

(1893) 09 MAD CK 0016
In the Madras High Court

Chowter Unhamma Devi

APPELLANT

Vs

Vaikunta Hegde and Others

RESPONDENT

Date of Decision : 18-09-1893

Acts Referred:

Citation : (1894) ILR (Mad) 218

Judgement

1. This was a suit brought by appellant to eject respondents. Both courts concur in finding that respondents Nos. 2 to 4 are, and have long been, in

possession as tenants. Their case was that they were mulgeni tenants and they set up their mulgeni right in 1880 long prior to the suit. The District

Munsif considered that they did not prove the mulgeni right but, on appeal, the judge thought it unnecessary to determine the question. But both

courts found that no notice to quit had been served upon respondents Nos. 2 to 10, and upon that finding, the judge dismissed the suit with costs.

For appellant it is contended that as respondents set up a mulgeni right, he was absolved from his obligation to give them notice to quit. There is no

doubt that a tenant from year to year is entitled to reasonable notice. So it was held in *Abdulla Rawutan v. Subbarayyar*, I. L. R 2 M 346 the

reason being that the duration of a tenancy from year to year is indefinite and that it is part of the landlord's case to show that he had determined

the tenancy prior to suit by sufficient notice to quit. Nor is there any doubt that the tenant forfeits this right to notice by denying the landlord's title

prior to suit. It is also settled law that the denial of title for the first time in the suit does not disentitle the tenant to notice, for the reason that the

plaintiff is bound to show that at the date of suit he had a complete cause of action; and subsequent denial of title, even if false, does not release the

landlord from proving his case or amount to a waiver by the defendant of his right to notice, *Subba v. Nagappa*, I. L. R 12 M 354 The question therefore arising for decision is whether setting up a mulgeni right is a disclaimer of title such as disentitles to notice. As far as we are aware, this is the first time this question arises in this Court. When a mulgeni right is set up, the landlord's title is, in fact, not denied; on the other hand, the relation of landlord and tenant is admitted; what is denied being the particular kind of tenancy under which the tenant holds possession. This denial includes no doubt a denial of the contract or the tenure under which the tenant commenced to hold, but it is not, we think, on that ground a denial of title. As pointed out in *Woodfall's Landlord and Tenant*, (13th Edition), page 325, there must be direct repudiation of the relation of landlord and tenant or an assertion of facts which are, either expressly or by necessary implication, incompatible with the existence of such relation. For the appellant, however, our attention is drawn to *Vivian v. Moat*, L. R 16 Ch. D 730 and to the observations of Justice Fry. The ground of decision in that case was that the claim to hold at a customary rent was inconsistent with the ordinary relationship of landlord and tenant, and that it amounted to a suggestion that the landlord, was not an ordinary landlord but either lord of the manor or owner of some other right which gave him a right to customary rent and to nothing more. We cannot say that in the case of a mulgeni in South Canara, the Landlord is in the position of a lord of the manor in England or that the rent reserved is not often substantial. The tenures are not alike and we do not think it safe to extend the rule laid down in *Vivian v. Moat* to this country especially as the rule is substantially one of forfeiture. The High court at Calcutta considered that *Vivian v. Moat* was not applicable in Bengal, in *Kali Krishna Tagore v. Golam Ally*, I. L. R 13 C 248 It was also held by the Bombay High Court in *Haji Sayyad v. Venkta*, I. L. R 15 B 415 that the defendant's unsuccessful attempt to prove himself a mulgenidar did not exonerate the plaintiff from proving the lawful determination of the chalgeni holding. The decision of the judge is right and we dismiss the second appeal with costs.