

(1916) 07 MAD CK 0010
In the Madras High Court

Muthu Reddi and Others

APPELLANT

Vs

Muthu Venkatapathi eddi and Another

RESPONDENT

Date of Decision : 18-07-1916

Acts Referred:

Citation : (1916) 4 LW 168 : (1916) 31 MLJ 354

Judgement

1. The plaintiffs sue as ryots, owning the occupancy right in the suit lands and the Lower Courts have held that they gave defendants, their tenants, valid notice to quit and are entitled to recover possession, rent and profits. The defendants first and main contention before us depends on the following facts, which have been admitted or found:--The mirasi or occupancy right in lands in the suit village belongs to the first and 2nd plaintiffs, each owning an unascertained moiety of it. First plaintiff and his predecessors have owned their moiety from time immemorial. Second plaintiff acquired hers as stridhanam from her father in 1873. There is no connection between their titles, though it is a fact that second plaintiff married a member of 1st plaintiff's family. The plaintiffs sue together, as tenants-in-common of the whole village and co-owners of the whole occupancy right. First plaintiff's predecessor however became entitled to the Zamindari, in which the suit lands are, by purchase about a hundred years back ; and 1st plaintiff has succeeded to his rights apparently (though nothing is alleged to turn on the fact) in respect of half the estate, Defendants therefore argue with reference to Section 8(1) of Act I of 1908, that the occupancy and land-holder's right having been united by transfer in the same person, first plaintiff's predecessor, the latter had and the plaintiff has, a right to hold and sue only as a landholder, not as a ryot; and that, as

first plaintiff cannot sue in the latter capacity, he and 2nd plaintiff cannot do so together. Plaintiffs, it is admitted, can succeed, Only if their suits are,

as the plaintiffs describe them, brought by ryots, against non-occupancy tenants, since it is not alleged that the conditions, in which a landholder can

evict his ryots are fulfilled.

2. Several answers, total or partial, to this contention have been attempted, but attention may be confined to one which is decisive. Section 8, on

which defendants rely, is no doubt, as its marginal note indicates, the portion of the Act devoted to the topic of merger : and the result of its Clause

(1), is that, when the interests of the landholder and the occupancy ryot have become united in the same person, the right of the latter is, subject to

the rights of third persons, determined. This provision, the one relied on by the defendants, is no doubt, absolutely general and if it stood

unqualified, their argument could be sustained. Clause (2) of the same section deals with a particular case of the class covered by Clause (1) the

acquisition of occupancy right by one amongst several co-landholders, but assumes that the general rule is applicable in those circumstances also

and provides for the protection of the co-landholder's right to his share of the rent and for the revival of the ryot's right in favour of any future

lessee of the land. It is in these circumstances that, according to defendants, the case before us of acquisition of the landholder's right by one of the

co-ryots, the converse in some respect of the case dealt with in Clause (2) must also be covered by Clause (1). They how-ever overlook another

provision, the explanation printed after Clause 6 of Section 6. That clause prohibits acquisition otherwise than by inheritance or devise, of

occupancy right by an ijaradar or farmer ; but the explanation following it is of wider scope, providing that the right of occupancy shall not be lost

in consequence not only of its owners subsequently holding the land as an ijaradar or farmer, but also, what is, unconnected with Clause 6 of his

becoming interested in it as landholder. Here, it is plain, we have what Section 8 did not afford, provision for the particular case before us; and,

though its position in the explanation to a clause dealing with other matters and separated from Section 8 by Section 7, relating to mining rights, is

anomalous, its unambiguous language cannot be deprived of effect. This being so, it is unnecessary to deal at length with the arguments based on

the general doctrine of merger or the evidence, found by the Lower Courts to be in plaintiff's favour as to the manner in which the parties have

understood their rights, especially as indicated by defendant's payment of Thunduvaram, consistently with the payment being to a ryot owning

occupancy right. As regards the first point it may however be observed that, as the Act, a comprehensive tenancy code, is explicit, discussion of

the general law is irrelevant; and that an exception to the general presumption of merger, similar to that allowed by the explanation after Section 6

Clause 6, though more logically placed, is to be found in the explanation 2, Section 22 of the Bengal Tenancy Act, (VIII of 1885). Vide also

Abdul Hassan v. Bhura ILR (1906) ALL. 768. Defendants' remaining argument is that the Lower Appellate Court should have dealt with their plea

regarding a specific letting to them and the absence of any notice by which the tenancy thus created could be terminated. The plaint para. 4

referred to their entering into an arrangement with plaintiffs, which was subject to an obligation to surrender, the land at the end of the fasli; and in

para. 5 the giving of a registered notice on December 1910 to surrender before the end of the fasli, i.e., 30-6-1911, is mentioned. In the written

statements the arrangement was denied and there was nothing regarding the notice, except a reference to it was "" alleged."" Issue 2 was framed

regarding the arrangement. But there was no issue regarding the notice ; and throughout defendants have never put forward any alternative

contention, that if the arrangement was established, the lease under it was never terminated in a valid way by notice alleged or otherwise. In these

circumstances they cannot put forward such a contention for the first time in this Court at the hearing.

3. The second appeals therefore fail and are dismissed, S.A. No. 1298 with costs and the others without costs.