

(1942) 01 MAD CK 0016
In the Madras High Court

Ukkali alias Ammu alias Amma Nethyar and Another	APPELLANT
Vs	
Pudumana Parambath Kelu Nayar	RESPONDENT

Date of Decision : 16-01-1942

Acts Referred:

Citation : AIR 1942 Mad 399 : (1942) 55 LW 152 : (1942) 1 MLJ 338

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—The petitioner here was the decree-holder in a suit for redemption of a kanom. The decree which was passed in 1936, took the form of declaring firstly, the amounts due to the tenants defendants, for improvements and for the kanom amount and declaring secondly, that on the deposit by the plaintiff of these amounts the defendants should hand over the property and the documents to the plaintiff. Then followed a series of clauses specifying the amount due from the defendants to the plaintiff viz., for arrears of rent, for costs, commission fee and also the rate at which future rent was payable and the decree provided that ""set-off is allowed"". While this decree was still unsatisfied, the tenants defendants, preferred an application u/s 15 (4) of the Madras Act IV of 1938 praying that the deposit towards arrears of rent for faslis 1347 and 1346 might be taken into consideration and the arrears for the earlier faslis scaled down. This application was opposed by the decree-holder because, by reason of the provisions for set-off in the decree, no rent was outstanding when Madras Act IV of 1938 came into force. The lower Court rejected this contention and hence the present revision petition.

2. An attempt has been made to argue on behalf of the jenmi that this is really a

case of two cross-decrees and that the lesser decree must be deemed to be merged in the greater decree. It seems to me quite clear that when there are two cross-decrees the lesser of which cannot be executed so long as the greater decree remains unsatisfied, having regard to the provisions of Order 21, Rules 18 and 19, Civil Procedure Code, the fact that the holder of the lesser decree cannot execute will not render the amount decreed to him an amount which is not due. The effect of the passing of the greater decree upon the lesser decree is no doubt to ear-mark the lesser decree for the satisfaction ""of the greater. But until the holder of the greater decree actually executes and sets off the amount due from him to the holder of the lesser decree, the latter still has a decree which is unsatisfied and which might become effective if the greater decree were satisfied in some other way.

3. The appellant, however, relies very strongly on an unreported decision of a Bench in A.S. No. 437 of 1938 with the connected C.M.P. No.

5946 of 1941, since reported in Eletath alias Muthetath Mallisseri Narayanan Nambudiri and Others Vs. Etacheri Kunnath Chathukutti Nayar and

Others, , the facts of which bear a considerable resemblance to those with which we are now concerned. In that case, there was, as here, a suit for

redemption of a kanom and a claim for a set-off of arrears of rent due to the landlord. That claim, was, however, based on a barred decree and

the trial Court held that in such circumstances there could be no set-off and granted the decree for redemption on payment of the full value of the

improvements and the kanom amount. The learned Judges, who-heard the appeal disagreed with the lower Court and held that though the decree

for arrears of rent had become time-barred, it could not be said that these arrears had ceased to be due and that by the statutory provisions of the

Malabar Compensation for Tenants' Improvements Act, it was incumbent upon the Court to set off the amount of rent due against the value of

improvements, and pass a decree for redemption on payment of the balance and a direction was given that such a decree should be prepared.

Thereafter, when dealing with an application filed in the appeal to scale down the arrears of rent u/s 15 of the Madras Act IV of 1938, the learned

Judges took the view that the decree passed in appeal was a decree for redemption on the payment of an amount reduced by the amount of rent

and that there was no subsisting claim for rent at the time when Act IV came into force, the appellate decree being regarded merely as a

rectification of the trial Court's decree by the reduction of the amount due for improvements. On this reasoning, the learned Judges declined to

allow the tenants" to scale down the claim for arrears of rent which was set off against the claim for improvements. There is to my mind a clear

difference between the facts with which those learned Judges had to deal and the facts which are now before me. In the case just cited, the whole

decree was before the Court, the Court modified the decree by giving a set-off which ought to have been given in the trial Court and, on this

rectification of the decree, the learned Judges declined to treat the arrears of rent as having been due during the period intervening between the trial

Court's decree and that of the Court of appeal.

4. In the present case the decree in the redemption suit has become final. It was not drawn up in the manner contemplated in Section 6 (2) of the

Malabar Compensation for Tenants' Improvements Act. Under that provision, the Court should itself have set off the amount due by the

defendants to the plaintiff for rent against the amount due by the plaintiff to the defendants for improvements, etc., and should have passed a decree

declaring as the amount payable to the defendants on ejectment only the balance after such set-off. No doubt in the present case, that which had to

be set off was not merely the arrears of rent but also future rent. But there would have been no difficulty in drafting the decree declaring (1) the

kanom amount and the value of improvements and (2) the amount due for arrears of rent, etc., and directing that the defendants should put the

plaintiff into possession on payment of a specified sum, equal to the balance after subtracting the amount due from the defendants from the amount

payable by the plaintiff and giving the plaintiff the right in future to set off any further rents which might be due to him before the redemption was

completed. Had such a decree been drawn, on the reasoning of the case cited above, it would necessarily have to be held that the claim for arrears

of rent was wiped out by the passing of the decree and could not be treated as rent due when Act IV of 1938 came into force. But the decree

which has actually been passed really takes the form of two separate decrees, one in favour of the plaintiff for rent, the other in favour of the

defendants for the kanom amount and value of improvements, together with a declaration that the plaintiff can redeem the properties on payment of

the amount due from him with liberty in future for the plaintiff to set off the arrears of rent.

5. The decree having been drawn in this way and no appeal having been preferred against that decree, I do not think that one is entitled in these

proceedings to rectify the decree or treat it as one drawn in accordance with the procedure prescribed in Section 6 of the Tenants' Improvements

Act. That being so, it seems to me that the arrears of rent were due when Act IV of 1938, came into force and were therefore liable to be scaled

down. The revision petition is therefore dismissed with costs.