

(1971) 03 MAD CK 0070

In the Madras High Court

Case No : Second Appeal No. 251 of 1969

Amirthalinga Pandarathar and Another

APPELLANT

Vs

Kesavachariar

RESPONDENT

Date of Decision : 05-03-1971

Acts Referred:

Tamil Nadu Cultivating Tenants Protection Act, 1955 — Section 2

Citation : AIR 1972 Mad 253 : (1972) 85 LW 300 : (1971) 2 MLJ 415

Hon'ble Judges : Gokulakrishnan, J

Bench : Single Bench

Advocate : R. Gopalaswami Iyengar, for the Appellant; K. Sarvabhauman and T.R. Mani, for the Respondent

Judgement

1. The defendants are the appellants. The suit was for possession and past and future mesne profits. The facts leading to this appeal are. The properties in plaint A and B schedules in Maduranthagallur belong to the plaintiff who was cultivating the same personally. Under the original of Ex. A-1, registration copy of the mortgage deed, dated 2-9-1962, he usufructually mortgaged the A schedule properties consisting of three items, measuring 1.93 acres, to his sister Thangammal of Kammapuram, 16 miles away from the suit village. The first defendant who was working as kariasthar under the plaintiff and whose services were terminated in the beginning of 1962 due to faction in the village took the lands usufructually mortgaged to the sister of the plaintiff, viz, the A schedule lands, on lease, and cultivated the same. Then he trespassed into the B schedule lands taking advantage of the fact that he was a lessee of the A schedule lands.

The said usufructuary mortgage was discharged on 3-10-1965 but the first defendant who was cultivating the lands of the A schedule as lessee under the usufructuary mortgagee and the B schedule lands as trespasser did not surrender possession of the land to the plaintiff in spite of notice, claiming that he was a cultivating tenant under him in respect of the third item in the A schedule, i.e., 72 cents, having taken it on waram seven years prior to the issue

of the notice under Ex. A-2 dated 31-10-1966. The second defendant claimed to be the cultivating tenant of the remaining two items in the A schedule, i.e., item 1 and 2, measuring 2.21 acres, and the only one item in the B schedule measuring 99 cents since 1961, having taken it on waram from the plaintiff in fasli 1370. The plaintiff denied the claims of the defendants that they were cultivating the lands under him on waram basis or otherwise, and stated that he was entitled to possession of the suit properties.

2. The trial Court found that the first defendant was cultivating the A schedule properties under the mortgagee, Thangammal, that he was not cultivating item 3 of the A schedule under any tenancy agreement, under the plaintiff from fasli 1369 onwards on waram basis, that the 2nd defendant was not cultivating item 1 and 2 of the A schedule and the B schedule property under tenancy agreement with the plaintiff from fasli 1370 on waram basis, that there was no arrangement between the plaintiff and defendants, that the defendants were not cultivating tenants entitled to the benefits of Act XXV of 1955, that the Court of the District Munsif, Chidambaram, had jurisdiction to try the suit, and that the plaintiff was entitled to possession of the properties with past mesne profits of Rs. 2232. In that view, it decreed the suit as prayed for relegating the question of quantum of future mesne profits for decision in separate proceedings.

3. The defendants preferred an appeal to the Sub Court, Chidambaram. The Appellate Court, after elaborately discussing the evidence on record, found that the first appellant took the A schedule properties on lease from the usufructuary mortgagee, Thangammal, and that he did not trespass into the B schedule property thus, the lower appellate court came to the conclusion that since the first appellant is not the waramdar under the respondent, he was a trespasser in respect of 73 cents, of land in the third item of the A schedule, with the result it confirmed the judgment and decree of the trial court. Even though the lower appellate court found that the first appellant did not trespass into the B schedule property, it held that the first appellant is liable for mesne profits even in respect of the B schedule property.

4. Aggrieved by the judgment and decrees of the courts below, the defendants have preferred the above second appeal.

5. The first defendant in his written statement alleged that he never worked as "karvari" under the plaintiff at any time, that there was no faction in the village, that he did not elicit the support of the plaintiff, that he was cultivating 72 cents, which is the third item of the A schedule properties, alone, from fasli 1369 in pursuance of the tenancy agreement between him and the plaintiff, that the alleged usufructuary mortgage did not come into effect and the said Thangammal never enjoyed the suit property, that he (first defendant) has been paying the waram due to the plaintiff, that he has nothing to do with the second defendant, that the plaintiff was not present at the time of the harvest in spite of the first defendant's notice on 30-1-1966, that he also refused to receive the money order sent on 23-2-1966 for his share and that the first defendant has

also paid the kist for the suit year for the third item of the A schedule. The first defendant also contended that he was not cultivating the B schedule property or item 1 and 2 of the A schedule, that he was a cultivating tenant only in respect of the third item of the A schedule from fasli 1369 that he was entitled to the benefits of Act XXV of 1955 and that the trial court had no jurisdiction to entertain the suit.

6. Sri M. Srinivasan the learned counsel for the appellants, submitted that the lower appellate court has not dealt with the matter of lease property, that once the lease is true, even if it be under the mortgagee, the statutory benefits under the Madras Cultivating Tenants Protection Act XXV of 1955 must accrue to the defendants and that with regard to the B schedule properties, the decree cannot be sustained in view of the finding of the lower appellate court.

7. Mr. T. R. Mani, the learned counsel for the respondent-plaintiff, argued that the first appellant is not entitled to the benefits of the Madras Act XXV of 1955, inasmuch as it has been found that he is a tenant only under the mortgagee. According to the learned counsel, a tenant under the mortgagee cannot get the benefits of the Act. He also stated that the first appellant pleaded in his written statement that he was a tenant under the respondent and that since he has pleaded that he is a tenant under the mortgagee, the courts below cannot give relief on the basis that he is a tenant under the mortgagee.

8. In the plaint, the respondent has definitely alleged that the first appellant cultivated the lands as lessee under Thangammal. It is also stated therein that after the discharge of the bogium the first appellant ought to have surrendered possession inasmuch as Thangammal cannot lease out the property beyond the period of redemption of the mortgage. In the written statement, the first appellant stated that he was a cultivating tenant under the respondent in respect of the 72 items and that he has been cultivating the same from fasli 1369 onwards and paying waram regularly to the respondent. In the light of these pleadings, the courts below have found that the first appellant is a tenant not under the respondent, but only under the mortgagee from him.

Thiru T. R. Mani placed before me the decision in AIR 1930 57 (Privy Council) and submitted that no amount of evidence can be looked into upon a plea which was never put forward. In that decision, the plea that was put forward was one of gift from one Hote Khan; but it was in evidence that the gift was made by the widow of Hote Khan, The Privy Council has negatived the evidence as it was not the plea put forth in the written statement. But I do not think the said decision will apply to the facts of this case inasmuch as the plea of put forward, in the pleadings was that the first defendant is a cultivating tenant. The respondent has pleaded that he is not a cultivating tenant under the respondent, but he came as a tenant only under the plaintiff-respondent's mortgagee. Hence the bare fact remains that the first appellant is a "cultivating tenant". The question is whether he is a cultivating tenant under the respondent or under the respondent's mortgagee.

9. In T.S. Govindaraj Vs. A.B. Kandaswami Goundar and Another, , this court has held that a plaintiff cannot be allowed to abandon his own case, adopt that of the defendant and claim relief on that footing, that it would certainly be an unusual thing for a court to allow a plaintiff, who has alleged one state of facts, as against the defendant who has denied that case and alleged another state of facts, to turn round and ask to be allowed to carry on the suit and claim relief on the ground that the defendant's statement of facts is true and his own false.

10. In Subramania Mudaliar Vs. Ammapet Co-operative Weavers Production and Sales Society Ltd., , the principles enunciated in T.S. Govindaraj Vs. A.B. Kandaswami Goundar and Another, , were reiterated by the statement that the plaintiff cannot be allowed to abandon his own case and then turn round and adopt that of the defendants and claim relief on that footing.

11. In Thirumalai Iyengar Vs. Subba Raja, , Jagadisan J., has observed thus:

"I am not unaware of the fact that my finding, namely, that though the suit promissory note is genuine it is supported by consideration only to the extent of Rupees 500 is not the case of either party. The parties took up extreme positions, the plaintiff pleading that he had advanced cash of Rs. 5500 to the defendant and the defendant denying the very execution of the suit promissory note. The duty of the court is to give effect to the inference to be drawn from the evidence on record. The Court is not prevented from recording a finding which may not be consistent with the pleadings of either party in a suit,"

12. In Lakshmiammal v. Sivakamu Natesan, (1969) 82 MLW 589, Natesan J., has held:

"If the Court can find the true and real relationship between the parties, notwithstanding some ornamentation, some exaggeration and some trappings in the cases of the parties, the court should give relief according to the rights found."

In the light of the view taken in the above decisions, it can be inferred that the first appellant, in his anxiety, has over-stated his case as if he is a cultivating tenant under the respondent. Apart from this fact, the plaintiff himself, in his evidence, has stated that Thangathammal's husband Rajagopala Aiyar asked him if he could lease out the properties to the first defendant and that he (plaintiff) said that the bogium properties could be leased out to the first defendant. Again, in his evidence, the plaintiff stated that at the time of the execution of Ex. A-1, his sister, Kangammal, asked him if the bogium properties could be let out to the first defendant and that she asked him so on the date the original of Ex. A-1 was written and he said it could be done. Taking into consideration all these aspects, I am of the view that in the interest of justice it can be safely found that the first appellant took the lease under the mortgagee even though in the written statement the first appellant has alleged that he is the lessee under the respondent-plaintiff.

13. Now, in the light of the above finding, we have to decide as to whether the tenant under a mortgagee can be given the benefits of the Madras Cultivating Tenants Protection Act XXV of 1955.

14. The Madras Cultivating Tenants Protection Act XXV of 1955 defines a "cultivating tenant" u/s 2 (aa) as meaning-

"(1) A person who carries on personal cultivation on such land, under a tenancy agreement, express or implied, and

(2) Includes-

(i) any such person who as is referred to in sub-clause (I) who continues in possession of the land after the termination of the tenancy agreement."

Section 2 (e) gives the definition of "landlord"-

"Landlord in relation to a holding or part thereof means the person entitled to evict the cultivating tenant from such holdings or part."

In *Mangalathachi v. Kalyanasundara Mudaliar*, (1966) 79 MLW 440, Kailasam, J., has held that under the Madras Cultivating Tenants Protection Act, a cultivating tenant is defined as a person carrying on personal cultivation under tenancy agreement express or implied and that a lessee under the usufructuary mortgagee is not entitled to claim the rights of a cultivating tenant as against the mortgagor subsequent to the redemption of the mortgage. In that decision, Kailasam J., took up for decision the question as to whether a tenant who was put into possession of the land by the usufructuary mortgagee, is entitled to claim the rights of a cultivating tenant even after the discharge of the mortgage. There, the counsel for the appellant argued:

"The definition of the word "cultivating tenant" would indicate that the tenancy agreement must be with the landlord and not with the mortgagee who is a transferee only of a portion of the right of the landlord."

In that case, according to the counsel for the respondent-

"The definition of the word "cultivating tenant" does not require that the tenancy agreement, express or implied, should be with the landlord and that, if the tenant was inducted into possession lawfully by a person entitled to possession as by a mortgagee in this case, the second defendant would be a cultivating tenant."

It was also observed in that case that-

"Both the courts have recognised that any agricultural lease created by the mortgagee would be binding on the mortgagor even though the mortgage had been redeemed, provided the mortgagee as a prudent owner entered into the lease agreement in the ordinary course of his management. This is in the nature of an exception to the rule that the mortgagee cannot confer a better title than what he has."

Kailasam, J. has distinguished the Supreme Court decision in Dahya Lal and Others Vs. Rasul Mohammed Abdul Rahim, and held:

"... The section in the Madras Cultivating Tenants Protection Act, is differently worded. Under the Madras Act, a cultivating tenant is defined as a person carrying on personal cultivation under tenancy agreement express or implied, whereas under the Bombay Act a person lawfully cultivating any land belonging to another person shall be deemed to be tenant. Under the Madras Act, there should be a tenancy agreement, express or implied; but under the Bombay Act, it is enough if the person lawfully cultivates any land belonging to another. Thus a tenant under the usufructuary mortgagee who has right to be in possession would be a cultivating tenant under the Bombay Act. The Bombay Act does not require that the person should be cultivating tenant under the landlord. It is sufficient if he is cultivating the land of another person lawfully. Cultivation by a tenant of a land in possession of the usufructuary mortgagee or lessee would satisfy the requirements of the Bombay Act; whereas it will not satisfy the definition of a cultivating tenant under the Madras Act. As already pointed out, the Madras High Court has taken the view that the tenancy agreement must be with the landlord. A person would not normally be entitled to transfer any right to which he is not entitled. An usufructuary mortgagee can only be in possession till the redemption of the mortgage. He cannot confer the right on a tenant to be in possession for a longer period. To hold that the mortgagee can confer on his tenant the right of a cultivating tenant would mean that he can transfer higher rights that he has and deprive the mortgagor of his right to possession. Unless the words in the statute are clear and specific this construction will not be justified."

15. Finally, Kailasam, J. has held that a lessee under a usufructuary mortgagee is not entitled to claim the rights of a cultivating tenant as against the mortgagor subsequent to the redemption of the mortgage.

16. In this decision, Kailasam, J. referred to the decision in Ramasami Naidu v. Marudaveera Moopan 1959 1 MLJ 25, where Balakrishna Aiyar, J. has held:

"I am unable to accept the contention.... that a sub-lessee can claim the benefits of this Act (Madras Cultivating Tenants Protection Act). A tenancy agreement means an agreement creating a tenancy and when we speak of a tenancy we normally understand that there is on the one side a landlord and, on the other side, a tenant or lessee. In relation to sub-lessee we do not usually use the term tenancy agreement; instead we speak of the assignee of a lease. It will also be appreciated that if the contention (of....) were right, it would be possible for a lessee to create rights larger than he himself has and normally a construction which produces such a result should not be accepted. No doubt in some statutes the word "tenant" is used to include a sub-lessee or an assignee from a lessee..... But it is equally clear that in other enactment the word "tenant" does not include an assignee from the original tenant..... Whether a sub-lessee is included or excluded from the scope of the word tenant occurring in a

particular enactment must, therefore, it seems to me, be ascertained by examining the context in which the word is actually used. When we read again the definition of "cultivating tenant" in clause (a) of Section 2 we find that it is intended to take in (1) a person in whose favour the agreement of tenancy has been made; and (2) the heirs of such person. It is distinctly provided that an intermediary or his heirs are not included. The expression "heirs, legal representatives and assigns" is a very familiar one. When, therefore, the Legislature said that the "heirs of such person" shall be deemed to be tenants but did not at the same time include "his heirs, legal representatives or assigns" in that category the inference must be that it did not want to confer the benefit of the Act on the legal representatives or assignees of the original lessee. Otherwise, it will be hard to explain the omission of the word "legal representatives and assigns."

17. Thus, it is seen that Balakrishna Iyer, J. has discussed the right of a sub-lessee to claim protection under the Madras Cultivating Tenants Protection Act. A sub-lessee is not a tenant under the landlord, and a lessee cannot come under the definition of a "landlord" occurring in Section 2 (e) of the Act.

18. In Kathaperumal Padayachi Vs. Muthiah Odayar, , a Bench of this Court has held-

"Where a person takes land on lease from the owner and sub-leases a part to another, the sub-lessee, if he satisfies the conditions of the definition of "cultivating tenant" under S. 2 (a) of the Madras Cultivating Tenants Protection Act, will be entitled to the protection of the Act as against his lessor, viz., the chief tenant. But the sub-lessee cannot have any rights as against the head lessor as there is neither privity of estate nor privity of contract between the head lessor and the sub-lessee. The chief tenant, ordinarily stands in the same relationship to the sub-tenant as his own landlord stands towards him. But the head lessor's rights will not be affected by the sub-lease and the sub-tenant's right will stand or fall with the right of the chief tenant.

So long as the main lease is subsisting, the sub-tenant will have all the rights secured to him under the contract between him and his own lessor as well as those rights which the statute give him as against his lessor. When the title of the main lessee terminates on the expiry of the term, the sub-lessee's right to remain in possession automatically comes to an end, notwithstanding the fact that his right to possession was given under the statute, as the sub-tenant cannot have any higher right than what his lessor had."

19. Thus, in this decision, it has been made clear that a sub-lessee under the chief tenant cannot get the rights of a "cultivating tenant" under the Madras Cultivating Tenants Protection Act.

20. In Ganapathi Iyer v. Ayyakannu 1961 1 MLJ 217 a Bench of this court has held:--

"An under-lessee or a person deriving title through a "cultivating tenant" is not a "cultivating tenant" within the meaning of S. 2 (a) of the Madras Cultivating Tenants Protection Act. A cultivating tenant enjoying the privileges of the enactment is only a statutory tenant in respect of whom and in whose favour it is impossible to conceive of an estate between himself and the landlord. The statutory tenant has only the statutory rights conferred upon him by the special enactment.

An under-lessee from such a statutory tenant cannot claim to have any interest in the land derived from the cultivating tenant as such interest as is conferred upon the cultivating tenant is purely personal to him and his heirs. If the cultivating tenant himself cannot be supposed in law to have any estate as between himself and the head lessor much less can the sub-lessee claim any interest in himself. Section 2 (a) of the Act ought not to be so construed as to result in the under-lessee becoming a permanent tenant on the land without danger or apprehension of his being evicted from his holding. The rule of statutory interpretation even when the words of the statute are plain, will enable a court to avoid a construction which will result inconvenience, injustice or absurdity."

Thus, even in this case, the rights of an under-lessee of the cultivating tenant are considered and a finding has been given that he cannot come under the definition of "cultivating tenant" under the Act.

21. But, in the present case, it is clear from the allegations in the plaint that the first appellant got into possession of the suit lands as lessee under the usufructuary mortgagee. Hence the decisions in 1959 1 MLJ 25 : 1961 1 MLJ 217 and Kathaperumal Padayachi Vs. Muthiah Odayar, , may not have bearing on the facts and circumstances of this case. But in (1966) 79 MLW 440, Kailasam, J. has specifically held that a lessee under a usufructuary mortgagee is not entitled to claim the rights of the "cultivating tenant" as against the mortgagee (mortgagor?) subsequent to the redemption of the mortgage. While deciding so, Kailasam, J. has referred to the abovesaid decisions which, in my opinion, may not have much bearing on the facts and circumstances of the present case and also of the case decided by Kailasam, J.

22. In Mahabir Gope and Others Vs. Harbans Narain Singh and Others, , the Supreme Court, while holding, in the circumstances of that case, that the appellants therein as tenants cannot get the rights of "settled raiyats" under the Bihar Tenancy Act, found-

"A permissible settlement by a mortgagee in possession with a tenant in the course of prudent management and the springing up of rights in the tenant conferred or created by statute based on the nature of the land and possession for the requisite period is a different matter altogether. It is an exception to the general rule. In such a case the tenant cannot be ejected by the mortgagor even after the redemption of the mortgage. He may become an occupancy raiyat in

some cases and a non-occupancy raiyat in other cases. But the settlement of the tenant by the mortgagee must have been a bona fide one.

This exception will not apply in a case where the terms of the mortgage prohibit the mortgagee from making the settlement of tenants on the land either expressly or by necessary implication. Where, for example, all the zamindari rights are given to the mortgagee, it may be possible to infer on the proper construction of the document that he can settle lands with tenants in the ordinary course of management and the tenants might acquire certain rights in the land in their capacity as tenants."

23. In Harihar Prasad v. Deonarain Prasad, AIR 1956 SC 305 it has been decided-

"A person cannot confer on another any right higher than what he himself possesses and, therefore, a lease created by a usufructuary mortgagee would normally terminate on the redemption of the mortgage. Section 76(a) (Transfer of Property Act, 1882) enacts an exception to this rule. If the lease is one which could have been made by the owner in the course of prudent management, it would be binding on the mortgagors, notwithstanding that the mortgage has been redeemed. Even in such a case the operation of the lease cannot extend beyond the period for which it was granted."

24. In Dahya Lal and Others Vs. Rasul Mohammed Abdul Rahim, it has been held:--

"A tenant of the mortgagee in possession is inducted on the land in the ordinary course of management under authority derived from the mortgagor and so long as the mortgage subsists, even under the ordinary law he is not liable to be evicted by the mortgagor. It appears that the legislature by restricting the exclusion to mortgagees in possession from the class of deemed tenants intended that the tenant lawfully inducted by the mortgagee shall on redemption of the mortgage be deemed to be tenant of the mortgagor. In our view, therefore, the High Court was right in holding that the respondent was entitled to claim the protection of the Bombay Tenancy and Agricultural Lands Act, 1948, as a deemed tenant."

25. In Prabhu Vs. Ramdev and Others, , the Supreme Court again reiterated the principle laid down in Mahabir Gope and Others Vs. Harbans Narain Singh and Others, and Dahya Lal and Others Vs. Rasul Mohammed Abdul Rahim, by stating:--

"A permissible settlement by a mortgagee in possession with a tenant in the course of prudent management and the springing up of rights in the tenant conferred or created by a statute based on the nature of the land and possession for the requisite period, it was observed, is a different matter altogether. Such a case is clearly an exception to the general rule prescribed by the Transfer of Property Act. It will thus be seen that while dealing with the normal position under the Transfer of Property Act, this court specifically pointed out that the

rights of the tenants inducted by the mortgagee may conceivably be improved by virtue of statutory provisions which may meanwhile come into operation. That is precisely what has happened in the present case. During the continuance of the mortgage, Section 15 of the Act came into operation and that made the respondents Khatedars who are entitled to claim the benefit of Section 161 of the Act."

26. From the various decisions of the Supreme Court above noticed, it is seen that a tenant inducted into possession of the land by the mortgagee in the course of prudent management, can get the rights conferred under a Statute which may meanwhile come into operation. The decision in (1966) 79 MLW 440 does not accept the said view. As a matter of fact, it distinguished *Dahya Lal and Others Vs. Rasul Mohammed Abdul Rahim*, on the ground that the Bombay Act, which is the subject-matter of the said Supreme Court decision, is different from the Madras Cultivating Tenants Protection Act, *Kailasam, J.* in (1966) 79 MLW 440 held that under the Madras Cultivating Tenants Protection Act, a cultivating tenant is defined as a person carrying on personal cultivation under tenancy agreement express or implied, whereas under the Bombay Act a person lawfully cultivating any land belonging to another shall be deemed to be tenant.

Holding that a mortgagee cannot be the owner, or the landlord, of the land in his possession under a mortgage, the learned judge has referred to the decisions in 1959 1 MLJ 25 and *Kathaperumal Padayachi Vs. Muthiah Odayar*, . In my opinion, these two decisions and also the decision in 1961 1 MLJ 217 are cases in which a chief tenant or a chief lessee sublets to a third party; in such circumstances, it has been held that a sub-lessee is not a tenant under the landlord and a lessee cannot come under the definition of "landlord" occurring in S. 2 (e) of the Madras Cultivating Tenants Protection Act.

27. As already noticed, Section 2 (aa) of the Act states that a "cultivating tenant" in relation to any land means a person who carries on personal cultivation on such land under a tenancy agreement express or implied. As far as the present case is concerned, the first appellant carries on personal cultivation in respect of the third item of the A schedule properties under a tenancy agreement. According to the respondent, the tenancy agreement the first appellant has, is only with the mortgagee. But according to the first appellant, it is with the respondent himself. The question arises whether the tenancy agreement can be deemed to be with the landlord as defined in Section 2 (e) of the Act. "Landlord in relation to a holding or part thereof meaning the persons entitled to evict the cultivating tenant from such holding or part." Assuming that the first appellant is a tenant under the mortgagee can evict him from such holding. In my opinion, the definition of "landlord" is wide enough to include the mortgagee also who has a right to evict the cultivating tenant from the holding.

28. In S. A. No. 1091 of 1959 and C. R. P. 264 of 1958 (Mad.), *Ganapatia Pillai, J.*, while dealing with the definition of "cultivating tenant" under S. 2 (a), has observed-

".... there is no indication in the definition as to who should be the person competent to enter into a tenancy agreement representing the landlord's interest".

The learned Judge has further observed:

"A landlord is defined in relation to a holding or part thereof as the person entitled to evict the cultivating tenant from such holding..... It is clear, having regard to the scope of the legislation and the provisions of the Act, that the letting of the land by Venkalakshmi to the appellant had the effect of converting Samiappan into a cultivating tenant entitled to the benefit of non-eviction except under the provisions of the Act."

It is clear that a mortgagee stands on a different footing than a lessee and a tenant. As regards the lessee, he himself is a cultivating tenant having taken the land for his personal cultivation. Any sub-tenant under him cannot have the benefits of a "cultivating tenant". The decision in (1966) 79 MLW 440 deals only with cases of the rights of a sub-tenant in relation to the lessee. But as per the present Amendment to the Madras Cultivating Tenants Protection Act, a sub-tenant shall be deemed to be a "cultivating tenant" of the holding under the landlord if the lessor of such sub-tenant has ceased to be the tenant of such landlord. Thus, a sub-tenant who is actually cultivating the land, gets the protection of the Act as at present. As far as the facts of the present case are concerned, it can be safely presumed, even assuming that the first appellant got the lease from the mortgagee, that the mortgagee has, in the course of prudent management, leased the land to the first appellant. Nevertheless, I find difficulty in holding that the first appellant gets the benefit of the Act in view of the decision in (1966) 79 MLW 440.

Even though I am of the view, considering the principle enunciated in the Supreme Court decisions noticed above, that a tenant under the mortgagee, in the present circumstances of the case, gets the benefit of a "cultivating tenant" under the Act, I am not able to decide the case on that point in view of the direct decision in (1966) 79 MLW 440. Since the Supreme Court decisions can be applied only on principles, I cannot override the decision in (1966) 79 MLW 440 which is direct to the issue in question in this case. It is for a Division Bench to decide this question as and when occasion arises. For my part, I am not placing this case before my Lord, the Chief Justice for the purpose of referring the question to a Division Bench, since I am inclined to allow the appeal on a different point.

29. According to the plaint allegations, the usufructuary mortgagee Thangammal permitted the first appellant to cultivate the lands as lessee during the currency of the mortgage and the first appellant's status as "cultivating tenant" became extinguished by reason of the discharge of the mortgage. The trial court found that the respondent's case that the first appellant was cultivating the A schedule properties under the mortgage is probable. The lower appellate court found that

the first appellant took the A schedule properties on lease from the usufructuary mortgagee Thangammal. According to Section 2(aa) of the Madras Cultivating Tenants Protection Act, "cultivating tenant" must carry on his personal cultivation; there must be a tenancy agreement and the said tenancy agreement may be express or implied. The definite case of the first appellant is that he is cultivating 72 cents, which is the third item of the A schedule properties alone from fasli 1369 in pursuance of the tenancy agreement between him and the plaintiff. Both the courts below have not discussed the evidence of P. W. 1, who is the plaintiff in the suit, in relation to the definition of "cultivating tenant". P. W. 1 has specifically admitted that his mortgagee's husband Rajagopala Iyer asked him whether he could lease the property to the first appellant and to that P. W. 1 said that the bogium property could be leased to the first appellant.

In another place, P. W. 1 has specifically admitted that at the time of the execution of Ex. A-1, his sister Mangalammal asked him whether the bogium property could be leased to the first appellant and to that he, the plaintiff, said it could be done. From these admissions, it can be easily inferred that the plaintiff impliedly agreed to have the first appellant as the "cultivating tenant" in relation to the third item of the A schedule properties and that only on the acceptance of the plaintiff, the first appellant was let into possession of the said item as cultivating tenant. The Madras Cultivating Tenants Protection Act is intended to protect the interests of the actual tiller of the soil. There is absolutely no doubt that the first appellant is actually cultivating the abovesaid item and that the plaintiff agreed for the leasing out of the said item to the first appellant. Considering the pleadings with reference to the admissions made by the plaintiff, it is clear that the first appellant satisfied the definition of "cultivating tenant" occurring in the Madras Cultivating Tenants Protection Act. Since the first appellant claims the right to be the cultivating tenant only in respect of the 72 cents in the third item of the A schedule properties, it can be safely accepted that the first appellant is the cultivating tenant in respect of the said item of property and that he is entitled to have the protection of the Act.

30. In this view, I allow the appeal of the first appellant holding that he is entitled to be in possession of 72 cents of land forming item 3 of the A schedule properties as cultivating tenant.

31. As far as the second appellant is concerned, both the courts below have concurrently found that he has not proved his tenancy agreement, implied or express. There is absolutely no admission by P. W. 1 as regards the status of the second appellant. Hence his appeal is dismissed.

32. The lower appellate court also found that the first appellant did not trespass into the B schedule property. Nevertheless, it has granted mesne profits even in respect of this property. I do not think the judgment of the lower appellate court can be sustained in respect of granting mesne profits for the alleged occupation of the B schedule property. The judgment and decree of the lower appellate court are set aside to the extent it has granted mesne profits in favour of the plaintiff

in respect of the B schedule property.

33. In the result, the second appeal is allowed as far as the first appellant is concerned regarding item 3 of the A schedule and the same is dismissed as regards the second appellant. There will be no order as to costs in the second appeal. No leave.