

(1944) 01 MAD CK 0016
In the Madras High Court

Chirayath Konikkara Palu alias K.V. Paul	APPELLANT
Vs	
Venkittarama Pattar's son Easwara Ayyar	RESPONDENT

Date of Decision : 03-01-1944

Acts Referred:

Citation : AIR 1944 Mad 267 : (1944) 57 LW 148

Hon'ble Judges : Happell, J

Bench : Division Bench

Judgement

Happell, J.—The question in C. M. S. A. No. 179 of 1943 is whether the appellant- and the appellant is the same in both appeals- is entitled

to the benefits of Section 33, Malabar Tenancy Act. Section 33 of the Act is as follows:

In any suit for eviction relating wholly or in part to a kudiyruppu, which has been in the continuous occupation of a tenant or the members of his family to ten years on the date of the institution of the said suit, such tenant shall be entitled to offer to purchase the rights in the kudiyruppu, of the landlord who seeks to evict him, at the market price on the said date.

The kudiyruppu in question in this appeal is a very small part of a large property mortgaged to the plaintiff-respondent by the holder of a

permanent lease from the landlord. The mortgage was a usufructuary mortgage and the respondent brought the suit out of which this appeal arises

to evict the appellant and his mortgagees from the kudiyruppu.

2. A certain Ramanatha Aiyer held a permanent lease of the suit kudiyruppu from the respondent's mortgagor and he gave an oral lease of the

kudiyruppu to one Velu Pillai who in his turn in 1929 executed a usufructuary mortgage in favour of the appellant. In 1937 he assigned his lease to

the appellant. The position therefore of the appellant, and the dates are relevant to the decision of this appeal, was that he was a usufructuary

mortgagee in possession of the suit kudiyruppu from 1929 to 1937 and from 1937 to the date of suit in 1942 he was the assignee of the lease. The

learned Subordinate Judge dismissed the application and consequently remanded the suit for the ascertainment of the value of the improvements on

the ground that a usufructuary mortgagee was not a tenant within the meaning of the Malabar Tenancy Act and that consequently the appellant had

not been in continuous occupation of the kudiyruppu for a period of ten years so as to entitle him to the benefits of Section 33.

3. Learned Counsel for the appellant concedes that the learned Subordinate Judge was right in his view that a usufructuary mortgagee . was not a

tenant within the meaning of the Malabar Tenancy Act. He argues however that in the present case the appellant from 1929 to 1937 was a tenant

because a privity of estate between himself and Ramanatha Aiyer was created by the usufructuary mortgage since by reason of it he was liable to

pay rent to Ramanatha Aiyer. This contention is based on English decisions which need not be referred to. It cannot be sustained in the light of the

decision of a Bench of this Court in Thethalan v. Eralpad Raja, Calicut AIR 1918 Mad. 425. The appellant would not have been liable to pay rent

to the landlord of his mortgagor.

4. It has also been argued by learned Counsel for the appellant that, even if the appellant was not a tenant within the meaning of the Act between

1929 and 1937, he would still be entitled to the benefits of Section 33 for the reason that he was a tenant when he made the application in 1942

and had been, on the date of his application, in continuous occupation for more than ten years. This contention appears to receive some support

from Govindan Nair's Commentary on the Malabar Tenancy Act. On p. 402 it is stated that what is required is ten years continuous occupation

and that a change in the character of the possession will not effect any break in the occupation. From the illustration given, the view of the author

would seem to be that, provided there has been continuous occupation for more than ten years, there is no necessity for the occupation to have

been throughout in the capacity of a tenant. It seems to me that the words ""continuous occupation of a tenant"" mean what they say and that a

person who applies must not only be a tenant on the date of the application but must be a tenant throughout the required period of ten years of

continuous occupation. This seems to be what the words of the section mean and is in conformity with what may be deemed to have been the

intention of the Legislature. As learned Counsel for respondent points out, if the character of the possession does not matter, it would be possible

for a person, who had been in possession as a trespasser for nine years and 364 days but had obtained an assignment of the lease on the day

before he made the application, to claim the benefits of the section.

5. C.M.S.A. No. 179 of 1943 therefore fails, and as the other Appeal No. 435 of 1943, which was from the order of remand necessarily follows

the result in C. M. S. A. No. 179 of 1943, both appeals must be dismissed. There will be one set of costs in C. M. S. A. No. 179 of 1943. Leave

to appeal is refused.