

(1910) 02 MAD CK 0038
In the Madras High Court

Mayan Thariyakath Kathijakutti Umma and Another	APPELLANT
Vs	
Ithikamparambil Kuthussa and Others	RESPONDENT

Date of Decision : 04-02-1910

Acts Referred:

Citation : (1910) 20 MLJ 415

Judgement

1. The plaintiffs alleged that they had given notice to the defendants to quit, but it has been found that none was given. The defendants alleged that the plaintiffs had no title to the land; that they (the defendants) were not in occupancy as their tenants but as jenmis by virtue of a purchase from the former jenmi. The tenancy alleged or found is a tenancy from year to year, terminable by a notice to quit, and this fact distinguishes the present case from Anandamoyee v. Lakhi Chandra Mitra ILR (1906) C. 339, and Venkatramana Bhatta v. Gundaraya ILR (1908) M. 403, where the tenancy was, in both cases, of a kind determinable only by forfeiture or efflux of time. In the case of a tenancy terminable by a notice to quit, the tenant, by denying the landlord's title before the suit, forfeits or is held to waive his right to the notice-Unhamma Devi v. Vaikunta Hegde ILR (1893) M. 218 and when the tenant alleges facts which by necessary implication involve a denial of the landlord's title this is a waiver of the right to notice (same case). Here the defendants by alleging that they held as jenmi under a title derived from a person other than the plaintiffs, clearly alleged facts inconsistent with their holding as the plaintiff's tenants and clearly therefore denied the plaintiff's title. And their allegation in the written statement of the purchase before the suit is evidence of the purchase before suit, and that purchase from the vendor as jenmis being necessarily

inconsistent with the plaintiff's title as landlord, the allegation is evidence also of a denial of title before suit-*vide* *Doedem Mee v. Litherland* (1836)

4 A.& E. 784, and *Doe Dem Grubb v. Grubb* (1830) 10 B.& C. 816. The defendants, therefore, are not entitled to any notice to quit.

2. The decree of the lower appellate Court is reversed and this appeal remanded for disposal on the merits. The costs of this second appeal will abide the result.