

(1937) 12 MAD CK 0017
In the Madras High Court

Thazhe Nelloli Pazhe Peringati Athiramankutti and Another	APPELLANT
Vs	
Thazhe Nelloli Pazhe Peringati Uppari alias Kunhi Parayayi and Others	RESPONDENT

Date of Decision : 16-12-1937

Acts Referred:

Citation : AIR 1938 Mad 570 : (1938) 47 LW 386 : (1938) 1 MLJ 400

Hon'ble Judges : Venkatasubba Rao, J

Bench : Division Bench

Judgement

Venkatasubba Rao, J.—Mr. Sridharan strenuously contends that the judgment under appeal is wrong. The question need not be considered

whether under the customary law of Malabar a permanent irredeemable kanom can be granted. According to the respondents (the tenants) such a

kanom demise under the Malabar Law is valid and their contention has been accepted by both the Courts below and by Venkataramana Rao, J. It

is unnecessary, as we have said, to examine the soundness of this position.

2. Then the question remains whether the respondents have acquired by adverse possession a permanent tenant right. This has been answered in

the affirmative by the lower Courts and by the learned Judge who heard the second appeal. Ex. I of 1869 purports to create an irredeemable

permanent right. Ex. A of 1895 does not supersede, as Mr. Sridharan contends, the deed of 1869, but on the contrary gives effect to a provision

for renewal which that deed contains. In 1903 the then jenmi of the suit property granted a melcharath to one Mammad. He filed a suit for rent in

1906 against the predecessor in interest of the present contesting defendants. To that suit the jenmi, that is, the ancestor of the present plaintiffs

was impleaded as a defendant. There the tenant put forward most unequivocally his saswatham right. The present suit was filed in 1928. From

1906 when the hostile assertion was publicly made in the suit, if not from 1869, the tenants have been in possession of the holding, asserting openly

their irredeemable right. The landlord had throughout notice of the claim put forward during the entire period. That a permanent tenant right, a

species of limited right, can be acquired by prescription has not been denied. Mohammad Mumtas Alt Khan v. Mohan Singh (1923) 45 M.L.J.

623 : L.R. 50 IndAp 202 : ILR 45 All. 419 (P.C) relied on by Mr. Sridharan is clearly distinguishable. Lord Salveson, delivering the judgment of

the Board, observed:

We are unable to affirm as a general proposition of law that a person who is, in fact, in possession of land under a tenancy or occupancy title can,

by a mere assertion in a judicial proceeding and the lapse of six or twelve years without that assertion, having been successfully challenged, obtain

a title as an under-proprietor of the lands. (Page 209.)

3. The case here is entirely different. What is relied upon, is not a mere assertion, but possession sufficiently open and hostile, its adverse character

and the nature of the right claimed, being brought home to the owner's knowledge.

4. The appeal therefore fails and is dismissed with costs.