
(1940) 12 MAD CK 0015
In the Madras High Court

Pechiyappa Chettiar

APPELLANT

Vs

Vazhukka Chetti

RESPONDENT

Date of Decision : 10-12-1940

Acts Referred:

Citation : (1941) ILR (Mad) 433 : (1941) 53 LW 287 : (1941) 1 MLJ 333

Hon'ble Judges : Alfred Henry Lionel Leach, C.J.; Krishnaswami Aiyangar, J.; Gentle, J

Bench : Full Bench

Judgement

Alfred Henry Lionel Leach, C.J.—The question raised in this petition is whether Section 15 of the Madras Agriculturists' Relief Act, 1938 applies in a case where there was no tenancy in existence in fasli 1347, that is during the year commencing from the 1st July, 1937, and ending with the 30th June, 1938. So much of the section as is relevant here reads as follows:

All rent payable by an agriculturist to a landholder or an undertenure holder under the Madras Estates Land Act, 1908, or to a jenmi or intermediary under the Malabar Tenancy Act, 1929, which has accrued for the fasli year 1345 and prior faslis and which is outstanding on the date of the commencement of this Act shall be deemed to be discharged whether the rent be due as such or whether a decree has been obtained therefor;

Provided that where the person liable to pay rent (hereinafter in this section referred to as "tenant") does not, on or before the 30th September, 1939, pay up all arrears of rent accrued in respect of any holding for faslis 1346 and 1347, the arrears of rent for fasli 1345 and prior faslis which were outstanding in respect of the same holding on the date of the commencement of this Act shall be deemed to be discharged only in the same proportion as the rent due for faslis 1346 and 1347 which is paid up by the ryot or tenant bears to the rent due for those two faslis;

Provided further that no tenant shall be entitled to the benefit of this section

unless he. shall have paid in respect of the holding, the rent due for fasli 1347 on or before the 30th September, 1938.

2. These provisions have been differently interpreted by two Division Benches of this Court. In *Kotithodi Ahmedkutty Haji v. Ramachandra Aiyar* A.A.O. 462 of 1939, *Burn and Lakshmana Rao, JJ.*, held that the section only applied, if a tenancy was subsisting in fasli 1347. In *Patteri Pakker v. Kunhi Tharuvayi* C.R.P. No. 767 of 1939, *Wadsworth and Patanjali Sastri, JJ.*, expressed the opinion that the section did not contemplate merely a continuing tenancy and that a person who had ceased to be a tenant for fasli 1347 could obtain the benefit of the Act in respect of rent which had accrued due for fasli 1345 and earlier faslis. In their judgment *Burn and Lakshmana Rao, JJ.*, did not set out their reasons and merely dismissed the appeal which came before them under Order 41, Rule 11 of the Code of Civil Procedure, but the position had been clearly stated in the order of the Subordinate Judge and in dismissing the appeal under Order 41, Rule 11, the learned Judges indicated their unqualified approval of the view of the Subordinate Judge. In his order the Subordinate Judge said that the provisos to the first clause of Section 15 made it clear that before a tenant can claim the benefit of that clause he must have been a tenant on the date when the Act came into force. *Wadsworth and Patanjali Sastri, JJ.*, considered that to disqualify a tenant from getting the relief merely because rent ceased to be due in respect of the holding in the course of fasli 1347 seemed to go beyond the words of the provisos.

3. In my judgment *Burn and Lakshmana Rao, JJ.*, took the correct view of the section. I consider that the first proviso indicates that here the Act is concerned with a continuing tenancy, but it seems to me that the matter is put beyond doubt by the second proviso which states, without the slightest ambiguity, that a tenant shall not be entitled to the benefit of S 15 unless he shall have paid rent in respect of his holding for fasli 1347. I can only give this proviso the meaning which the words imply and to my mind its effect is that a tenancy in 1347 is a condition precedent to relief under the section. It may possibly have been the intention, of the Legislature to give relief to a tenant whose tenancy has ceased before the 1st July, 1937, but it has not said so; in fact, it has said the direct opposite. If the section as it stands does not express the intention of the Legislative authority, the Legislative authority can amend the section. The Court cannot amend it; it can only have regard to the language used. For these reasons I hold that the section does not apply when a tenancy has ceased to exist before the commencement of fasli 1347.

4. In this case the District Munsif of Palghat dismissed the petitioner's suit on the ground that there was no rent owing to , the petitioner, after applying the provisions of the Act for scaling down the debt due by the respondent. In the view I take, the case should be sent to the District Munsif to decide it in the light of this judgment. The petitioner is entitled to his costs.

Gentle, J.

5. I agree but desire to add a few words. Apart , from the provisions of Act IV of 1938 the respondent is liable to pay to the petitioner the rent of the holding for fasli 1345, subject to any contention that there has been a previous discharge. Relief from this payment is given by Section 15 (1) of the Act, and in order to obtain the relief the respondent must bring himself within the statutory provisions, fulfilment of which is required before relief can be obtained. The second proviso to Section 15 (1) indicates that no tenant shall be entitled to the benefit of the section unless he shall have paid the rent due for fasli 1347 in respect of the holding. In my view payment of rent for fasli 1347 is a condition precedent to obtaining relief in respect of fasli 1345 and earlier years. Since the respondent has not fulfilled this condition precedent he cannot bring himself within the provisions of Section 15 and is not entitled to the relief which the section gives by the money or rent owing to the petitioner being deemed to have been discharged.

Krishnaswami Aiyangar, J.

6. I defer to the opinion of my Lord which has also been concurred in by Gentle, J. I own to a certain amount of doubt still lingering in my mind but it is not sufficiently strong to persuade me to take a different view.