
(1951) 03 MAD CK 0042
In the Madras High Court
Case No : A.A.A.O. No. 152 of 1949

Chonthan Veetil Moidin Kutty Musaliar	APPELLANT
Vs	
Vallikat Kunhi Krishnan and Others	RESPONDENT

Date of Decision : 20-03-1951

Acts Referred:

Malabar Tenancy Act, 1930 — Section 33

Citation : AIR 1951 Mad 995 : (1951) 64 LW 677 : (1951) 2 MLJ 165

Hon'ble Judges : Balakrishna Ayyar, J

Bench : Single Bench

Advocate : K. Kuttikrishna Menon, for the Appellant; N. Sundara Iyer, for the Respondent

Final Decision : Allowed

Judgement

Balakrishna Ayyar, J.—This appeal raises a question under the Malabar Tenancy Act which does not appear to be covered by authority. This is how the matter arises.

2. The appellant who was the plaintiff filed a suit under the Malabar Tenancy Act to evict the defendants from certain premises described in the schedule to the plaint. In column 7 of the schedule the property is described as having a perimeter of 24-8 koles. In the next two columns the dimensions of the entire property are given as 7 3/4 by 11 1/2 "carpenter"s koles, that is to say, the property set out in the schedule consists of the house with apparently a little space round it. The defendants countered the plaintiff"s demand by claiming that the property was kudiyruppu and offering to purchase it u/s 33 of the Malabar Tenancy Act. Their claim was upheld and the courts below permitted the defendants to purchase property measuring 7 3/4 by 11 1/2 "six feet" koles. To avoid confusion it may be stated at once that the dimensions given in the schedule to the plaint are in terms of carpenter"s koles whereas the property which the defendants have been permitted to buy are in terms of six feet koles. A carpenter"s kole is roughly a yard long. The courts below are not wholly

unaware that the property which they allowed the defendants to buy u/s 33 was in excess of the property included in the plaint. But they seem to have considered that, nevertheless, the direction they gave was in order.

3. Section 3(m)(1) defines kudiyruppu thus, "Kudiyruppu means and includes the site of any residential building, the site or sites of other buildings appurtenant thereto, such other lands as are necessary for the convenient enjoyment of such residential buildings, and the easements attached thereto".

The commissioner's report in this case shows that for the convenient enjoyment of the house it was essential that the defendants should be allowed to purchase the area they were actually allowed to buy by the courts below.

4. Section 33 runs 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 for 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 learned Subordinate Judge considered that u/s 33 of the Malabar Tenancy Act, a tenant is entitled to purchase the landholder's rights in the entire kudiyruppu, even in those cases where the suit for eviction relates only to a portion of that kudiyruppu. It seems to me that this view of the learned Subordinate Judge is erroneous. Section 33 provides for two classes of suit : (1) suits for eviction, relating wholly to a kudiyruppu, and (2) Suit for eviction relating in part to a kudiyruppu. Such suits in the former category would comprise the kudiyruppu not necessarily the whole of it--and nothing more. Suits in the latter category would include the kudiyruppu plus something else. The error of the Subordinate Judge lay in this : He construed the words "suits.....relatingin part to a kudiyruppu" as meaning a suit relating to a part of a kudiyruppu, which is not what the Act says. Not merely that. The word "Kudiyruppu" occurs in two places in Section 33 of the Act. In the first part of the section where it occurs, the article "a" precedes the word "Kudiyruppu". In the latter part the article "the" precedes the word. The right given to the tenant is the right to buy the kudiyruppu which naturally means the aforesaid kudiyruppu, that is to say, the kudiyruppu in respect of which the action has been brought.

5. There is another objection to the view taken by the learned Subordinate Judge. It is familiar knowledge that a Court has no jurisdiction to make an order in respect of properties not included in the suit before it, and established practice confirms that view. The interpretation placed on Section 33 by the Subordinate Judge is at variance with principle and practice.

6. Mr. Sundara Iyer, the learned advocate for the respondents argued that for the more effective and convenient enjoyment of the house it might be necessary to

give the tenant something more than what is included in the subject matter of the suit. That may be so. But the answer to this is that there is nothing in Section 33 which empowers a Court to make an order in respect of properties not included in the suit before it.

7. In the result, the civil miscellaneous second appeal is allowed with costs. The defendants will be entitled to buy only the property included in the suit. The application is remanded to the trial Court in order that the value of the property included in the schedule to the plaint which alone I consider the defendants are entitled to buy may be determined.