

Kunhanujan Vs. Anjelu

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Court : Chennai

Decided On : Sep-25-1893

Reported in : (1894)ILR17Mad296

Judge : Muttusami Ayyar, J.

Appellant : Kunhanujan

Respondent : Anjelu

Judgement :

Muttusami Ayyar, J.

1. This was a suit for house-rent. The house was let to the first defendant under a kulichit, which he executed on the 23rd September, 1888. The first defendant assigned the lease to one Ali Koya, and defendants 2 to 7 are his heirs. The eighth defendant purchased Ali Koya's interest at a Court sale. The plaintiff claimed Rs. 210 as the balance of rent due by all the defendants. The eighth defendant did not enter into possession, and stated that he did not desire to take possession under his sale certificate, though it was his intention to insist on his claim as purchaser so far as the improvements made by Ali Koya are concerned. The Subordinate Judge held, on the Small Cause side, that, as the principal lessee, the first defendant was liable for rent, that defendants 2 to 7 were also liable, as Ali Koya's heirs, from date of Ali Koya's purchase, and that the eighth defendant was liable for rent from the date on which he purchased Ali Koya's interest. The eighth

defendant is the petitioner in revision before me, and it is contended for him that unless he enters into possession as purchaser, he is not liable for rent under Section 108, Clause (j) of Act IV of 1882. It is not denied that under the English law the assignee of a lease may be sued on covenants which run with the land, although he has not taken actual possession of it, and that a covenant to pay rent is a covenant running with the land (Woodfall's Landlord and Tenant, page 239). The reason for the assignee's liability is the privity of estate created by the assignment as between heir [him?] and the original lessor, and the privity arises from the vesting of the assignor's interest in the assignee. The question, therefore, is whether, as argued on petitioner's behalf, Section 108, Clause (j) of Act IV of 1882 renders this view inapplicable in this country. That clause provides that the lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and the lessee shall not, by reason of such transfer, cease to be subject to any of the liabilities attaching to the lease. But from this it does not follow that the transferee is not also liable. The lessor may at the same time sue the lessee upon his express covenant, and the assignee upon the privity of estate, though he can have execution against one only. (Woodfall's Landlord and Tenant, 11th edition, 238.) I do not, therefore, consider that this petition can be supported, and I dismiss it with costs.