upon his express covenant and the transferee upon the privity of estate, though he can have execution against one only. KUNHANUJAN
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PETITION under section 25 of Act IX of 1887 praying the High Court to revise the decree of E. K. Krishnan, Subordinate Judge of South Malabar, in Small Cause suit No. 65 of 1892.

The facts of the case appear sufficiently for the purpose of this report from the judgment of the High Court.

The Subordinate Judge gave a decree in favour of the plaintiff, and the eighth defendant preferred this appeal.

Sundara Ayyar for petitioner.

Sivasami Ayyar for respondent.

JUDGMENT.—This was a suit for house-rent. The house was let to the first defendant under a kulichit, which he executed on the 23rd September 1888. The first defendant assigned the lease to one Ali Koya, and defendants 2 to 7 are his heirs. The eighth defendant purchased Ali Koya's interest at a Court sale. The plaintiff claimed Rs. 210 as the balance of rent due by all the defendants. The eighth defendant did not enter into possession, and stated that he did not desire to take possession under his sale certificate, though it was his intention to insist on his claim as purchaser so far as the improvements made by Ali Koya are concerned. The Subordinate Judge held, on the Small Cause side, that, as the principal lessee, the first defendant, was liable for rent, that defendants 2 to 7 were also liable, as Ali Koya's heirs, from date of Ali Koya's purchase, and that the eighth defendant was liable for rent from the date on which he purchased Ali Koya's interest. The eighth defendant is the petitioner in revision before me, and it is contended for him that unless he enters into possession as purchaser, he is not liable for rent under section 108, clause (j) of Act IV of 1882. It is not denied that under the English law the assignee of a lease may be sued on covenants which run with the land, although he has not taken actual possession of it, and that a covenant to pay rent is a covenant running with the land (*Woodfall's Landlord and Tenant*, page 239). The reason for the assignee's liability is the privity of estate created by the assignment as between heir and the original lessor, and the privity arises from the vesting of the assignor's interest in the assignee. The question, therefore, is whether, as argued on petitioner's behalf, section 108, clause (j) of Act IV of 1882 renders this view inapplicable in this country. That clause provides

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that the lessee may transfer absolutely or by way of mort gage or sub-lease the whole or any part of his interest in the property, and the lessee shall not, by reason of such transfer, cease to be subject to any of the liabilities attaching to the lease. But from this it does not follow that the transferee is not also liable. The lessor may at the same time sue the lessee upon his express covenant, and the assignee upon the privity of estate, though he can have execution against one only. (Woodfall's Landlord and Tenant, 11th Edition, 238). I do not, therefore, consider that this petition can be supported, and I dismiss it with costs.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

1893.
October 12.

VENKATANARASIMHA NAIDU (PETITIONER),

v.

SURANNA (RESPONDENT).*

Rent Recovery Act—Madras Act VIII of 1865, s. 76—Civil Procedure Code, ss. 4, 622.

Orders passed by a Collector under the Rent Recovery Act are not open to revision under s. 622 of the Civil Procedure Code. *Velli Periya Mira v. Moidin Padsha*(1) followed.

PETITIONS under section 622 of the Civil Procedure Code praying the High Court to revise the order of C. Venkatajugga Row, Assistant Collector of Kistna, dated 9th March 1892, passed in summary suits Nos. 100 and in others.

The petitioner, a zamindar, applied under section 10 of the Rent Recovery Act to eject a tenant on the ground that he had not, in accordance with a decree of the Assistant Collector given in a suit to enforce the acceptance of patta brought by the petitioner against the tenant, accepted patta and presented a muchilika as directed. The Assistant Collector rejected the application, and the zamindar presented this petition under section 622 of the Civil Procedure Code.

Pattabhirama Ayyar for appellant.

Seshagiri Ayyar for respondent.

* Civil Revision Petitions Nos. 489 of 1892, &c.

(1) I.L.R., 9 Mad., 332.