

(1945) 01 MAD CK 0036
In the Madras High Court

Etakkandi Lakshmi Amma and Others	APPELLANT
Vs	
Thirumangalath Chathu Kurup	RESPONDENT

Date of Decision : 31-01-1945

Acts Referred:

Citation : AIR 1945 Mad 305 : (1945) 58 LW 173 : (1945) 1 MLJ 337

Hon'ble Judges : Kuppuswami Ayyar, J;Kuppuswami Aiyar, J

Bench : Division Bench

Judgement

Kuppuswami Ayyar, J.—The only question for consideration is whether when a melcharthdar granted a renewal to the tenant, the shackles

put on him by Section 40(2) of the Malabar Tenancy Act drop down.

2. The respondent obtained a melcharth in respect of the plaint mentioned properties. He filed a suit for eviction and in that suit, the tenant applied

for renewal and the renewal was granted. He subsequently filed the suit out of which this appeal arises in which he sought to evict the tenant on the

ground that he wanted the land for his own personal use. The tenants applied for renewal but their application was resisted on the ground that the

landlord wanted the land for his own personal use u/s 20(5). The first Court allowed the contentions of the tenant and ordered a renewal. On

appeal, the learned Judge held that the plaintiff was entitled to evict u/s 20(5) even though he was a melcharthdar, because he had granted a

renewal in the prior suit and had thus become the landlord. Hence the appeal by the tenants whose petition for obtaining renewal was dismissed.

3. That the respondent obtained a right to the property by a melcharth from the original jenmi is not disputed. As a matter of fact, as melcharthdar

he filed the suit for eviction and in that suit the renewal was granted. He now

seeks to evict the tenant again and opposes the application for subsequent renewal. The learned District Judge observes that the view taken by the learned District Munsiff amounted to this, namely, that a melcharthdar can only be a melcharthdar and nothing else, and that just as a lessee can himself become a landlord by sub-leasing the tenancy, a melcharthdar also, by entering into a direct contract of tenancy with another, might become his landlord within the meaning of the Act. He therefore considered that by the previous renewal the plaintiff has become a landlord and therefore can file a suit u/s 20 of the Act. Evidently the learned District Judge has not noticed that a melcharth has been defined in Section 3(p) as being a "" transfer by the landlord of a part of his interest in any land held by his tenant by which the transferee is entitled to evict such tenant."" So by the very melcharth, the melcharthdar becomes entitled to evict and Section 40(2) contemplates a suit by the melcharthdar u/s 14 or 20 of the Act. The section runs thus:

No holder of a melcharth can when suing for eviction claim possession on grounds (5) and (6) of Section 14 or on grounds (5) and (6) of Section 20 as the case may be.

4. The only two provisions made in the Act for eviction are Sections 14 and 20 and in both these sections what is stated is that no suit for eviction of a cultivating verumpattamdar, or a customary verumpattamdar, kuzhikanomdar, or kanomdar shall lie at the instance of his landlord except on the grounds stated thereunder. Unless the melcharthdar was conceived of as being a landlord of that particular tenant, it is not possible to understand how a suit could be filed under those two sections by the melcharthdar with no other rights except under the melcharth. If therefore a melcharthdar was conceived by the legislature to be a landlord for the purpose of those two sections, the fact that either by attornment or grant of a renewal he gets the character of a landlord cannot gave him much higher or different rights than what he has as a melcharthdar. In this view, on the fact that he granted a renewal and thus became a landlord or that the tenant attorned to him and therefore the relationship of landlord and tenant was created as between the two, it cannot be said that he would be exempt from the restrictions u/s 40(2) of the Act. In these circumstances, I set aside the order of the District Judge and restore the order of

the District Munsiff on the petition with costs throughout.
(No leave).