

Ramappa Vs. Abdulla Beari

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SooperKanoon Citation : sooperkanoon.com/773723

Court : Chennai

Decided On : Dec-20-1920

Reported in : AIR1921Mad284; (1921)41MLJ127

Appellant : Ramappa

Respondent : Abdulla Beari

Judgement :

1. In this case the learned District Judge has decreed a suit for possession subject to the evicted tenant being awarded compensation for an improvement made by him on the property. The tenant was in under a registered Chalgeni chit or yearly lease executed on the 4th September 1915. It appears to be common ground that the term according to that chit came to an end on the 10th March 1916 and the improvement in question which, is chiefly a house, was admittedly built after the termination of the Chalgeni chit. But it was built while the tenant was holding over and that holding over was subsequently recognised and legalised by the landlord, because in his plaint he sues for the rent for 1917 and the rent for 1918 and it has been clear law for a very long time that a landlord who recognises a term even, by suing for the rent, let alone accepting it, cannot be heard to say that there was no valid subsisting lease during the period for which he sues for rent. Moreover he will be deemed to have waived any cause of forfeiture existing up to the end of the period for which he sues for rent. Vide Dendy v. Nicholl 4 C.B. (N.B.) P. 376. By the Transfer of Property Act Section 116, where the lessor assents to the lessee's holding over, the tenant should be deemed to be a tenant from year to year and in

this Case the landlord has signified his recognition of it by the demand for rent.

2. The next point taken is this, that the provisions of the Transfer of Property Act apply which would give the tenant only the right of removing the superstructure that he put upon the land and not any right to compensation. As against that, it is said that the customary law of Kanara is that the tenant has not merely the privilege of removing the improvements where they are severable but is entitled to leave them on the land and to be paid compensation by the landlord. The leading case on the subject is *Damma v. Mariatnma* (1914) 24 M.L.J. 397. It is quite true, as pointed out by Mr. Lakshmana Rao, that this is a case not of a lessee but of a mortgagee in possession. But not only do we see no logical distinction between the two cases because the principle is that the landlord should not get the benefit of what he has not paid for and reap what others have sown but it is clearly regarded in the judgment in that case as being exactly on the same footing for both tenants and mortgagees. In fact the argument there seems rather to have been. 'We agree that this law applies to tenants but we contend that it does not apply to mortgagees.'

3. As a last point, it is said by Mr. Lakshmana Rao that this is not an improvement for which he is liable. The only one as to which¹ the question arises is this house. It does seem a little strong to say that you cannot have a garden without a house for people to live in and look after it and the other reason given by the District Judge that the garden will have the benefit of the house and the rubbish etc., is obviously unreasonable. But it may be that there are gardens for the proper cultivation of which it is essential that somebody should live there and therefore there must be a house: This is a finding of fact and we think therefore that this appeal fails and must be dismissed with costs.