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Court : Chennai

Decided On : Aug-10-1914

Reported in : AIR1915Mad654; (1914)27MLJ475

Appellant : Balasidhantam and ors.

Respondent : Perumal Chetti, and ors.

Judgement :

1. The suit was brought under Section 7, clause XI (cc) of the Court Fees Act on payment of the court fees upon one year's rent. Therefore the title of the plaintiffs need not be gone into in this case. We express no opinion whether the documents, Ex. A, B, & 1, constitute a sale with a condition to repurchase or a mortgage by conditional sale. We are not to be understood as agreeing with the conclusion at which the Courts below have arrived upon this point.

2. It is argued that as the full amounts mentioned in Exhibits A and B have been deposited in Court, the plaintiffs are not entitled to a decree for rent. As was pointed out in Satyabai Behara v. Harabati I.L.R. (1907) C. 223 and in Rukmani Bai v. Venkatesh I.L.R. (1907) B 527, mere deposit of the amount does not put an end to the relationship already subsisting. Even if the plaintiffs were only mortgagees so long as Exhibit B subsists, they can sue for possession and for rent under it. We agree with the decisions of the Calcutta and Bombay High Courts and hold that the payment into Court has not taken away from the plaintiffs the right to sue for possession under Exhibit B. We uphold the decree solely upon this ground.

We think this is a fit case in which the parties should bear their own costs in this Court.

3. The Second Appeal is dismissed.

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