
(1965) 06 KL CK 0020

In the High Court Of Kerala

Case No : Second Appeal No. 361 of 1960

Iravinallur alias Orupulasserri Manakkal Parameswaran
Namboodiripad's son Narayanan Namboodripad

APPELLANT

Vs

Pothen Thottapurath Kunjikutty Potha Nayissiar's daughter
Parvathikutty Naiyissiar and Others

RESPONDENT

Date of Decision : 16-06-1965

Acts Referred:

Malabar Tenancy Act, 1929 — Section 32

Citation : AIR 1966 Ker 19 : (1965) KLJ 677

Hon'ble Judges : M.S. Menon, C.J;V.P. Gopalan Nambiyar, J;P.T. Raman Nair, J

Bench : Full Bench

Advocate : T.L. Viswanatha Iyer, for the Appellant; V.R. Venkitakrishnan, for the Respondent

Final Decision : Allowed

Judgement

1. Section 12 of the Malabar Tenancy Act, 1929 as amended by Madras Acts XXXIII of 1951, VII of 1954 and XXII of 1956 provides for the reduction of the rent payable by an intermediary to his landlord where, by the operation of Madras Act XXXIII of 1951 or Madras Act VII of 1954 there has been a reduction of the rent payable to the intermediary by his tenant. In this case, however, the reduction of the rent payable to the intermediary 1st defendant by his tenant, the 2nd defendant, was not by the operation of Madras Act XXXIII of 1951 or of Madras Act VII of 1954 which alone are referred to in Section 32 but by the operation of Madras Act XXII of 1956 which is not referred to in the Section -- in fact the fair rent as first fixed under the provisions of the Malabar Tenancy Act as amended by Acts XXXIII of 1951 and VII of 1954 was the same as the contract rent, so that there was no reduction by the operation of those Acts; it was only by an amendment ordered u/s 7(2) of Act XXII of 1956 that the reduction was made. It is true that Act XXII of 1956 is retrospective in operation but that cannot make the reduction one effected by the operation of Act XXXIII of 1951 or Act VII of 1954. That being so, Section 32 of the Malabar Tenancy Act does

not apply so as to reduce the rent payable by the intermediary 1st defendant to his landlord the plaintiff and the question for the decision of which this case has come up before us, namely, whether the Section can be applied to the detriment of a landlord who was not a party to the fair rent proceedings between the intermediary and the latter's tenant does not really arise.

2. It is not disputed that, if Section 32 of the Malabar Tenancy Act has no application, the plaintiff's suit for rent should have been decreed in full and that the courts below were wrong in reducing his claim.

3. In the result we allow this appeal and decree the plaintiff's suit as prayed for. The plaintiff will have his costs in the courts below but we make no order as to costs in this court.