

APPELLATE CIVIL.

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

VENKATRAMANA BHATTA (DEFENDANT), APPELLANT,

v.

GUNDARAYA AND ANOTHER, (PLAINTIFFS), RESPONDENTS.*

1908.
April 28.

Landlord and tenant—Forfeiture—Landlord not showing intention before suit to determine lease on the ground of forfeiture is not entitled to maintain suit for possession.

A landlord is not entitled to maintain a suit for possession of the lands leased to a tenant on the ground of forfeiture under the terms of the lease when he does not allege or prove that, prior to bringing the suit, he did any act to show that he intended to avail himself of the forfeiture and determine the lease.

Anandamoyee v. Lakhi Chandra Mitra, (I.L.R., 32 Calc., 339), followed.

SUIT for possession of land held by the defendant under a mulgeni lease executed by the defendant's ancestors in 1866, with rent for four years as provided by the lease, and damages for non-payment at the periods specified.

The mulgeni lease contained *inter alia* the following clause:—

“If the rent is allowed to fall in arrears without payment on the due dates, I shall pay the whole of the rent of rice and coconuts by the end of July of the respective year and take a receipt. On failure to pay at the said time, the mulgeni condition shall be void and I shall surrender the property without stating the objection of improvements. Such is the mulgeni chit.”

The plaintiff alleged that the rent for 1899 was not paid on the due dates, or before the end of July 1900, and that the lease had consequently determined. The plaint did not contain any allegation that subsequent to July 1900, the plaintiff did any thing to show his intention to forfeit the lease under the forfeiture clause contained in the lease deed.

The District Munsif passed a decree for the arrears of rent claimed and directed that, in default of payment by the defendant

* Second Appeal No. 894 of 1905, presented against the decree of H. O. D. Harding, J. sq., District Judge of South Canara, in Appeal Suit No. 306 of 1904, presented against the decree of M. R. Ry. A. C. Kannan Nambiar, District Munsif of Mangalore, in Original Suit No. 636 of 1903.

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within three months, the plaintiff should be entitled to recover possession.

On appeal the District Judge held that, as the lease itself provided a period of grace within which the defendant should pay the rent, no further period ought to be allowed and he accordingly passed a decree for possession and mesne profits.

The defendant appealed to the High Court.

B. Sitarama Rao for appellant.

Mr. K. R. Shenai and K. P. Madhava Rao for respondents.

JUDGMENT.—In this case the plaintiff has neither proved nor alleged that before bringing his suit he did any act showing his intention to avail himself of the forfeiture and determine the lease. This being so we are of opinion that the plaintiff is not entitled to rely on the forfeiture. On this question we agree with the decision of the Calcutta High Court in *Anandamoyee v. Lakhi Chandra Mitra*(1).

As regards the construction of the lease we agree with the lower Appellate Court. We think the rent was payable in kind.

The decree for possession must be set aside. In other respects the decree is affirmed. The parties must pay their own costs throughout.

(1) I.L.R., 33 Cal., 339.