

Ali Khan Vs. Appadu

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Court : Chennai

Decided On : Oct-29-1883

Reported in : (1883)ILR7Mad304

Judge : Charles A. Turner, Kt., C.J. and ;Kindersley, J.

Appellant : Ali Khan

Respondent : Appadu

Judgement :

Kindersley, J.

1. The plaintiff first sued the defendant, his tenant, on the small cause side of the Subordinate Court to recover rent for the year Vrishu (1881-82) upon a kadapa, or counterpart, alleged to have been executed by the tenant. The Subordinate Judge, believing that the kadapa was a forgery, dismissed the suit. The plaintiff then proceeded under the Rent Recovery Act, but failed. He has now brought this suit against the same tenant for use and occupation of his land, and to recover the costs of his previous abortive litigation. Of course, the plaintiff could not recover the costs of his previous litigation. The question reserved was, whether, having failed in his suit on the kadapa, the plaintiff could bring this fresh suit for use and occupation. An action for use and occupation is always founded on some contract or promise, express or implied. The defendant must have held or occupied the premises as tenant thereof to the plaintiff, or by his permission or sufferance

(Woodfall's Landlord and Tenant). And in the present case it is admitted that the defendant was the plaintiff's tenant. Therefore, as a suit for use and occupation, it amounts to a suit to enforce the terms of a tenancy, and, under Section 7 of the Rent Recovery Act, no such suit can be maintained unless the landlord and tenant have exchanged patta and muchalka, or a proper patta has been tendered, or the parties have agreed to dispense with patta and muchalka.

2. Nothing of the kind has been done in this case; therefore the suit was properly dismissed.

Charles A. Turner Kt., C.J.

3. The respondent was admittedly a tenant, against whom suit had been brought to recover rent and dismissed because the landlord had not tendered a patta. The petitioner cannot now sue for damages for use or occupation. If, as is argued here, the claim for such damages arises out of an implied agreement to pay for the use of the landlord's property (Woodfall's Landlord and Tenant), the Rent Act prohibits the landlord from suits to enforce the terms of a tenancy : if the claim is for damages for wrongful possession, the possession of the tenant was not wrongful.

4. If the landlord were at liberty to maintain such a suit, the provisions of Section 7 of the Rent Act would be defeated; and, if the tenant were entitled to hold at favorable rates, it would be the interest of the landlord to avoid issuing a patta and to obtain damages to the full annual value of the land for the use and occupation of it.

5. The application is dismissed.

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