

(1940) 09 MAD CK 0030
In the Madras High Court

Amad Koya and Another

APPELLANT

Vs

Appu and Another

RESPONDENT

Date of Decision : 04-09-1940

Acts Referred:

Citation : AIR 1941 Mad 201 : (1940) 52 LW 849 : (1940) 2 MLJ 935

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—This Civil Revision Petition raises the question whether Section 15 of the Madras Act IV of 1938 can be invoked in favour

of a tenant whose rent is payable to an assignee of rent from a Malabar jenmi. The petitioners here were the applicants in the Court below and they

were the judgment-debtors. The suit was brought by the first plaintiff as assignee of the rent for the period from 1929-30 to 1936-37, his assignor

being the second plaintiff, the jenmi. The assignment was dated 17th February, 1937, and there was a decree dated 9th October, 1939, in favour

of the first plaintiff, the assignee, alone. Defendants applied under Sections 19 and 15 of Act IV of 1938 to scale down this decree.

2. Section 15(1) of the Act begins as follows:

All rent payable by at agriculturist to a landholder or an under-tenure-holder under the Madras Estates Land Act, 1908, or to a jenmi or

intermediary under the Malabar Tenancy Act, 1929, which has accrued for the fasli year 1345 and prior faslis and which is outstanding on the date

of the commencement of this Act shall be deemed to be discharged.

3. Mr. Kuttikrishna Menon for the petitioners has contended that the effect of these words is to give to the tenant a right to scale down the rent,

whether or not it is due to a jenmi or intermediary on the date of the commencement of the Act, provided that in its origin it partakes of the character of rent due to a jenmi or intermediary. It is quite clear that the definitions of the words "jenmi" and "intermediary" in Sections 3(k) and 3(j) of the Malabar Tenancy Act do not include an assignee of the right to collect rents, though under the corresponding provision, Section 3(5) of the Madras Estates Land Act, the term "landholder" does include a person entitled to collect rent. It is not very apparent why an assignee of the right to collect rent in Malabar should have been treated differently from an assignee of the right to collect rent in other parts of the Presidency but the fact remains that the terms "jenmi" and "intermediary" used in this section and in the succeeding Sections 16 and 17 are not extended by any words in the Act so as to include an assignee of the right to collect rents, and the definitions in the Malabar Tenancy Act do not cover such an assignee. It seems to us apparent that, reading Section 15(1) in its plain terms, there must be rent outstanding on the date of the commencement of the Act, which rent must be, as on that date, payable by an agriculturist to a landholder or an under-tenure-holder or to a jenmi or intermediary. If these conditions are not satisfied the section had no application. It may be that the omission of any provision relating to an assignee of a right to collect rent in the case of a Malabar tenancy is a lacuna due to the inadvertence of those who drafted the Act: but, even so, the remedy is the amendment of the Act. Dealing with an expropriatory measure we cannot extend the language so as to expropriate more persons than those actually comprised within its terms. In the present case it seems to us clear that as the arrears with which we are concerned were not outstanding as rent payable to a jenmi or intermediary on the date of the commencement of the Act, the petitioners are not entitled to the benefit of Section 15 of the Act.

4. We may add that to read the term "jenmi" or "intermediary" in Section 15(1) as including an assignee of the right to collect rent would lead to the difficulty that u/s 15(4) there is no provision for notice to such an assignee, and in Sections 16 and 17 the same terms are repeated with reference to safeguarding of certain rights of the landholder and with reference to limitation, which also have not been extended to cover an assignee.

5. In the result, therefore, we dismiss the Civil Revision Petition with costs.