

Muthusami Pillai and ors. Vs. Srinivasier

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Court : Chennai

Decided On : Mar-26-1902

Reported in : (1902)12MLJ194

Appellant : Muthusami Pillai and ors.

Respondent : Srinivasier

Judgement

ORDER

1. This is an application for review of judgment. A preliminary objection was taken that, since the ground of the application is that the judgment was wrong in law, we have no jurisdiction to entertain it. In our opinion we have jurisdiction, and we overrule the preliminary objection. The defendants were tenants of the plaintiff from year to year under a written instrument. The Advocate-General contended that the defendants' tenancy being a tenancy from year to year, and the defendants having repudiated their landlord's title in 1871 their tenancy came to an end at the end of that year, although nothing was done by the landlord to show that he intended to put an end to the tenancy. The Advocate-General relied on certain observations made by Sir S. Subramania Aiyar, in the course of his judgment in *Ittappen v. Manavikrama* I.L.R. 21 M. 153 with reference to the operation of the law of limitation in the case of repudiation by a tenant of his landlord's title. After dealing with the question generally, the learned judge said 'the same observations apply to the case of a tenant from year to year who denies his landlord's title.' The Advocate-General argued that the learned judge intended to lay down as a proposition of law that a tenancy from year to year was ipso facto determined by a disavowal of the landlord's title at the end of the year of the tenancy during which the disavowal was made. We are by no means satisfied that the learned judge intended to lay down any such proposition, and, if he did, the proposition was in the nature of an obiter dictum. The proposition seems inconsistent with the express words of Section 111(g) of the Transfer of Property Act, 'A lease of immoveable property determines by forfeiture in case the lessee renounces his character as such...by claiming title in himself and the lessor...does some act showing his intention to determine the lease (as has been pointed out, however, the Act does not apply to the lease in this case). A tenant from year to year is defined in Woodfall's 'Landlord and Tenant,' Edition 16, page 230, as 'one who holds under a demise (express or implied) for a term which may be determined at the end of the first or any subsequent year of the tenancy either by the landlord or by the tenant, by a regular notice to quit.' A tenancy from year to year does not, like a tenancy for a definite term of years, come to an end by effluxion of time. It does not come to an end except on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.' [Transfer of Property Act, Section 111(b)].

2. The Advocate-General relied upon an observation of Pattison, J. in *Tomkins v. Lawrence* 8 C. & P. 729, to the effect that a tenancy from year to year is considered as re-commencing every year. The question in that case was whether an allegation of a tenancy in a given year was proved where the yearly tenancy had begun some years earlier. It is obvious the learned judge did not use the word 're-commence' in the sense that a tenancy from year to year re-commenced each year because it came to an end each year. The fact that the law requires a notice to quit shows that it does not come to an end each year.

3. We see no grounds for reviewing our judgment.

4. This application must be dismissed with costs.

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