

T. Umar Pulavar Vs. Dawood Rowther and ors.

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SooperKanoon Citation : sooperkanoon.com/778607

Court : Chennai

Decided On : Mar-29-1946

Reported in : AIR1947Mad68; (1946)2MLJ229

Appellant : T. Umar Pulavar

Respondent : Dawood Rowther and ors.

Judgement :

Chandrasekhara Aiyer, J.

1. A new point not raised in the Courts below is now taken on behalf of the plaintiff-appellant. He says that in applying section in (g) of the Transfer of Property Act to the facts of this case and holding that even where forfeiture has been incurred on the ground of a denial of the landlord's title a notice in writing determining the lease is necessary, the lower Courts overlooked the fact that this was an agricultural lease which is exempt from the operation of the provisions of Chapter V of the Transfer of Property Act. Under Section 111(g) as it originally stood, the landlord was bound in the case of such a forfeiture to show by some act of his an intention to determine the lease. The question often arose whether Section 111(g) in that form was applicable to agricultural leases and the preponderance of authority was in favour of the view that though under Section 117 of the Act agricultural leases were excluded from the scope of the provisions of the particular chapter, still the principle embodied in the section could be applied

to such leases also as a rule of justice, equity and good conscience. One of the points that the Courts were called upon to consider in this connection on the wording of the section as it originally stood was whether the act to be done by the lessor to show his intention to determine the lease was an act which had to precede the institution of the suit or whether the launching of the suit could itself be regarded as such an act. Following the rule of English Law before the enactment of Section 146 of the Law of Property Act, 1925, it was held in two decisions that in cases of tenancies not governed by the Act, either because they came into existence before the Act, or because they were in the nature of agricultural leases, the institution of the suit was itself enough. *Padmanabhayya v. Ranga* : (1910)20MLJ930 , was one such case where the lease had been executed long before the Transfer of Property Act came into force, and it points out that the decision in *Venkataramana Bhatta v. Gundarraya* I.L.R.(1908)Mad. 403, to the effect that some act independent of the institution of the suit was necessary even with reference to a lease executed before the Transfer of Property Act was probably due to the circumstance that the attention of the Court was not drawn to the fact that the lease in that case was prior to the Transfer of Property Act. Another case on the same line is that reported in *Korapalu v. Narayanan* : (1913)25MLJ315 , where the lease came into existence after the Transfer of Property Act but was an agricultural lease. *Sadasiva Aiyar, J.*, with whom *Tyabji, J.*, concurred, observed that no act was at all necessary on the part of the plaintiff to take advantage (as regards his share of the land) of the forfeiture clause in the lease deed. It is for the purpose of attenuating the rigour of the law as thus interpreted and applied in such decisions that Section 111(g) was amended in 1929 and it was made clear that even in the case of forfeiture by denial of the landlord's title a notice in writing determining the lease must be given. The principle, so embodied in the section as a result of this amendment becomes, so to say, a principle of justice, equity and, good conscience which must be held to govern even agricultural leases, though under Section 117 of the Act they are exempt from the operation of the chapter. To hold that with reference to agricultural leases previous notice determining the tenancy is not necessary is to ignore the policy of the Act as disclosed by the amendment which was intended to afford all tenants greater protection than what was v afforded by the decisions

which interpreted Section 111(g) as it originally stood. It is reasonably clear that if notice is necessary with reference to non-agricultural leases it is still more necessary in the case of agricultural leases where larger interests are at stake, generally speaking, and where in the absence' of a proper notice to quit the right to the standing crops raised by the tenants might itself become a subject of dispute as between them and the landlord. The following observations of Sir Wallis, C.J., in *Krishna Shetti v. Gilbert Pinto* : (1919)36MLJ367 , can be usefully quoted in this connection:

The fact that agricultural leases such as this one are excepted from the operation of Sections 105 to 116, Transfer of Property Act does not, in my opinion affect the present question. The Act was framed by eminent English lawyers to reproduce the rules of English law, in so far as they are of general application and rest on principle as well as authority, and its provisions are in my opinion binding on us as rules of justice, equity and good conscience, when we have to deal with agricultural leases in the absence of any special reason for not applying them. The legislature wisely in my opinion, if I may say so, has refrained from making these sections applicable *proprio vigore* to agricultural leases for fear of unnecessarily interfering with settled usages which it is undesirable to disturb. But in the absence of special reasons, there is no ground for applying a different rule in the cases of agricultural leases and there are many decisions to that effect.

Once we reach the position that Section 111(g) as amended embodies a principle of justice, equity and good conscience, it follows that it should apply to agricultural leases as well even more forcefully perhaps than to non-agricultural leases.

2. I hold therefore that the lower Courts have rightly decided that the plaintiff's, suit must fail in the absence of a proper notice to quit and dismiss this second appeal with costs.

3. Leave to appeal is refused.