

(1927) 02 MAD CK 0048
In the Madras High Court

Kottayi Chathukutty

APPELLANT

Vs

Changanatha Parkum Thottathil Kunhappan and Another

RESPONDENT

Date of Decision : 08-02-1927

Acts Referred:

Citation : AIR 1927 Mad 776

Hon'ble Judges : Jackson, J

Bench : Division Bench

Judgement

Jackson, J.—Second appeal against the judgment and decree of the District Judge of North Malabar in A. S. No. 270 of 1922 made in O.

S. No. 1190 of 1920 on the file of the District Munsif of Nandapuram.

2. The short point for determination in this appeal is whether the tenant of a shop in Malabar comes within the purview of Act 1 of 1900, Madras;

curiously enough the question appears to be res integra. Although the Court must have decided times without number in the lower Courts,

nevertheless, there is no ruling of this Court in the matter. In Section 3 "tenant" is defined as including a person who is lessee of land. "Holding" in

Sub-section 3 of Section 3 has no larger connotation than is implied by the language in Sub-section 1. Improvements are set forth in Section 4 and

there is nothing in that list which could include the improvement in urban dwellings. I think it is entirely foreign to the intention of the Act to hold that

because a house or a shop must necessarily stand upon land, therefore, whenever a house or shop is leased the tenant is lessee of land within the

meaning of the Act and if there happen to be some small yard appurtenant to the shop that would make no difference. I think it has invariably been

held in Malabar that the Act applies to agricultural holdings and also what are

known as kudiyruppu or vacant site available for buildings and does not apply to sites which are already mainly occupied by houses or shops. It follows, therefore, that the respondent in this appeal can derive no benefit from the provisions of the Act and he must be held to the term of his contract, Ex. C, by which he has undertaken to remove the oven, - I do not know why the translator of this Court should call it a bread safe--at the expiry of his lease. The appeal is accordingly allowed and the decree of the District Munsif is restored with costs throughout. P. R. S. Appeal allowed.