

**Krishnacharya Vs. Anthakki and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/812933](http://sooperkanoon.com/812933)

**Court :** Chennai

**Decided On :** Aug-10-1915

**Reported in :** AIR1916Mad939; 31Ind.Cas.12

**Judge :** Spencer and ;Kumaraswami Sastri, JJ.

**Appellant :** Krishnacharya

**Respondent :** Anthakki and ors.

**Judgement :**

1. This suit was brought to restrain a mulgeni tenant from cutting down the trees in his holding. These include three classes of trees., viz., (1) trees in existence at the grant of the lease, 2) trees planted by the tenant and (3) trees of spontaneous growth. In the District Munsif's Court the plaintiff's Pleader conceded that he had no title to the trees planted by the lessee after the commencement of the lease. In this Court even this position is contested, but if we rely upon the analogy of the Transfer of Property Act, as it was held in Gangamma v. Bommakha 7 M.L.T. 231 that Courts were entitled to do, Section 108, Clause (h), is against the appellant's contention and no direct authority has been cited for a different view.

2. The decision in Gangamma v. Bommakha 5 Ind. Cas. 437 : 7 M.L.T. 231 is conclusive on the point that a mulgeni lessee in South Canara is not entitled to cut trees standing at the date of the grant. The plaintiff failed to prove that the defendant had sold or felled any of such trees. Therefore, an injunction was

properly refused.

3. There remains the case of trees and plants of spontaneous growth. In other parts of the Presidency by Section 12 of the Madras Estates Land Act the Legislature has, as regards ryots possessing occupancy rights in land situated in estates, put trees planted by the ryot and those that grow naturally upon the holding on the same footing and has recognised the ryot's right to enjoy and cut them. In Malabar under the Malabar Compensation for Improvements Act compensation is allowed to the tenants at the rate of 3/4ths of the market value for trees spontaneously grown during the tenancy and the cost of protecting and maintaining such trees grown prior to the commencement of the tenancy is to be paid to the tenants. In *Vasudevan Nambudripad v. Valia Chathu Achan* 10 M.L.J. 32, the right of kanomdars was recognised to remove trees which they have, planted during the period of their occupation. This decision does not decide the right even of kanomdars in Malabar to remove trees of spontaneous growth, but it is worthy of notice that when an argument was advanced that trees exhaust the ground and that this was a reason for the landlord being more interested in their growth than the tenant, this suggestion did not meet with the approval of the Full Bench. The only obligation on the part of the tenant that they recognised was that he should restore the land at the end of his lease period in as good a condition as he received it at the beginning. The observation in *Ruttonji Edulji Shet v. Collector of Tanna* 11 M.I.A. 295, that the trees upon the land were part of the land and the right to cut down and sell them was incidental to the proprietorship of the land, had reference to tree' standing on the land when the lease was made. Mr. Ramanath Shenai for the appellant has not been able to advance any sound reasons for vesting in the mulgar the entire right to trees that have sprung up without any effort or expenditure on his part. Nor has the appellant adduced any evidence of custom or usage by which he is entitled to such growth. The lease is silent on the point. We consider that if landlords were to have the power to prevent their tenants from clearing the ground of shrubs and undergrowth, this would greatly interfere with the tenants' use of the land for agriculture. Even in England the property in bushes is in the tenant, vide *Berriman v. Peacock* 9 Bing. 384. In this country it may well be that on leasing land capable of growing timber the lessee may intend to raise and cut timber for sale as firewood, etc., and so long as the trees growing on the

land at the date of the lease are not interfered with and the nature of the holding is not changed, it is difficult to see why the tenant should not be entitled to any benefits conferred on him by nature. We, therefore, dismiss this second appeal with costs.

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