

(1946) 02 MAD CK 0030
In the Madras High Court

Kolappurath Achuthan Nair

APPELLANT

Vs

Pachakkil Thayyil Choyikutty's children Devaki and Others

RESPONDENT

Date of Decision : 22-02-1946

Acts Referred:

Citation : (1946) 59 LW 276 : (1946) 1 MLJ 370

Hon'ble Judges : Lakshmana Rao, J

Bench : Division Bench

Judgement

Lakshmana Rao, J.—The appellant was a tenant of the suit lands within the meaning of the Malabar Tenancy Act and his eviction was obtained under Clause (6) of Section 20 of the Act on the ground that the holding was required by the landlord bonajide for building purposes for his tarwad. The lands were transferred to the seventh defendant, a stranger, on 8th June, 1942 and the suit for the restoration of the lands was filed by the appellant on 22nd December, 1942. It has been dismissed as being premature and the question is whether the decision is correct.

2. Section 21 of the Act confers on the tenant a right to sue for restoration of the lands in certain cases and Section 43 prescribes the period of limitation for such suits. Sub-section (1) of Section 21 provides that in any case in which eviction is obtained on the ground specified in Clause (5) of Section 20, subject to the provisions of Section 43, if the landlord who obtains such eviction transfers any of the lands to any person on any kind of lease or mortgage with possession or on kanom, kuzhi-kanom or verumpattam within six years of such eviction, the tenant shall be entitled to sue for the restoration to him of the possession of all the lands from which he was evicted and to hold them with all the rights and subject to all the liabilities of a tenant; and Sub-section (2) provides that in any case in which eviction has been obtained on the ground specified in Clause (6) of Section 20, the tenant shall be entitled to the right of suit conferred by Sub-section (1) not only under the circumstances mentioned therein, but also if the building for constructing which the eviction was obtained is not erected on the

lands within six years of such eviction. Section 43(1)(a) requires a suit for restoration under Sub-section (1) of Section 21 to be instituted within one year from the date of the transfer by the landlord; while Section 43(1)(b) provides that a suit for restoration under Sub-section (2) of Section 21 shall be instituted within one year from the expiry of the six years after the eviction.

3. In this case the suit for restoration was founded on the transfer of the lands after eviction was obtained under Clause (6) of Section 20 and Sub-section (2) of Section 21 expressly provides that under these circumstances the tenant shall be entitled to the right of suit conferred by Sub-section (1) of the section. The suit is, therefore, governed by Section 43(1)(a) which requires it to be instituted within one year from the date of the transfer by the landlord and the view of the Courts below that Section 43(1)(b) is applicable is untenable. There is no conceivable reason for postponing the right of a tenant evicted under Clause (6) of Section 20 to sue for restoration of the lands on the ground of transfer by the landlord until the expiry of six years after eviction and it is obvious that Section 43 (I)(b) relates to the right of suit conferred by Sub-section (2) of Section 21, i.e., the right to sue for restoration of the lands if the building for constructing; which the eviction was obtained is not erected on the lands within six years of such eviction. The dismissal of the suit on the ground that it cannot be instituted before the expiry of six years after the eviction is therefore unsustainable and the appellant is entitled to restoration of the lands.

4. The second appeal is accordingly allowed and the suit is remanded to the trial-Court for passing the appropriate decree for restoration of the lands having regard to the proviso to Sub-section (2) of Section 43 of the Act. The respondents will pay the costs of the appellant here and before the Subordinate Judge and the costs in the trial Court will be provided for in the decree to be passed.