

APPELLATE CIVIL.

Before Mr. Justice Parker and Mr. Justice Wilkinson.

KRISHNA (DEFENDANT), APPELLANT,

1891.
August 28.

v.

LAKSHMINARANAPPA (PLAINTIFF), RESPONDENT.*

Rent Recovery Act—Act VIII of 1865 (Madras), ss. 3, 12—Mulgeni holding—Right of tenant to relinquish his lease.

It is not competent to a mulgeni tenant in South Canara to relinquish his lease and free himself from his obligation for rent without the consent of the landlord :

Quere, whether a mulgar is within the class of landholders defined in Rent Recovery Act, s. 3.

SECOND APPEAL against the decree of S. Subbayar, Subordinate Judge of South Canara, in appeal suit No. 299 of 1889, affirming the decree of K. Krishna Rau, District Munsif of Puttur, in original suit No. 103 of 1889.

The plaintiff, who was a *mulgar* in South Canara, sued to recover Rs. 18-8-0, being arrears of rent, with interest, due under a mulgeni lease granted to the defendant on 16th November 1877. The defendant pleaded that he had intimated to the plaintiff in the beginning of the year for which rent was claimed, that he had relinquished possession of the land and his rights under the mulgeni lease, and that accordingly the plaintiff was not entitled to recover. He further alleged that he had been compelled to quit the land, as the plaintiff had failed to get certain works on the land carried out as promised by him. This allegation was held by both the Courts not to have been substantiated, but no issue was framed with reference to it.

The District Munsif passed a decree for the plaintiff, providing that he should recover the decree-amount "from the defendant or by sale of the property mentioned in the plaint." This decree was affirmed on appeal by the Subordinate Judge. Both decrees were passed on the ground that it is not open to a mulgeni tenant to surrender his rights under the lease and thereby free himself of liability for rent without the consent of the landlord.

* Second Appeal No. 1039 of 1890.

KRISHNA
v.
LAKSHMI-
NARANAPPA.

The defendant preferred this second appeal on the following grounds :—

“ The lower Courts were wrong in deciding that defendant could not relinquish his lands in favour of his landlord.

“ Defendant having relinquished his lands to plaintiff as per I and II is not liable to pay plaintiff the rent sued for.

“ The lower Courts should have framed an issue as to whether there was an agreement between plaintiff and defendant that plaintiff should do certain acts in reference to the land and whether the non-performance of such acts justified defendant in relinquishing the lands and the absence of such an issue prejudiced defendant’s case.”

Ramasami Mudaliar for appellant.

Mr. Subramanyam for respondent.

JUDGMENT.—We are of opinion that section 12 of the Rent Recovery Act does not apply to this case. In the first place it is not shown that the plaintiff comes within the class of landholders defined by section 3, and next it is impossible to suppose that in an Act for consolidating and improving the law for the recovery of rent, it could possibly be intended to repeal the ordinary law relating to contracts and enact that one contracting party could put an end to the contract whenever he chose and the other never. (See the remarks of Holloway, J., page 173, in the case of *Chockalinga Pillai v. Vythalinga Pundara Sannady*(1).)

The appeal is dismissed with costs.