(1902) 09 MAD CK 0006

In the Madras High Court

Achutan Nambudri APPELLANT

Vs

Koman Nair and Others RESPONDENT

Date of Decision : 15-09-1902

Acts Referred:
Registration Act, 1908 — Section 3

Citation : (1903) 13 MLJ 217

Judgement

1. The finding that the plaintiff had notice of the agreement to renew, evidenced by Exhibit I, is not seriously impugned. We accept the finding.

2. But it is argued on behalf of the appellant that the kanom held by the 2nd defendant is really a lease, and that Exhibit I, as an agreement to renew

a lease, is a lease, according to the definitions of that term in Section 3 of the Indian Registration Act, and that its registration is therefore

compulsory u/s 17(d) of the Act, and also that though Exhibit I contemplates the execution of a further document, yet Clause (h) of Section 17 of

the Registration Act does not exempt Exhibit I from registration, in as much as the exemption under Clause (h) is limited only to the instruments

specified in Clauses (6) and (c) of Section 17. It is further contended that if the kanom held by the 2nd defendant is to be regarded in law as a

mortgage, not as a lease, the agreement to give a renewed kanom will be for the original kanom amount of 200 fanams and for the purankadom of

1,000 fanams, the aggregate of which sums is more than Rs. 100, and that under the Transfer of Property Act, Section 59, the kanom which was

intended to be created can be effected only by an instrument in writing registered and that therefore the 2nd defendant at the date of the suit had

acquired no interest in the property which would bar the plaintiff''s right to redeem the then subsisting mortgage, the term of which had expired. It is not necessary in this case to decide whether the kanom is to be regarded as a lease, and not merely a mortgage, as, in our opinion, the plaintiff

must succeed on the 2nd ground. The 2nd defendant''s pleader argues that at the date of the suit the 2nd defendant was in a position to enforce

specific performance of the contract to renew evidenced by Exhibit I, though she may now be barred by limitation from doing so.

3. The fact, if it be so, that the 2nd defendant was then in such a position, does not, in our opinion; satisfy the requirements of the Transfer of

Property Act, the policy of which is to secure a public registry of mortgages affecting Immovable property exceeding Rs. 100 in amount.

4. In the absence therefore of a registered instrument in support of the 2nd defendant''s alleged title to hold the Kanom for a further period of 12

years, we must hold that the 2nd defendant has no valid answer to the plaintiff''s claim to redeem. Ramasami Putter v. Chinnan Asari I.L.R 24 M.

462 and Maddison v. Alderson 8 A.C. 474 per Lord Selborne.

5. We allow the appeal, set aside the decree of the Lower Appellate Court, and restore decree of the District Munsif with the modification that the

compensation payable to the defendants 2 to 4 shall be that fixed by the Lower Appellate Court, and the time for redemption is extended until this

day six months.

6. The 2nd to 4th respondents must pay the plaintiff''s costs in this and in the Lower Appellate Court.