Kandoth Chathoth Kunhi Raman Nambiar Vs. Cheriyalanthot Aniyath Elambilam Kunhi Kannan Nambiar and ors.

LegalCrystal Citation : legalcrystal.com/807986

Court : Chennai

Decided On : Feb-14-1936

Reported in : AIR1936Mad664; 165Ind.Cas.8

Appellant : Kandoth Chathoth Kunhi Raman Nambiar

Respondent : Cheriyalanthot Aniyath Elambilam Kunhi Kannan Nambiar and ors.

Judgement :

ORDER

Venkatasubba Rao, J.

1. The cases cited by Mr. Nambiar, granting that they have been correctly decided, are easily distinguishable. His contention amounts to this: that a lessee can in a suit for rent claim abatement, however trifling or trivial the deterioration is, that the leased property has undergone. Not one of the cases cited by him lends support to this doctrine. He strongly relies upon the observations of Sir Bernes Peacock, C.J. in two old Calcutta decisions Afsurooddeen v. Mt. Shorooshee Bula Dabee 1863 Marsh 558 and Sheikh Enayetoolah v. Sheikh Elahea Buksh 1864 WR Act 10. In both of them the abatement was allowed on the ground that a portion of the property leased was washed away. The learned' Chief Justice makes the following observation:

We think that the rule is founded on the principles of natural justice and equity, that if a landlord let his land at a certain rent to be paid during the period of occupation, and the land is, by the act of God, put in such a state that the tenant cannot enjoy, the tenant is entitled to an abatement.

2. The two cases to which I have referred were decided in 1863 and 1864 respectively. Sir Bernes Peacock, C.J. quotes with approval the following rule laid down. in Bacon's Abridgment and follows it:

In this place we are to consider whether the tenant shall pay the whole rent, though part of the thing demised be lost, and of no profit to him, or though the use of the whole be for some time intercepted, or taken away without his default; and here it seems extremely reasonable that, if the use of the thing be entirely lost or taken away from the tenant, the rent ought to be abated or apportioned because the title to the rent is founded upon this presumption, that the tenant enjoyed the thing during the contract; and, therefore, if part of the land be surrounded or be covered with the sea, this being the act of God, the tenant shall not suffer by it, because the tenant, without his default, wants enjoyment of part of the thing which was the consideration of his paying the rent;, nor has the lessee reason to complain, because, if the land had been

in his own hands, he must have lost the benefit of so much as the sea has covered.

3. Whether this rule is reconcilable with the law as laid down in the more recent English decisions on the point, such a Matthey v. Curling (1922) 2 AC 180 it is unnecessary for me to enquire. The effect of those decisions is thus stated in Redman's Landlord and Tenant, Edn. 8 (1924) p. 447:

If the thing demised is destroyed or rendered' uninhabitable by fire, flood, tempest, lightning the violence of a mob, or the occupation of an invading Army, the tenant still remains liable for the full rent throughout the remainder of the terms unless the lease contains an express stipulation to the contrary.

4. Sukraj Rao v. Ganga Dayal Singh 1922 63 IC 219 and Salimulla v. Kali Prosonna 1916 33 IC 349;, arose under special Acts and can hardly be relied upon as supporting Mr. Nambiar's contention. In Kunhayan Haji v. Mayan (1894) 17 Mad 98, the case turned upon the express provision of the Transfer of Property Act and has therefore no bearing on the present question. In Subramania Pattar v. Kattambath Rama 1920 43 Mad 132, the learned Judges basing their decision on the two Calcutta cases referred to above, held that where the value of the land leased was inundated by sea water and became unfit for cultivation, the tenant could, in the suit brought to recover rent, claim abatement. This case is like the other cases already mentioned, clearly distinguishable from the case in hand, but I cannot help remarking that there is at least one passage in the judgment which is open to question. The learned Judges observe:

Therefore, even under the Transfer of Property Act, following these authorities, the word 'flood' may have to be restricted to flooding by other than sea water.

5. I fail to see the justification for this restricted meaning of the word 'flood' in Section 108(B) (e), nor am I able to understand how this conclusion follows from even the judgment of the learned Judges. This being an agricultural lease, Section 108(B) (e), T.P. Act does not in terms apply; but it may be contended that by analogy the principle underlying it as a rule of justice and equity may be invoked. But that section requires that any material part of the property, owing to any of the specified causes, should have been wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let; what has been proved here at the most is, that some of the trees on the land perished or decayed in the ordinary course of nature. On such an inadequate ground, a Court acting under Section 108 will not adjudge a lease void. I, therefore, hold that the lower Court's judgment cannot be supported. I accordingly pass a decree for the amount claimed with interest at 6 per cent. per annum from the date of the plaint and full costs here and in the lower Court.