
(1940) 09 MAD CK 0042
In the Madras High Court

Kolathoor Soolapani Moopil variar

APPELLANT

Vs

Vayanakare Thekke Veettil Velloor alias Amminikat Mele
Veettil alias Etachole Kunhihileshmi alias Kunhimalu Amma

RESPONDENT

Date of Decision : 03-09-1940

Acts Referred:

Citation : (1940) 52 LW 676 : (1940) 2 MLJ 788

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—The petitioner here was the plaintiff in a suit to redeem a Malabar kanom. An application was filed in that suit by the ninth

defendant for relief u/s 15 of Madras Act IV of 1938. That application was granted and it is this order that the plaintiff-petitioner seeks to revise.

2. The kanom in question was executed on 23rd March, 1915, and it contained a provision that in case of default of payment of rent to the jenmi,

the latter could adjust the arrears of rent due with interest thereon to the kanom amount. There was a default and on 10th September, 1934, the

plaintiff filed a suit for redemption appropriating the arrears towards the amount which was due under the kanom and claiming to redeem the

kanom on payment of the balance Rs. 715 and odd. At the time of this suit, the kanom right was held by the tarwad of the defendants which

admittedly paid more than Rs. 500 as land revenue and was therefore not an agriculturist, having regard to the Proviso D to Section 3(ii) of Act IV

of 1938. On 5th July, 1935, there was a partition in the defendant's tarwad and at this partition the kanom right in question was assigned to the

tavazhi represented by the ninth defendant. This smaller group pays less than Rs. 500 as land revenue and it is therefore entitled to be regarded as

an agriculturist under the definition. It is contended by the, petitioner that since he filed his original suit against the tarwad as a whole, which was his tenant, it was the tarwad as a whole which was liable to pay the rent and there was no liability on the ninth defendant's tavazhi such as would entitle it to apply u/s 15 of Act IV of 1938. We find it very difficult to appreciate the force of this contention. Granted that at the time of the suit the rent was payable by the tarwad as a whole, even then, the ninth defendant representing her tavazhi was one of the group by which the rent was payable. After the partition by which the kanom right and the liabilities thereunder were allotted to the ninth defendant's tavazhi, that tavazhi is certainly under a liability to pay the rent such as would entitle it to claim the benefits of Section 15. So much follows from the reasoning in the decision in Perianna Goundan Vs. Sellappa Goundan and Others, A similar view is taken by King, J., in *Cheeru v. Chathu Nambiar* 2 M.L.J. 451 in a case arising under Section 15 of Act IV of 1938.

3. A further contention, relates to the effect of Section 24 of the Malabar Tenancy Act which provides that the tenant may obtain a renewal on deposit of all arrears with interest thereon at the contract rate, if any, up to the date of the order. The suggestion is that to apply the provisions of Section 15 of Act IV of 1938 would amount to a repeal of the provisions of Section 24 of the Malabar Tenancy Act. We are unable to accept this contention. By applying the provisions of Section 15 of Madras Act IV of 1938 to this case, the amount of the arrears due from the tenant becomes liquidated by a deposit in accordance with the terms of that section. When the Court has to deal with an application under Sections 22 to 24 of the Malabar Tenancy Act it has to look to the arrears due at the time of its order and on deposit of those arrears it will order renewal in favour of the tenant. When ascertaining the amount of the arrears the Court will have regard to any payments made and may equally well have regard to any discharge by the process laid down in Section 15 of Act IV of 1938.

4. In this view, we dismiss the Civil Revision Petition with costs.