

(1950) 02 MAD CK 0030

In the Madras High Court

Case No : Civil Revision Petition No. 2050 and Civil Miscellaneous Petition No. 10307 of 1949

Avarenkal Kunhayadru and Others

APPELLANT

Vs

Olankara Ali Kutty

RESPONDENT

Date of Decision : 25-02-1950

Acts Referred:

Madras Tenants and Ryots Protection Act, 1946 — Section 2

Citation : AIR 1950 Mad 559 : (1942) 55 LW 398

Hon'ble Judges : Panchapakesa Ayyar, J

Bench : Single Bench

Advocate : S.R. Subramaniam, for the Appellant; D.A. Krishna Variar, for the Respondent

Final Decision : Dismissed

Judgement

Panchapakesa Ayyar, J.—I see no reason to interfere in revision. The petitioner is clearly a usufructuary mortgagee and not an "intermediary" also, as in the case in K.V. Govindan Nair and Another Vs. Appukutty, . So the lower Court is not proved to have erred in law in refusing a stay as the petitioner would not be a tenant under Act XVII [17] of 1946. The learned counsel for the petitioner relies on the ruling of Subba Rao J. in A. Unnooli Vs. M. Subramaniam and Another, . There also, the usufructuary mortgagee was held to be a tenant as he was an "intermediary" and so got in under that category. The petitioner here is a mere usufructuary mortgagee or panayamdar in possession as in the case in Kunhamu v. Raman Nambissan, in C. R. P. No. 1253 of 1948 wherein Subba Rao J. himself held that such panayamdars will not be tenants under Act XVII [17] of 1946.

2. The learned counsel for the petitioner urged that it was against logic and common sense to hold that a usufructuary mortgagee in possession will not be a tenant under Act XVII [17] of 1946 but that he will become such a tenant if he leases out the land and becomes an "intermediary." I see nothing contrary to logic and commonsense in this. An alien living here may not be a citizen but his

son born here may be, or even he may become a citizen if he does certain acts like staying here for some years etc. And besides, law need not always conform to logic and commonsense. Petition dismissed. No order as to costs in the peculiar circumstances.

3. C. M. P. No. 10307 of 1949 (For stay): Dismissed. No order as to costs.