

Narayanan Nambudripad Vs. Beepattumma

Narayanan Nambudripad Vs. Beepattumma

SooperKanoon Citation : sooperkanoon.com/797979

Court : Chennai

Decided On : Mar-11-1946

Reported in : AIR1946Mad387; (1946)1MLJ400

Appellant : Narayanan Nambudripad

Respondent : Beepattumma

Judgement :

Alfred henry Lionel Leach, C.J.

1. These three appeals, filed under Clause 15 of the Letters Patent, all raise the same question, namely, whether in a case where rent is payable in kind and the landlord is suing to enforce payment he is entitled to take the market price ruling on the date of the institution of the suit or whether he must accept the price ruling on the date when the produce should have been delivered to him.

2. Under the leases in suit the rents were payable in terms of paddy and were to be delivered at the granary of the landlord on the due date. The District Munsiff held that the landlord was entitled to the market price ruling on the dates when proceedings were instituted. On appeal by the tenants the Subordinate Judge held that the prices to be taken were those ruling when the rents fell due and with this view Chandrasekhara Aiyar, J., in second appeal agreed. These appeals-are from his judgment. The appeals have been heard together and can be dealt, with in one judgment.

3. There are numerous decisions of Judges of this Court sitting alone which support the judgment of Chandrasekhara Aiyar, J., but there is a Bench decision which apparently runs to the contrary. In none of the cases has the question of law now under discussion been really discussed.

4. The first decision given was in Parameswaran Nambudripad alias Narayanan Thrathar Nambudripad v. Subramania Aiyar (1944) 2 M.L.J. 84 which was a second appeal heard by Horwill, J. The main question there was whether Section 51(2) of the Malabar Tenancy Act applied where the rent was payable in kind. It was held that it did not apply. It is accepted by both sides here that the decision on this question is correct. The learned Judge went on to state that where rent has to be paid in kind at a particular place and the tenant does not deliver the paddy, the landlord is entitled to its value according to the market price at the time of 'the breach'. The learned Judge gave a decision to the same effect in Achutan Nayar v. Madhavati Nayar : AIR1945 Mad438 and again in the unreported case of Ammalu Amma v. Kandan Narayanan Nambudripad S.A. Nos. 941 and 942 of 1944. The same view was taken by Somayya, J., in P.P.V. Kunhiraman v. K.T.V. Kunhiraman : AIR1945 Mad357 and in the unreported case of Kanthaswimi Pillai v. Narayanan Nambudripad S.A. No. 683 of 1944. In Meghji Gopalji Salt v. A.S. Kalyani Ammal A.A.A.O. No. 302 of 1944 also unreported, Bell, J., agreed. The learned Judge whose judgment is now under appeal had expressed the same opinion in Kunhachumma v. Manavedan alias Valia Thirumalpad⁷.

5. The case decided by the Division Bench is Chandukutti Nambiar v. Kalhar Kutty S.A. No. 1611 of 1944, which was heard by Wadsworth and Patanjali Sastri, JJ. There the question was whether the Courts below were right in fixing the commutation rate with reference to the terms of Section 51(2) of the Malabar Tenancy Act or whether the plaintiffs were entitled to a decree based on the market price of the produce ruling on the date of the plaint. The learned Judges accepted the view taken in the earlier cases on the question of the applicability of Section 51(2) and therefore decided that the plaintiffs were entitled to convert the rent at the market price prevailing on the date of the suit. Apparently there was no argument on the question whether the proper rate was that prevailing on the date fixed for the payment of the rent.

6. It would appear that Somayya and Horwill JJ., accepted the market price ruling on the date when the rent should have been paid on the ground that there was a breach of contract by the tenant and therefore it was a matter of assessing damages. With great respect, we do not consider that this is a correct aspect. The question is what is the landlord entitled to in money in lieu of the paddy which should have been delivered to him at the end of the year of tenancy. Obviously, the landlord cannot maintain a suit for specific performance; he cannot ask the Court to direct that the tenant shall deliver to him so many measures of paddy. When the tenant failed to deliver the required amount of paddy on the due date, the landlord had the right of suing for the recovery of its value as on that date and that is all he is entitled to. He cannot improve his position by sitting on his rights. In these cases the landlord wishes to have the rate ruling at the date of plaint because the market price of paddy has greatly increased in the meantime. We can well imagine that if the price had fallen, a claim for the market price ruling on the date due for payment of the rent would have been urged with much stronger emphasis.

7. We hold that the landlord is not entitled to recover any thing more than the value of the paddy at the rate ruling when the paddy should have been delivered to him. It follows that these appeals must be dismissed with costs but confined to the costs in L.P.A. No. 68 of 1945.