

(1935) 03 MAD CK 0075
In the Madras High Court

S. Rajagopala Pillai

APPELLANT

Vs

K. Namasivayam Pillai and Another

RESPONDENT

Date of Decision : 26-03-1935

Acts Referred:

Citation : (1935) ILR (Mad) 1023 : 158 Ind. Cas. 273 : (1935) 42 LW 407 :
(1935) 69 MLJ 325

Hon'ble Judges : King, J

Bench : Division Bench

Judgement

King, J.—The question at issue in these connected appeals is whether the appellant who came into the occupation of a kudiyruppu in October, 1929 can enforce against his landlord the right of purchase granted by Section 33 of the Malabar Tenancy Act. That section runs as follows:

In any suit for eviction relating wholly or in part to a kudiyruppu, 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 kudiyruppu, of the landlord who seeks to evict him, at the market price on the said date.

2. Now the appellant has prima facie no rights under this section. His personal occupation at the time of the institution of the suit had lasted for just seven weeks, and his predecessor- in-title from whom he purchased his tenant's right was not a member of his family. But he contends that the kudiyruppu has been in the continuous occupation of himself and his two predecessors-in-title since 1906, and that he is entitled to reckon this whole period of 23 years in his favour. The word "tenant" according to him is used in the section as contrasted with other possible occupiers for example a landlord or a usufructuary mortgagee, and whenever a kudiyruppu has been in the possession of a succession of tenants for ten years the section applies.

3. This contention amounted in the arguments before us to little more than a

mere assertion. The only other section of the Act which Mr. Sitarama Rao called to his aid was Section 39. This section no doubt permits a tenant to alienate whatever rights he has, but that alienation is expressly made "subject to the provisions of this Act" and if Section 33 provides what is only a personal and conditional and not an absolute right Section 39 cannot make it alienable so as to relieve the alienee of the conditions. We must therefore go back to Section 33 itself and to us it seems apparent that that section can confer no rights upon the appellant. Omitting for the moment the words "or the members of his family" what is the meaning of the expression "the continuous occupation of a tenant"? Only one meaning we think is possible without a violent straining of the English language, and that is that a single tenant must have been in occupation for the whole ten years. The section goes on to qualify this by the words "or the members of his family". What now is the meaning? Surely this, that throughout the ten years, no one other than the tenant or members of his family must have been in occupation. If the appellant's contention is correct, it would surely have been easy to make a specific reference in the section to predecessors-in-title, or if that were not done, to use the word "tenants" in the plural instead of "a tenant" in the singular. The words "a tenant" in the section must refer to the tenant, whose eviction is actually sought for, it is "such tenant" who shall be entitled to offer to-purchase.

4. This interpretation of Section 33 is further confirmed, we think, by a consideration of Section 38. That section provides that when the tenant has become the owner of the landlord's rights in the kudiyruppu, any sale by him or his representatives of the kudiyruppu shall be subject to the landlord's right of preemption. Why should the tenant's powers of alienation be thus restricted? If the object of Section 33 is to benefit tenants as a class rather than individual tenants with personal qualifications, if a tenant like the appellant with seven weeks' occupation can take advantage of the section on what principles of logic can the interference with such a tenant's rights which Section 38 creates be justified? But, if on the other hand, the object of Section 38 is to bestow special rights on an individual tenant on the ground that he and his family have had a long residence in the family house, it is obviously just that a tenant should not be allowed to make use of the section for his own personal profit, and if he and his family no longer want to retain the family house, then the landlord's rights which have been curtailed by the special provisions of Section 33, are enlarged again by Section 38. We think that the latter object must clearly have been the object which the legislature desired to attain. It is the only object which is consistent with the language of the two sections, or with the language of Section 33 read by itself.

5. These appeals accordingly fail and are dismissed with costs.