

became vested in the sons as a case of intestacy, because the gift in favour of the male issue of the sons such issue failing in favour of the female issue and that again failing, in favour of the grand-daughters by his daughter was invalid. No doubt the gift to Velayuda's grand children, by his sons failed as none such were in existence at the testator's death, but as Thayummal, one of his daughters had then two daughters alive they became entitled in remainder to all the property left by Velayuda to his three sons and to his junior widow, it not having been shown how the disposition in their favour was in any way invalid.

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BISSEN SONI.

With reference to the conclusions thus arrived at, the mortgage to the plaintiffs must be held to be inoperative so far as house No. 94, Annapillai street, is concerned, no interest therein having been created in favour of the sons; and the parties thereto entitled under the will being the junior widow and the grand-daughters. With reference to the other house the life interest of the first defendant is liable to be proceeded against in respect of the plaintiffs' debt.

The decree of the City Civil Judge will be modified as aforesaid. Each party will bear his costs in the lower Court. In the appeal the plaintiffs will bear their own and pay half the costs of the appellants.

APPELLATE CIVIL.

*Before Sir S. Subrahmaniam Ayyar, Offy. Chief Justice, and
Mr. Justice Bhashyam Ayyangar.*

NARAINA NAIKA (SIXTH DEFENDANT), APPELLANT,

v.

VASUDEVA BHATTA (PLAINTIFF), RESPONDENT.*

1903.
October 21

Land-lord and tenant—Lease, forfeiture of, for non-payment of rent when period of grace allowed for payment—Transfer of Property Act IV of 1882, s. 114.

A Mulageni chit or permanent lease of 1866 for building purposes provided that the lessee should pay to the lessor a rent of Rs. 5 per annum by the 24th

* Second Appeal No. 247 of 1902, presented against the decree of J. W. F. Dumergue, Esq., District Judge of South Canara, in Appeal Suit No. 298 of 1900, presented against the decree of M.E.Ry. V. Ranga Row, District Munsif of Mangalore, in Original Suit No. 191 of 1899.

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May of each year; and if any arrears remained due, they should be paid within a further period of three months or by the 24th August, and if not so paid, the Mulageni chit to stand cancelled.

In a suit brought for cancelling the lease and recovering the demised premises on the ground amongst others that the rent due on the 24th May 1898 was not paid by the 24th August 1898:

Held, affirming the decree of the lower Appellate Court, that the condition of forfeiture for non-payment was not penal as a period of grace was allowed and consequently no relief against forfeiture could be given.

Narayana Kamti v. Nandu Shetty, (S.A. No. 89 of 1900, unreported), referred to and followed.

The provisions of the Transfer of Property Act do not apply to the lease. Even under section 114 of the Transfer of Property Act, relief against forfeiture is discretionary and may depend on whether the lease allows a reasonable period of grace.

ONE Narasa Naika, deceased father of defendants Nos. 1 to 5 and brother of the sixth defendant, obtained from the plaintiff under a permanent lease-deed of the 24th May 1866 a piece of land for building purposes. One of the conditions of the deed was that an annual rent of Rs. 5 was to be paid by the 24th May of each year; and if any portion remained unpaid within that time, it should be paid within a further period of three months, *i.e.*, by the 24th August. If not paid within such further period, the lease to stand cancelled. The defendants failed to pay the rent due on the 24th May 1898 by the 24th August 1898. The plaintiff brought this suit for the recovery of the lands leased and for other reliefs. The first issue was whether the lease was penal and in what particular. The District Munsif held that the Court had a discretion to grant time for payment of rent preparatory to forfeiture and that no forfeiture was created by mere non-payment of rent. He gave a decree for rent due and directed the removal of certain encroachments but dismissed the prayer for possession. The District Court on appeal held that the lease was forfeited and decreed possession to the plaintiff.

The sixth defendant preferred this second appeal.

K. Narayana Rau for appellant.

K. P. Madhava Rau and *A. Srinivasa Poi* for respondent.

JUDGMENT.—This case is not governed by the Transfer of Property Act. Under the lease in question the lessee had as against the lessor a permanent right to occupy, but he was at liberty to quit whenever he might choose to do so. The time fixed for payment of rent is the 24th May of every year with a

proviso that if rent is not paid within a further period of three months allowed as a period of grace, the lease shall stand cancelled. In a similar case of *Narayana Kamti v. Nandu Shetty*(1) where also there was a grace period allowed, it was held by this Court that the case was distinguishable from the reported cases in which relief against forfeiture had been given by the Court for non-payment of rent on the ground that, in those cases, the lease provided no period of grace.

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Following that decision we hold that the decree of the District Judge is right.

We may add that, even under section 114 of the Transfer of Property Act, the exercise of the discretion to relieve against forfeiture may depend upon the circumstance whether the lease allows a period of grace or not, and in the former case, whether the period of grace is a reasonable period having regard to the nature and terms of the lease.

This second appeal fails and is dismissed with costs.

APPELLATE CIVIL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Benson.

NARASIMHA CHARI (PLAINTIFF), APPELLANT,

v.

GOPALA AYYANGAR (DEFENDANT),

RESPONDENT.*

1905.
January 5.

Hindu Law—Religious Endowment—Trustee, creation of tenure by—Cancellation by succeeding Trustee—Notice to tenure-holder—Tender of patta at end of fasli not reasonable notice.

A trustee of a religious endowment cannot, except on special grounds, create a perpetual tenure binding on his successors in office.

Mayandi Chettiar v. Chokkalingam Pillay, (I.L.R., 27 Mad., 295) and *Vidya-purna Tirtha Swami v. Vidyanidhi Tirtha Swami*, (I.L.R., 27 Mad., 435), followed.

Where however a long succession of trustees had acquiesced, a succeeding trustee cannot sue to eject the tenure-holder without giving him reasonable notice of the determination of the tenure; and the tender of a patta at the end of a fasli for which it is tendered is not a reasonable notice.

(1) S.A. No. 89 of 1900 (unreported).

* Second Appeal No. 716 of 1903, presented against the decree of D. Broadfoot, Esq., District Judge of South Arcot, in Appeal Suit No. 313 of 1902 presented against the decision of M.R.Ry. K. Krishna Ayyar, Deputy Collector of Chidambaram Division, in Summary Suit No. 1 of 1902.