
(1910) 04 MAD CK 0051
In the Madras High Court

Sappa Krishna Patrudu and Others

APPELLANT

Vs

Thelli Mukunda Sahu

RESPONDENT

Date of Decision : 27-04-1910

Acts Referred:

Citation : 6 Ind. Cas. 586

Hon'ble Judges : Arnold White, C.J; Munro, J

Bench : Division Bench

Judgement

1. The Judge holds that at the time of the main grant to Balajee Deo, the land was cultivated by one Brindavana who held it with occupancy right and that the defendant succeeded Brindavana.

2. On these findings, we are not prepared to say the Judge was wrong in holding that the defendant is a tenant with occupancy right.

3. We think the present case is distinguishable from Marapu Tharala v. Telukula Neelakanta Behara 30 M. 502 : 2 M.L.T. 470. There the tenants set up a permanent lease which they failed to prove. The appeal in that case came before the same District Judge, who heard the appeal in the present case. He observed in his judgment that, the lands being wain, the presumption of occupancy right did not apply unless the tenant or his predecessor-in-title held the Kudivaram right. He pointed out that there was no limit of any earlier tenancy than the alleged permanent lease. Here the Judge points out that all that passed under the grant from the zemindar to Balajee Deo was what the zemindar possessed at the time, i.e., the right to Rajabhogam, and he finds that, at the time of the grant, there was a subsisting tenancy, Brindavana being the tenant.

4. In Second Appeal No. 1021 of 1905 (where the Inamdar was held entitled to evict), the defendants set up a permanent lease, which they failed to prove and in their written statement they did not claim any right of permanent occupancy independently of alleged lease.

5. We may observe that in Second Appeal No. 1737 of 1908, where the plaintiffs

relied on the same grant to Balajee Deo the Courts below held in favour of the occupancy right and an appeal to this Court was dismissed though it does not appear that, the question of occupancy right was raised.

6. The second appeal is dismissed with costs.