
(1942) 08 MAD CK 0048
In the Madras High Court

Mammu Kurukkal

APPELLANT

Vs

C. Kunhimoideen Kutti

RESPONDENT

Date of Decision : 26-08-1942

Acts Referred:

Tamil Nadu Agriculturists Relief Act, 1938 — Section 15

Citation : AIR 1943 Mad 690 : (1943) 56 LW 517 : (1943) 2 MLJ 313

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—This civil revision petition raises a question u/s 15 of the Madras Agriculturists' Relief Act (IV of 1938). One Viriya Kutti Umma, a Mopla woman, was given a life interest in the kanom rights in land under a partition arrangement. She assigned her interest to one Moidin Kutti on 5th January, 1926. A week later Moidin Kutti leased the property orally to the present respondent, who is the eldest son of the life tenant Viriya Kutti Umma. In 1928 the kanom right assigned by Viriya Kutti Umma was transferred to the present petitioner and he filed a suit, O.S. No. 437 of 1928, against the present respondent for possession and arrears of rent. That suit was still pending in 1932 when the life tenant Viriya Kutti Umma died and her death, of course, put an end to the petitioner's title in the land. The Court which tried O.S. No. 437 of 1928 accordingly gave him a decree only for arrears of rent up to the date of the plaint and directed him to file a fresh suit for the rent from that date to the date of the death of Viriya Kutti Umma. As a consequence of this direction a fresh suit, S.C. No. 47 of 1937, was filed and it was decreed, and in revision proceedings against that decree, this Court referred to the trial Court for disposal a plea u/s 15 of Act IV of 1938. The question referred has been decided by the trial Court, which has held that the tenant (respondent) was entitled to have the arrears of rent decreed in S.C. No. 47 of 1937 discharged by reason of his payment of the rent due for the Malabar years corresponding to faslis 1346 and 1347.

2. The question u/s 15 of Act IV of 1938 is complicated by the fact that on the

death of Viriya Kutti Umma, her life interest in the kanom right having terminated, the property was vested in her children one of whom was the respondent, who is also the cultivating tenant. The lower Court has held that the respondent has become entitled to the benefits of Section 15 by reason of a payment to his co-sharers of the portion of the rent due to them the balance being due to himself, for the two years corresponding to faslis 1346 and 1347. The learned District Munsiff held quite rightly that there would be no merger terminating the tenancy unless the whole of the landlord's right was acquired by the tenant--vide *Faquir Bakhsh v. Murli Dhar* (1931) 61 M.L.J. 261 : L.R. 58 IndAp 75 : ILR 6 Luck. 197 (P.O.). This decision, however, does not conclude the matter. The respondent is entitled to get the rent payable to the petitioner discharged u/s 15 only if it can be deemed to be rent payable to a jenmi or intermediary under the Malabar Tenancy Act. The petitioner is not a jenmi, but admittedly he was an intermediary up to the date of the death of Viriya Kutti Umma. Thereafter he was no longer entitled to possession of the land and therefore would not come within the definition of the term "intermediary" under the Malabar Tenancy Act. The question therefore reduces itself to this : when Section 15(1) of Act IV provides for the discharge of all rent payable by an agriculturist to a landholder, jenmi or intermediary, what is the date with reference to which the payee must belong to one of these categories in order to entitle the tenant to relief under that section? It seems to us that this is a question which must be answered on the lines indicated in the decision of this Bench in *Amad Koya and Another Vs. Appu and Another*, . That was a case in which we decided that an assignee of a right to collect arrears of rent payable to a jenmi was not a jenmi for the purposes of Section 15. But it was necessary for the decision of that case to consider also the question of the date on which the rent must have been payable to a jenmi to entitle the tenant to relief. On the facts of that case the assignment by the jenmi was sometime before the commencement of the Act. On the date of the commencement of the Act the person to whom the rent was payable was the assignee whom we held not to be a jenmi. In dealing with the legal consequences of these facts, after holding that the assignee was not a jenmi we state as follows:

It seems to us that, reading Section 15(1) in its plain terms, there must be rent outstanding on the date of the commencement of the Act, which rent must be, as on that date, payable by an agriculturist to a landholder or an under-tenure holder or to a jenmi or intermediary. If these conditions are not satisfied, the section has no application.

3. These words are not mere observations. They embody a conclusion which was necessary for the decision on the facts of the case. Applying the principle therein laid down to the facts of the present case, it is clear that the petitioner to whom the arrears of rent were payable was an intermediary up to 1932 but was not an intermediary in March, 1938, when Act IV of 1938 came into force. It follows therefore that the arrears of rent payable to the petitioner cannot be deemed to be rent payable to an intermediary on the crucial date. The lower Court had

therefore no jurisdiction to declare those arrears of rent discharged. The revision petition is therefore allowed and the application u/s 15 will be dismissed with costs here and in the Court below.