

(1961) 07 KL CK 0002
In the High Court Of Kerala
Case No : S.A. No. 132 of 1956 (M)

Pakkayi

APPELLANT

Vs

Pangan and Another

RESPONDENT

Date of Decision : 10-07-1961

Acts Referred:

Citation : (1961) KLJ 962

Hon'ble Judges : M. Madhavan Nair, J

Bench : Single Bench

Advocate : C.K. Viswanatha Iyer, for the Appellant; K.N. Karunakaran and K.G. Devarajan, for the Respondent

Final Decision : Dismissed

Judgement

Madhavan Nair J.

1. The plaintiff, whose suit for recovery of property with mesne profits on the strength of title has been dismissed concurrently by the courts below, has come up in this Second Appeal. The facts are that the property belonged to the Kelankulangara tarwad who mortgaged the same under Ext. A1 to Achuthan Nair who leased it to the defendants 1 and 2 as per Ext. A2. Plaintiff, having secured a "melpanayam" (puisne mortgage) from the tarwad and obtained a release of the mortgage from Achuthan Nair, instituted this suit for recovery of the property from defendants on the ground that the lease granted by the mortgagee had come to an end with the redemption of the mortgage and the defendants had no right thereafter to hold the property. Both the courts below held that the defendants are entitled to fixity of tenure u/s 43 of the Malabar Tenancy Act as amended by Act XXXIII of 1951 and dismissed the suit. Hence the Second Appeal. The contention of the learned counsel for the appellant is that Section 43 conferred fixity of tenure only on cultivating tenants of mortgagees at the time the amending Act of 1951 came into force. Stress was laid on the expression "cultivating tenant" in the Section to show that he should be a tenant on the date of the Act, and contention was pressed that the tenancy in the present case

having been terminated long before the commencement of the Act they could not be tenants entitled to fixity under the Act of 1951. This contention is not correct. The expression used in the Section is:

Notwithstanding..... any other law for the time being in force..... a cultivating tenant..... shall be entitled to continue on the holding as such although the rights of his immediate landlord..... have been extinguished whether by eviction or by redemption of a mortgage or otherwise.

2. As observed by our Supreme Court in Mahabir Gope and Others Vs. Harbans Narain Singh and Others, the moment the mortgage is redeemed the sub-demises created by the mortgagee come to an end. After redemption of the mortgage, the sub-demise of the mortgagee could not be a "tenant" in the eye of law. So, when the Legislature used the expression "cultivating tenant" in relation to a demise of the mortgagee in respect of his continuance on the holding after the redemption of the mortgage, it evidently meant only the quondam tenant who was inducted on the property by the mortgagee. It follows therefore that the decree of the courts below recognizing a right to fixity in the lessees of the mortgagee and disallowing the plaintiff's prayer for their eviction is correct, and is accepted. The Second Appeal fails and is dismissed, there will be no order as to costs in the circumstances of this case.