
(1926) 12 MAD CK 0018
In the Madras High Court

Kommaraju Narasimham and Another APPELLANT
Vs
Kolli Sobhabadi and Others RESPONDENT

Date of Decision : 20-12-1926

Acts Referred:

Madras Estates Land Act, 1908 — Section 3(7)

Citation : AIR 1927 Mad 610

Hon'ble Judges : Wallace, J

Bench : Division Bench

Judgement

Wallace, J.—The first question for decision in the petition is whether the words "final decree of a competent civil Court establishing that the ryot has no occupancy right" in the last clause of Section 3 (7) of the Madras Estates Land Act imply that the decree relied on must contain these ipsissima verba, or whether they mean any decree in which the occupancy right has been and ought to have been specifically in issue in the suit and has therefore been explicitly or implicitly decided in the suit in which the decree was passed. The District Judge has taken the former view and the trial Court the latter. I think the District Judge's view is wrong and too narrowly construes the words of the clause. The result of such a construction would be that where a decree is in such terms that the tenants cannot in the face of it set up occupancy rights but does not expressly say that they have no occupancy rights, the tenants may never the less successfully maintain against the landlord in any subsequent litigation that they have occupancy rights. The Courts would be rather stultifying themselves accepting such a construction of the clause. In the present case, the decree which the plaintiffs predecessors-in-title obtained in 1888 declared them entitled as against the then tenants of the present lands to physical

possession, and the plaintiffs in execution of the decree were in 1891 actually put in physical possession of the lands. Obviously tenants so ousted

by decree of the Court and Court delivery retained no occupancy rights and could not, in the face of that decree against them, maintain that they

had. They rested content under that decree and delivery and made no attempt to challenge them or to establish thereafter any rights of occupancy.

I agree with the trial Court that in effect this decree established that they had no occupancy rights. The land therefore since 1888 has been, even if

it was ryoti land before old waste according to the last clause of Section 3 (7) and remained old waste up to and after the passing of the Madras

Estates Land Act.

2. On this finding, the decision of the trial Court is correct, and no other point remains for consideration. I reverse the decree of the lower appellate

Court and restore that of the trial Court with costs to plaintiffs throughout in all Courts.