
(1902) 08 MAD CK 0018
In the Madras High Court

Suri Venkata Subbaraya Sastri		APPELLANT
	Vs	
Darappareddi Kristnaya and Others		RESPONDENT

Date of Decision : 20-08-1902

Acts Referred:

Citation : 9 Ind. Cas. 566

Hon'ble Judges : Moore, J;Bhashyam Aiyangar, J

Bench : Division Bench

Judgement

1. It appears that these lands were held by Timmalapally Ramakrishnamaiya and others, but as to when they got possession there is no evidence.

They fell into arrears and Meruvu Gopalaswami, the vendor" to the defendants, was allowed to come into possession of the lands on condition of

his paying the arrears. Such being the case it must be assumed that Meruvu Gopalaswami continued to hold the lands on the same terms as his

predecessors. In 1891 Meruvu Gopalaswami sold his rights over the lands to the defendants. The plaintiff is a purchaser from an Inamdar, but it is

not alleged or proved that the lands themselves were given to his vendor as Inam, or, in other words, that the Kudivaram or any portion of it was

granted to him as Inam. There is, consequently, no presumption that the predecessors-in-title of the defendants derived their title to the Kudivaram

from the Inamdar. Such being the case, the Subordinate Judge has rightly thrown on the plaintiff the onus of proving that he is entitled to eject the

defendants. The appellant relies on Exhibits J and H4 as showing that the defendants are only yearly tenants. We do not consider that these

documents establish the character of the tenancy of the defendants. In Exhibit J (December 1883) Meruvu Gopalaswami, the vendor to the

defendants, recites the amount that he is bound to pay as kist for fasli 1293 and concludes by saying that after the end of the fasli he will not touch the land without obtaining a fresh cowle. This is merely an undertaking on his part that he will not commence to cultivate in the ensuing year without first obtaining cowle from the Inamdar and is perfectly consistent with a right of occupancy on his part. The same observations apply to Exhibit H4 where the tenant states that at the end of the term of four years to which that document relates he shall continue to cultivate the land but shall not enter on the land for the purpose of cultivation till he receives a cowle from the Inamdar. Here again there is nothing, in our opinion, inconsistent with a right of occupancy in the defendant's vendor. As the onus of proving the right to eject was on the plaintiff, and as he has, in our opinion, failed to discharge that onus we must hold that this second appeal has failed and dismiss it with costs. We remark that the Subordinate Judge should have passed an order either admitting or rejecting the extract from the Inam Register which was produced before him in appeal.