

Akkamma Shetti Vs. Chandro Shetti

Akkamma Shetti Vs. Chandro Shetti

SooperKanoon Citation : sooperkanoon.com/821094

Court : Chennai

Decided On : Oct-15-1923

Reported in : AIR1924Mad649

Appellant : Akkamma Shetti

Respondent : Chandro Shetti

Judgement :

1. This appeal raises the question whether the respondent the tenant has lost his right to hold possession of the property by forfeiture. The suit was brought by the landlord, the appellant before us, for recovery of rent and also for enforcing the right of forfeiture which he had under the lease-deed for non-payment of rent. The first Court decreed a certain sum of money for rent and directed that if that amount was paid within one month from the date of the decree, the forfeiture would be relieved against: accordingly the tenant paid a sum of over Rs. 200 into Court in time: but unfortunately for him, there was an appeal to the Sub-Court and that Court increased the amount of rent payable by about Rs. 21. The question we have to consider in this case is whether by the decree of that Court, the payment of the Rs. 21 within one month from the date of that Court's decree was a condition precedent to the forfeiture being relieved against or not. The Munsif held that it was, and the money not having been paid in time, he enforced the forfeiture and directed possession to be given to the landlord of the lands in suit. On appeal, the District Judge had held that the decree of the appellate Court is not so clear as to make it necessary to construe it as leading to forfeiture if the extra-money that

was ordered to be paid by that Court was not paid within one month from the date of its decree. The matter is not very clear on the wording of the appellate Court's decree or of its judgment. What the Court said in its appellate judgment after deciding that 'Rs. 21 more should be paid was 'time for payment one month from this date.' That is the last sentence in that judgment but it did not say anything about nonpayment leading to forfeiture being enforced. In the decree that was drawn up, the language used, is not any the clearer. It says 'that the defendants do pay to the second plaintiff within one month from this date Rs. 21 for sundries claimed in the plaint in addition to the money already decreed by the lower Court.' Then it says lower down after making order as to costs 'that in other respects the lower Court's decree is confirmed.' The matter, we think, is left in ambiguity as to whether the non-payment of the extra Rs. 21 would lead to forfeiture or not. In cases of this sort where forfeiture is sought to be enforced by a landlord under the terms of a decree we think it right that he should prove conclusively that the decree which he is executing has given him that right. The Court ought to lean in favour of the tenant against forfeiture rather than in the landlord's favour in such cases. We are not prepared to say that the District Judge is wrong in holding in this case that the decree does not make it clear that forfeiture will be involved if the extra Rs. 21 is not paid within one month. What exactly was meant by a month's time being given is not very clear.

2. In these circumstances, we are not prepared to differ from the District Judge in his construction of the decree. We must therefore dismiss the appeal, but in the circumstances of the case as neither of the parties can be said to be free from fault, we direct that each party do bear his costs throughout.