

(1935) 07 MAD CK 0002
In the Madras High Court

Nettalia Sequeria

APPELLANT

Vs

Chovvakaran Orkatteri Abdul Khader and Others

RESPONDENT

Date of Decision : 29-07-1935

Acts Referred:

Citation : AIR 1935 Mad 1048 : (1936) ILR (Mad) 419 : (1935) 42 LW 617 :
(1935) 69 MLJ 675

Hon'ble Judges : Varadachariar, J

Bench : Division Bench

Judgement

Varadachariar, J.—This is an appeal against an order of remand passed by the learned Subordinate Judge of Tellicherry in connection with

an application made by a tenant who was a defendant in an ejectment suit. The application was made u/s 22 of the Malabar Tenancy Act, and the

case raises a point of some importance with reference to the construction of certain provisions of that Act. The first plaintiff is the ultimate landlord

or jenmi. Also he is the Karnavan of a tarwad and plaintiffs 2 to 4 are his sister's children. In 1928 the first plaintiff granted to his sister (the mother

of the plaintiffs 2 to 4) what is described in the plaint as a ""melcharth"" but the document itself has not been marked as an exhibit in the case. In

1930 the four plaintiffs (the sister having died in the meanwhile) filed a suit in ejectment against the present appellant who was in possession from

the Jenmi as a kuzhikanomdar. We are not now concerned with the merits of the ejectment suit but only with the application which the defendant

filed in that suit, claiming a renewal u/s 22 of the Tenancy Act. To that application he made only plaintiffs 2 to 4 parties and not the first plaintiff

(who was the Karnavan and the original landlord). That application was resisted on the ground that the paramba was required for bona fide

building purposes, as contemplated in Section 20(6) of the Act. The learned District Munsiff dismissed the application holding that plaintiffs 2 to 4

were entitled to raise that question and that the paramba was in fact required for a purpose contemplated by Section 20(6).

2. The defendant (Petitioner) appealed, contending that plaintiffs 2 to 4 were not entitled to avail themselves of the objection u/s 20(6) by reason,

of Section 40(2). The learned Subordinate Judge upheld this contention, but he was of opinion that the application for renewal should be made

against the landlord, who according to him was the first plaintiff and that it was bad for not making him a party. He accordingly set aside the order

of the lower Court and remanded the application to be disposed of after making the first plaintiff a party to the application.

3. The tenant has appealed against this direction of the learned Subordinate Judge and on his behalf it has been contended before us by Mr.

Sitarama Rao that the application should have been straightaway granted, on the ground that plaintiffs 2 to 4 were precluded from relying upon

Section 20(6) and that it was unnecessary to implead the first plaintiff, because after the grant of the melcharth he is really not the landlord at all.

On behalf of the respondents a memo of cross-objections has been filed contending that the Subordinate Judge should have affirmed the order of

the District Munsiff that it is unnecessary to implead the first plaintiff as a party to the application and that the remand is therefore uncalled for.

4. As we stated at the outset, the melcharth document has not been filed as an exhibit in the case. But we have been shown a copy of it and as its

contents substantially correspond to the description given of it in paragraph 7 of the plaint in the suit, it is not necessary for us to insist upon its

being formally proved and marked. It contains no provision for any payment of rent to the melcharthdar during the continuance of the original

tenant in possession, nor does it provide for any collection of rent by the melcharthdar from the original tenant. It no doubt empowers the

melcharthdar to give notice to quit to the original tenant but it goes on to add that any suit in ejectment should be instituted jointly with the karnavan

but conducted at the expense of the melcharthdar. In the light of these provisions, the question for consideration in this appeal is, who is the

"landlord" for the purposes of the Act. Section 3(o) defines a "landlord" as the person under whom a tenant holds and to whom he is liable to pay

rent or michavaram and includes a jenmi. There can be no doubt that the first plaintiff as representing the tarwad is the jenmi in this case and as the melcharth contains no provision enabling the melcharthdar to collect rent from the original tenant the melcharthdar cannot in any sense be regarded as a "landlord". Again in Sub-clause (p) of the same section, a "melcharth" is defined as the transfer by the landlord of part of his interest in any land held by his tenant by which the transferee is entitled to evict such tenant. Here again, as we have pointed out already, the document seems to contemplate that the right to evict the original tenant lies not exclusively in the melcharthdar but only in him jointly with the original landlord. The right to evict cannot therefore be said to be wholly vested in the melcharthdar or transferred away from the first plaintiff. Taking this to be the correct legal position of the parties, we do not see how the appellant can contend that the first plaintiff is not the landlord to whom notice should be given on an application u/s 22 or that he is not the person with reference to whose plea a claim under Sub-clause (6) of Section 20 must be decided. Section 18 no doubt speaks of the "immediate landlord" but a person must satisfy the definition of "landlord" before he can be spoken of as the "immediate landlord" and if the melcharthdar is not really a landlord within the meaning of the definition in the Act the first plaintiff must be taken to be the landlord for all purposes; In this view, the order of the learned Judge is right. The appeal as well as the cross-objections must be dismissed. In the circumstances we make no order as to costs in this Court.