

(1928) 01 MAD CK 0038
In the Madras High Court

Eranhikal Talappil Moosa Kutty

APPELLANT

Vs

Kozhikote Puthia Kovilakath Thekke

RESPONDENT

Date of Decision : 06-01-1928

Acts Referred:

Citation : AIR 1928 Mad 687 : 110 Ind. Cas. 398

Judgement

1. The contention of the appellant is that no notice was given to the appellant terminating the tenancy. It is contended for the respondent that the

terms of the tenancy were such that no notice to quit was necessary as a condition precedent for bringing a suit in ejectment. Two documents, Exs.

2 and 3, have been filed in the case. They appear to be receipts granted by the respondent to the appellant for rent for the year M.E. 1097. But it

is not quite clear whether the rent paid was for the whole of 1907. If the respondent had received rent for the whole of the year 1097, he was not

entitled to bring a suit in ejectment before the close of the year. In order to dispose of the case satisfactorily it is necessary that there should be

finding on the question

whether Exs. 2 and 8 were granted by the Kovilakam of defendant 2 (respondent) herein, for the rent for the whole of the year 1097.

2. The District Judge will record a finding on the issue and submit the same within one month after the vacation. Both sides are allowed to adduce

fresh evidence. Seven days will be allowed for filing objections.

3. [The District Judge submitted the; folio win findings.]

* * *

4. I, therefore, find that the rent of Rule 75 paid under the receipts Exs. 2 and 3 relates to the period 1st December 1920 to 30th November 1921

and not to M.E. 1097.

5. [After the return of the finding the Court delivered the following judgment.]

6. The finding of the learned District Judge is not seriously challenged by the appellant. We accept the finding that the rent of Rs. 75 paid under

Exs. 2 and 3 relates to the period 1st December 1920 to 30th November 1921 and not to M.E. 1097. This finding is against the appellant. If it be

in his favour the second appeal would have to be allowed.

7. Mr. Kuttikrishna Menon raises a further contention that, as there had been no notice to quit before the date of suit, the plaintiff's cause of action

to eject the defendant did not arise. His argument is that in every case of tenancy determination of the tenancy is the cause of action for a suit in

ejectment and in order to determine the tenancy there must be notice to that effect; and in this case there was no such notice and, therefore, the suit

is bad. Reliance is placed upon Deo Nandan Pershad v. Meghu Mahton [1907] 34 Cal. 57 for the position that a notice to quit is a condition

precedent for a suit in ejectment whatever, may be the nature of the tenancy. In that case it was found that the defendant had been recognized as a

tenant. The question was whether a demand to give up possession was necessary in order to enable the plaintiff to sue in ejectment. Mookerjee, J.,

observed at p. 63:

When a person has acquired possession of the lands of another, which he continues to retain, and when the holding is not for a fixed or determinate

time, a manifestation of intention is required before the tenant can be called upon to surrender possession to the owner.... A refusal to surrender, or

a non-compliance with the demand, furnishes the gist of an action for the recovery of the land, and the occupant may then be regarded as a

wrongdoer.

8. It cannot be said that in all cases the cause of action to sue in ejectment arises only when the tenant becomes a wrongdoer by reason of his

staying on after notice to quit is given. If a tenant is a yearly tenant or a tenant-at-will, no doubt notice to quit would be necessary; but if according

to the terms of the lease the tenant is not entitled to notice, it cannot be said that the cause of action does not arise till the period given in the notice

to quit expires. Section 3, T. P. Act, enacts how land in what cases a lease of immovable property determines, and Clause (h) says:

On the expiration of a notice to determine the lease or to quit or of intention to quit the property leased duly given by one party to the other;

and notice to quit is only one of the modes in which a tenancy could be determined.

9. In this case the lease was an oral lease and one of the conditions was that the land demised should be surrendered whenever required. The

contention for the appellant is that even in such a case there must be a demand to give up possession and in the absence of a demand a suit in

ejectment would not lie. There is no authority for such a proposition. The only authorities to which our attention has been called by the appellant

relate to cases of tenancies-at-will. Where a person is in possession of property during the pleasure of another as his tenant, it is but reasonable

that the intention of the other to determine the tenancy should be communicated to the person in possession in order to enable him to vacate the

property. But in cases where the tenant undertakes to give up possession on demand, if it be granted that notice is necessary it would be difficult

for the Courts to say what would be reasonable notice, for if the argument is pushed to its logical conclusion the demand could be made an hour

before the suit is filed. The Court is not in a position in such cases to say what would be a reasonable notice. Where no notice is contemplated by

the contract, or where the terms of the lease do not provide for giving notice, it would not be right for the Court to hold that there ought to be a

notice to quit before a suit is filed. In the case of yearly tenancies and tenancies-at-will, notice would be necessary if there is no term in the contract

as regards the waiver of notice. In *re Threlfall Ex parte Queen's Benefit Building Society* [1881] 16 Ch. D. 274 does not help the appellant. In that

case Cotton L. J., observed at p. 281:

I know of no law or principle to prevent two persons agreeing that a yearly tenancy may be determined on whatever notice they like. There is

freedom of contract in this respect. In one sense, indeed, there is a tenancy at the will of the landlord; that is, he is enabled to put an end to a yearly

tenancy at a very short notice. All that the passage cited from Coke means, is, that if there is a demise with no term fixed between the parties

except the will of the lessor, then it is implied by law to be also at the will of the tenant.

In India we are governed by the provisions of the Transfer of Property Act as regards notice in the case of leases coming within the ambit of the

Act, The lease in this case is not an ordinary agricultural lease. The premises demised are a paramba, house and outhouses with garden around and

the tenant has to pay a certain amount for the occupation of the buildings and the usufruct of the trees. u/s 106, T. P. Act, in the case of a lease of

immovable property for agricultural or manufacturing purposes, in the absence of a contract or local law or usage to the contrary, the lease shall be

deemed to be a lease from year to year and in the case of a lease of immovable property for other purposes, the lease shall be deemed to be a

lease from month to month; in the former case a notice of six months expiring with a year of the tenancy is necessary and in the latter case, 15 days

notice expiring with the end of a month. Here the contract is that the tenant should surrender the property whenever required and the provisions as

to notice in Section 106 cannot apply to it. The decision in *Abdulla Rawuthan v. Subbarayyar* [1878] 2 Mad. 346 was before the passing of the

Transfer of Property Act. In that case *Kernan and Muthuswami Ayyer, JJ.* observed.

As tenants from year to year they cannot be turned out of possession without being served with notice to quit requiring them to quit and deliver

possession at the period of the year at which their tenancy commenced, which notice should be so served a reasonable time before the period at

which they are required to quit and deliver up possession.

10. They further observe:

No custom has been alleged entitling a landlord in India to dispossess a tenant from year to year, from fasli to fasli, without a previous notice to

quit. There is no reason why notice in this country should not be required as in England and Ireland.

11. Section 106 only recognizes two kinds of tenancies, one yearly tenancy and fine other monthly tenancy. There are oases which do not come

within the ambit of Section 106 and they are governed by the terms of the contract of tenancy and the present case is one of them.

12. Mr. Krishna Warriar relies upon *Kelu v. Ammad Kully* [1910] M.W.N. 794, for his position that no notice is required in this case to enable

the plaintiff to sue in ejectment. In that case the contention was raised that no

proper notice to quit was given. The appellate Court found that the defendant was allowed to hold over and remain in possession after the expiration of the original term of the lease and that it was not shown that

notice was dispensed with. The District Judge observed:

The fact that the lease contains a provision that defendant 1 shall surrender on demand does not, I think, deprive him of the right to notice. As no

proper notice to quite was given, plaintiff is not entitled to evict defendant 1.

13. Munro and Sankaran Nair, JJ disallowed the contention as regards notice and set aside the judgment of the District Judge. They observed:

Seeing that in Ex. A there is an express provision to surrender on demand, we think there is a contract to the contrary within the meaning of

Section 106, T.P. Act.

14. This is a direct authority for the position that, when there is a contract that the tenant will surrender on demand, no notice is necessary in order

to enable the landlord to sue in ejectment. In Mukat Singh and Others Vs. Misra Paras Ram and Another, it was found that the defendants had

taken a lease of the house from plaintiffs on an agreement to pay a rent of Re 1. per mensem. It was contended that the suit was bad for want of notice.

Section 106, T.P. Act, does not require the sending of such a notice where there is con-tract or local law or usage to the contrary. The allegation

in the plaint was that the defendants had agreed to vacate the house on demand.... There is no allegation that any term was fixed for the tenancy;

and in view of the evidence, which goes to show that the defendants had agreed to vacate the house when the plaintiff wanted, Section 106 cannot

be made applicable and the omission to give notice cannot be regarded as fatal to the present suit.

15. It is only in oases where there is no contract as to notice that the provisions of Section 106 would be applicable; but where there is a contract

as to giving notice or waiving notice the parties are governed by the terms of the contract and the law enacted in Section 106, T. P. Act, cannot

apply. In this case the finding of the lower Court is that one of the terms of the tenancy was that the paramba and Kuzhilkur chamayams should

be surrendered when required; and that being so, no notice was necessary in order to enable the plaintiff to maintain a suit in ejectment. The

second appeal fails and is dismissed with costs.