

Ambalam and ors. Vs. V.R.M. Peria Karuppan Chetti and ors.

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Court : Chennai

Decided On : Nov-21-1934

Reported in : AIR1935Mad377

Appellant : Ambalam and ors.

Respondent : V.R.M. Peria Karuppan Chetti and ors.

Judgement :

King, J.

1. In 1889 there was a mortgage of the melwaram interest in certain land and a lease back to the mortgagors under a lease deed for a term of four years. The interests of the mortgagee have now devolved upon plaintiff and defendants 6 to 8, and these of the mortgagors upon defendants 1 to 5. Plaintiff sued for the recovery of the mortgage money and for profits for faslis 1328 to 1330 (1918-21). None of the defendants except defendant 3 had been paying any rent, and as against defendants 1, 2, 4 and 5 both plaintiff's claims were held to be barred by limitation in; both the Court of first instance and lower appellate Court. In second appeal however Madhavan Nair, J., held that the claim for profits was not barred and defendants 1, 2, 4 and 5 have accordingly filed their Letters Patent Appeal.

2. In coming to this decision Madhavan Nair, J., relied upon Article 131, Lim. Act, which lays down that a suit to establish a periodically recurring right is not barred until 12 years after the plaintiff is first refused the enjoyment of the right. No doubt

if this article could be applied in isolation to the facts of this-case this decision would be correct, but it is argued in this appeal, and we think rightly, that Article 139 and Section 28 of the Act must also be considered, and that all plaintiff's rights as landlord are nail. extinguished. Article 139 allows 12 years to a landlord to sue for possession of his land from his tenant from the date of the determination of the tenancy, In this case the tenancy was admittedly determined in 1893. No doubt plaintiff did not actually frame his suit as one to recover possession, but in view of the provisions of Section 28, Article 139 cannot merely for that reason be ignored. Section 21 runs as follows:

At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

3. It is argued for the respondent here that all that that section means is that respondent's right to recover possession is extinguished and his right to three years' arrears of rent is not affected, but if that interpretation be correct, the section seems to be redundant, for that is merely repeating the terms of Article 139. Nor can any authority be shown in favour of respondent's interpretation. No doubt *Madhavan Nair, J.*, relied in second appeal upon *Alubi v. Kunhi Bi* (1887) 10 Mad 115 and *Jagannath Pandiajiar v. Muthiah Pillai* : (1904)14MLJ477 and we have also been referred to *Vittal Bava v. Narayan Daji* (1894) 18 Bom 507; but in all these three cases the suits were instituted by melwaramdars against their kudivaramdars who had a permanent right of occupancy. Their tenancy could not therefore be 'determined' and the question of the application of Article 139 could not arise.

4. On the other hand we find the law very plainly stated at p. 1626 of Vol. II of, *Mitra's Limitation and Prescription* "as follows:

If a landlord after determination of the [tenancy does not sue within 12 years for recovery of possession from the tenant not only his right to recover possession would be barred but also the title to the property would become vested in the defendant under Section 28 of this Act,

5. and no less than six cases are cited in the foot note in support of this proposition.

6. Madhavan Nair, J., in his judgment has made no reference to Section 28 but has treated the case simply as one of deciding which of two Articles 131 or 139, should be applied to it. But Section 28 clearly cannot be ignored, and we think that the contention of the present appellants, must prevail. We accordingly allow this appeal, and restore the decree of the lower appellate Court with costs throughout.

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