

(1900) 10 MAD CK 0020
In the Madras High Court

Srinivasa Ayyar

APPELLANT

Vs

Muthusami Pillai and Others

RESPONDENT

Date of Decision : 29-10-1900

Acts Referred:

Limitation Act, 1963 — Article 139

Citation : (1901) ILR (Mad) 246

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

Bench : Division Bench

Judgement

1. Two points were raised on behalf of the appellants--(1) that the learned Judge misconstrued the two exhibits R and S in holding that their effect

was to confer an occupancy right in perpetuity on the defendants' predecessor in title; (2) that the learned Judge erred in law in holding that a suit

in ejectment was barred by limitation.

2. With regard to the construction of documents exhibits R and S. We are unable to agree with the view taken by the learned Judge. He was of

opinion that the effect of exhibit S was to grant the kudivaram right in perpetuity to the defendants' predecessor in title (one Perumal) with a

reservation of the right to lease the melvaram to some one else. The effect of exhibit S, in our opinion, was to constitute Perumal a tenant from year

to year of the lands in question at an annual rent of Rs. 60. If the tenancy was put an end to he was entitled to receive from the landlords half the

produce of the seeds, paikkaramboo and fruit trees which had been planted by him. That is to say, if the landlords determine the tenancy, they

become liable to pay Perumal as compensation for improvements effected by him during the term of his tenancy one half the produce of the seeds

and fruit trees. Under exhibit S there would, of course be no privity of contract as between Perumal and any new tenant, but Perumal, on the determination of the tenancy, would have the right to-recover, as against the landlords, half the produce of the seeds and fruit trees. If exhibits R and S are to be read as amounting to a grant of a permanent occupancy right, it seems impossible to place any reasonable construction on the words ""while so-enjoying, if you be dismissed, &c."" in exhibit B, and the words. while so enjoying, if any were to agree for a higher amount of lease, &c."" in exhibit S. In our opinion, under exhibits R and S, the rights acquired by Perumal were merely the rights of a lessee.

3. With regard to the question of limitation, the learned Judge held that inasmuch as in 1871 the defendants to the knowledge of the plaintiffs set up

a right of permanent occupancy in the lands in question, thereby repudiating their landlords' title, any suit in ejectment was barred by limitation.

Under Article 139 of the second schedule to the Limitation Act, the period of limitation is twelve years and the time from which the period runs is

the date of the determination of the tenancy. The learned Judge held that the tenancy was determined as from the time when the landlords knew

that the defendants had set up a right of permanent occupancy in the lands in question. We think he was wrong in so holding. The lands demised

were agricultural lands and consequently Section 111 of the Transfer of Property Act does not apply. But although the express provisions of this

section do not apply to the present case, the section contains an exposition of the general law which is applicable. Section 111 of the Transfer of

Property Act provides that a lease of Immovable property determines by forfeiture in case the lessee renounces his character as such by claiming

title himself and the lessor does some act showing his intention to determine the lease. A tenant-repudiating the title under which he entered

becomes liable to immediate eviction at the option of the landlord--see the case of Vishnu Chintaman v. Balaji bin Raghuji ILR 12 Bom. 352. Until

the landlord indicates that he intends to exercise his option the tenancy subsists. In the present; case the lessor did nothing to show his intention to

determine the lease until he served the defendants with notice to quit. It appears to be settled law that, in the case of a person in possession under a

tenancy for a term of years, or for life, a mere notice by the person in possession that he claimed to be holding under a perpetual or hereditary

tenure does not make his possession, after notice, adverse within the meaning of the Limitation Act-- see the judgment of the Privy Council in

Maharani Beni Perahad Koeri v. Dudh Nath Roy L.R. 26 IndAp 216. Even if, after the tenant's repudiation of the landlord's title had come to the

knowledge of the latter, the tenants are to be regarded as in the same position as tenants for a term of years who are holding over after the

expiration of the term, time does not begin to run as against the landlord until the tenancy on sufferance, or the tenancy at will, has been

determined--see Adimulam v. Pir Ravuthan ILR 8 Mad. 424.

4. The respondents' vakil was driven to contend that a distinction must be drawn between a tenancy for a term of years or a tenancy for life and a

tenancy from year to year, and that, in the case of a tenancy from year to year, the Betting up of an adverse right by the tenant ipso facto puts an

end to the tenancy. This proposition cannot be maintained on any principle of law and is unsupported by authority. The case of Maidin Saiba v.

Nagapa ILR 7 Bom. 96 is no authority for the proposition. It was held in that case that the tenant's alleged tenancy was a pretended tenancy. His

possession, from the first, as against the landlord, was wrongful. He was a mere trespasser. In the present case the defendants' possession was

under the lease. This possession, as against the plaintiffs, did not become wrongful, and therefore could not be $\frac{1}{2}$ adverse until the landlord

exercised his option to determine the tenancy.

5. The observations of Sir Subrahmania Ayyar in his judgment in Ittappan v. Manavikraman ILR 21 Mad. 153 have been cited in support of the

respondents' contention. We do not think, however, that the learned Judge intended to lay down that a tenancy from year to year was ipso facto

determined by disavowal of the landlord's title. It may be that such a disavowal renders the tenant liable to be ejected without notice to quit, but it

does not preclude the landlord from waiving the forfeiture and treating the tenancy as a subsisting one.

6. The decision in Doe d Davies v. Evans 9 M. & W. 84 has no bearing upon the question raised in the present case. It was merely a decision that,

in the circumstances of that case, a notice to quit was not necessary to entitle the plaintiffs to recover in ejectment.

7. In Doe dem Graves v. Wells 10 A. & E. 427 the only question was whether an

oral disclaimer by a tenant worked a forfeiture in law.

8. We think the plaintiffs are entitled to sue in ejectment, and we allow the appeal except as regards the lands referred to as item No. 5. As the

plaintiff have succeeded with regard to the substantial part of their claim, the appeal will be allowed with costs throughout.

9. The plaintiffs are entitled to mesne profits, be a amount of which will be determined in execution.