

Venkatacharlu Vs. Kandappa

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Court : Chennai

Decided On : Sep-08-1891

Reported in : (1892)ILR15Mad95

Judge : Arthur J.H. Collins, Kt., C.J. and ;Handley, J.

Appellant : Venkatacharlu

Respondent : Kandappa

Judgement :

1. In our opinion the District Judge was right in holding that plaintiff had not proved his right to eject defendant. On the findings of both Courts, it must be taken that the only facts proved are that plaintiff is the Inamdar of the village, that defendant and his father have been in occupation of the lands for 40 or 50 years as tenants. Plaintiff's case, as set up in his plaint, was that of an occupancy commencing with the execution by defendant of a muchalka for 10 years in 1874-75. This is clearly not supported by the evidence. It was for plaintiff to show that, under the terms of the tenancy and in the circumstances that exist, he has a right to eject defendant, and this he has not shown. The cases of Appa Rau v. Subbanna I.L.R. 13 Mad. 60 and Venkan v. Kesavalu S.A, No. 1078 of 1887, unreported there referred to, are distinct authorities for the position that, when the plaintiff does not prove what the terms of the tenancy are, he cannot eject, although defendant may fail to prove his right of occupancy. Achayya v. Hanumantrayudu I.L.R. 14 Mad. 269 does not, in our opinion, conflict with this decision. We agree with the District Judge that the

muchalka (Exhibit A) does not of itself show that plaintiff has any right to eject defendant.

2. The appeal fails, and is dismissed with costs.

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