

(1943) 01 MAD CK 0016
In the Madras High Court

Chennamangalath Manakkal Vasudevan Nambudripad	APPELLANT
Vs	
Ambujakshi and Others	RESPONDENT

Date of Decision : 28-01-1943

Acts Referred:

Malabar Tenancy Act, 1929 — Section 15(3)

Citation : AIR 1943 Mad 524 : (1943) 56 LW 315 : (1943) 1 MLJ 393

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—The plaintiff sued to evict his tenants, defendants 1 to 6, from the land in suit. The tenancy was an oral

one and was from year to year. The relief was asked for because the tenants had failed to pay the rent due for several years. In addition to asking

for a decree for eviction the plaintiff asked for a decree for a sum equivalent to the rent due for three years preceding the suit.

2. The tenants were members of a tarwad and before the suit was instituted they had separated. On separation, defendants 1, 3 and 6 sub-let a

portion of the land in suit to the eighth defendant, who subsequently assigned his sub-tenancy to the seventh defendant. The suit was not defended

and a decree directing the eviction of defendants 1 to 6 and the payment to the plaintiff of the three years' rent was passed. Notwithstanding that

none of the defendants had resisted the suit the seventh defendant filed an appeal. At the hearing she said that she was prepared to pay the amount

of the rent due and on this basis asked for the dismissal of the suit under the provisions of Section 15 (3) of the Malabar Tenancy Act, 1929. The

Subordinate Judge held that she was entitled to the benefit of Section 15 (3) and accordingly allowed the appeal on the condition that she

deposited the amount decreed by the trial Court. This appeal is from the decision of the Subordinate Judge. Two questions are said to arise,

namely, (1) whether a sub-tenant can claim the benefit of the provisions of Section 15 (3), and (2) whether an appellate Court can for the first time

grant relief under that section when no deposit of rent was made in the trial Court.

3. Section 14 of the Act states that no suit for eviction of a cultivating vemmpattamdar from his holding shall lie at the instance of his landlord

except on the grounds set out in the section. There are seven grounds mentioned and the third is that the tenant has not paid within three months

after the due date, the whole or any portion of the rent due in respect of the holding. Sub-section (3) of Section 15 reads as follows:

In any suit in which eviction is claimed on the ground specified in Clause (3) of Section 14, if the tenant deposits in Court, for payment to the

plaintiff in the suit, (i) the amount of rent due with interest thereon at the contract rate, if any; (ii) interest on the principal amount of the rent due at

12 per cent, per annum from the date of suit up to the date of deposit; and (iii) the costs of the plaintiff up to that date, the Court shall dismiss the

suit.

It is to be observed that Section 14 (3) and Section 15 (3) relate to a suit between the landlord and his tenant. If it is not a suit between the

landlord and his tenant then Sub-section (3) of Section 15 does not come into operation. Clause (0) of Section 3 defines ""landlord"" as a person

under whom a tenant holds and to whom he is liable to pay rent or michavaram, and includes a jenmi. Clause (v) of this section defines ""tenant"" as

a person who has paid or has agreed to pay rent, or other consideration, for his being allowed by another, to enjoy the land of the latter, and

includes art intermediary, a kanomdar, a kuzhikanomdar and a verumpattamdar of any description. The word ""landlord"" in Section 14 therefore

means the person to whom the tenant is liable to pay rent.

4. The seventh defendant was never a tenant of the plaintiff and in bringing this suit the plaintiff did not sue as her landlord, but as the landlord of

defendants 1 to 6. They were the persons who owed the rent and they were the persons who were entitled to take advantage of Section 15 (3),

but they did not wish to do so. Section 15 (3) does not empower the seventh

defendant to deposit in Court the rent due to the plaintiff because she was not the tenant of the plaintiff. If it had been a suit instituted by defendants 1, 3 and 6, who were the landlords of the seventh defendant within the meaning of Section 14 to recover from her the rent for the portion occupied by her as their tenant, she would have been able to avail herself of Section 15(3), but the suit was not by them, but by the landlord of defendants 1 to 6. The Subordinate Judge erred in holding that Section 15 (3) applied in this case.

5. In this view it is not necessary to decide the second question referred to.

6. The appeal must be allowed with costs here and before the Subordinate Judge.