

(1945) 09 MAD CK 0014
In the Madras High Court

Mekkileri Koppirichi (since deceased) and Another	APPELLANT
Vs	
Uppoonni Thattari Kunhi Ramar	RESPONDENT

Date of Decision : 17-09-1945

Acts Referred:

Citation : AIR 1946 Mad 95 : (1945) 58 LW 601 : (1945) 2 MLJ 471

Hon'ble Judges : Rajamannar, J

Bench : Division Bench

Judgement

Rajamannar, J.—The question of law which arises in this appeal is not free from difficulty. The facts which are not in dispute are as follows :

On 1st October, 1929, one Chandu executed a marupal, Ex. P-2 in favour of one Chandu Panikkar. The rights of the lessor, Chandu Panikkar,

are now vested in the plaintiff. Defendants 1 and 2 are the assignees of the rights of the lessee, Chandu, under a document dated 21st October,

1935. The suit was to recover possession of the property covered by the marupat and arrears of rent subject to a payment of the value of

improvements that may be found due to the defendants. The marupat comprised besides a paramba, a farm house which belonged to the landlord.

The tenants were permitted to reside therein and a separate rent was also specified for the occupation of the house. Subsequently on 4th March,

1941, the landlord permitted the tenant to pull down the house then in existence and received a sum of Rs. 25 from the tenant as its value. He

allowed the tenant further to construct a new house at his own expense and agreed to give him the value of the Hew house at the time of the

surrender of possession of the paramba (vide Ex. D-3). A new house was accordingly built in pursuance of this permission.

2. The dispute now is only regarding the site occupied by the house and the approach to it. The defendants claim that they are entitled to purchase the site on which the house stands and the site used as a way leading to the house, u/s 33 of the Malabar Tenancy Act. Besides raising this plea in the written statement, the defendants also filed a petition u/s 18, Clause (1) and Section 33 of the Malabar Tenancy Act offering to purchase the sites (kudiyiruppu).

3. Section 33 of the Malabar Tenancy Act runs thus:

In any suit for eviction relating wholly or in part to a kudiyiruppu, which has been in the continuous occupation of a tenant or the members of his family for ten years on the date of the institution of the said suit, such tenant shall be entitled to offer to purchase the rights in the kudiyiruppu, of the landlord who seeks to evict him, at the market price on the said date." The District Munsiff of Tellicherry held that the defendants were entitled to the benefit of the section. He held that as the defendants were members of the family of Ghandu, the original tenant, the period of Chandu's occupation could be added to the period of the occupation by the defendants, in which case the condition in Section 33, namely, "the continuous occupation of a tenant or the members of his family for ten years" would be satisfied. He overruled a contention of the plaintiff that the tenants were not entitled to the benefit of the section because of Section 2, Clause (3). The plaintiff appealed and the Subordinate Judge of Tellicherry allowed the appeals (there were two appeals, one against the decree in the suit and the other against the order on the application). The defendants have filed S.A. No. 1000 of 1944 and G.M.S.A. No. 159 of 1944 against his decision in the two appeals respectively.

4. The contention of the plaintiff based on Section 2(3) may be first disposed of. Section 2, Clause (3) says:

Nothing in this Act shall apply to-

(3) any building owned by a landlord including a house, shop or warehouse, and the site thereof, together with the garden or land appurtenant thereto.

5. The house now in existence was built by the tenants at their own expense and cannot obviously be described as a building owned by the landlord. This fact is sufficient to preclude the plaintiff-landlord from relying on

the provision. It cannot, therefore, be said that the Act does not apply to this case.

6. Mr. Govinda Menon for the appellants contended that the appellants have satisfied the conditions mentioned in Section 33 of the Act and are entitled to the benefit of it because they and the members of their family have been found to be in continuous possession of the kudiyruppu on which the present house stands for over ten years. Mr. Kuttikrishana Menon for the landlord-respondent, however, urges that till 1941, the house on the site admittedly belonged to the landlord and the period of occupation subsequent to 1941 falls far short of the period often years requisite under the section as the suit was filed on 17th July, 1942. This contention of the plaintiff also found favour with the Subordinate Judge who says as follows:

Since the house became the tenant's house only on the 4th March, 1941, the tenant has not completed the period prescribed in Section 33 of the Malabar Tenancy Act to entitle him to purchase the kudiyruppu.

7. Kudiyruppu is defined as follows in the Act:

kudiyruppu" means and includes the site of any residential building, the site or sites of other buildings appurtenant thereto, such other lands as are necessary for the convenient enjoyment of such residential building, and the easement attached thereto.

8. Applying this definition and attaching the ordinary meaning to the words in Section 33, it cannot be denied that the tenants have been in the continuous occupation of the kudiyruppu, that is, the site of a residential building and the pathway necessary for the convenient enjoyment of the building. In this view the tenants in this case would certainly be, entitled to the benefit of Section 33.

9. It is, however, possible to construe the section to mean that the occupation contemplated by the section is occupation in respect of a house belonging to the tenant, in which case alone, it would be accurate to speak of occupation of the kudiyruppu and to exclude the application of the section to the occupation of a tenant of a house belonging to the landlord, which no doubt may also mean an occupation of the site on which the house stands. The object of the section may be said to be that if a tenant has built a house or is in occupation of a house belonging to him which is

situated on a site belonging to the landlord for a number of years, it would be hard on the tenant to be evicted therefrom when the landlord could be adequately compensated by being awarded the value of the site. In the present case the facts are that it is only in 1941 that the tenant can be said to have put up their own house on a site belonging to the landlord, and the tenants have been occupying that house only for a period of 16 months by the date of the institution of this suit.

10. Though I find it more equitable to construe Section 33 in this manner, I feel that it is not permissible for me to disregard the plain language of the section. The present suit is for eviction and relates in part to a kudiyruppu, that is, the site of a residential building. This site has been in the continuous occupation of the tenant and members of his family for over ten years on the date of the institution of the suit. The tenants that is the defendants (appellants), therefore, will be entitled to offer to purchase the rights in the kudiyruppu of the landlord who seeks to evict them. The appeals are therefore allowed, the decree and the order of the Subordinate Judge set aside and the decree and order of the District Munsiff are restored. The petitioners (appellants) will get their costs from the respondent throughout--Advocate's fee in the second appeal.