

(1935) 01 MAD CK 0052
In the Madras High Court

Aghileswara Aiyar

APPELLANT

Vs

Shamu Ayyar and Others

RESPONDENT

Date of Decision : 10-01-1935

Acts Referred:

Citation : 156 Ind. Cas. 147 : (1935) 42 LW 494

Hon'ble Judges : Madhavan Nair, J

Bench : Single Bench

Judgement

Madhavan Nair, J.—The substantial and the only question for determination in this second appeal is whether the original of Ex. A evidences a lease from year to year or a lease for 12 years.

2. The District Munsif held that the lease evidenced by the original of Ex. A was one from year to year, determinable on notice. The Subordinate Judge set aside this finding and came to the conclusion that the lease must have been one for 12 years.

3. Exhibit A is simply a kychit. It does not specifically say that it is either for 12 years or it is from year to year. The previous history of the holding of the property is referred to in Ex. A. It shows that the earliest demise of the property was of the year 1889. Then there was a melcharth on August 2, 1897, which is expressly stated to have been for a period of 12 years. (See Ex. I). The original demisee took an assignment of this melcharth right. It is with respect to the property held under this right that a renewal was executed and this is the suit demise Ex. A. After mentioning the terms of the holding, the document ends with the statement that Rs. 45 has been paid as "sowjanyam." The learned Subordinate Judge on a construction of the terms of the document came to the conclusion that Ex. A must be held to be a lease for 12 years. As stated already, it does not state the period for which the renewal was executed but it expressly says that the renewal that has been given under the document is a renewal of the property held under the previous melcharth which was expressly made for 12 years. When the prior demise was for a term of 12 years and it has been

renewed without any term being mentioned, I think the fact of the renewal may be taken as proof that the new demise also is for a period of 12 years. This is the view of the learned Subordinate Judge. It may also be stated that reference is made in the document to the payment of sowjanya for renewal. It is not customary in the case of leases from year to year to pay sowjanya for renewal. These two circumstances suggest that the original of Ex. A must be held to have been a lease for 12 years.

4. Mr. Ramakrishna Ayyar strongly relied upon a case in *Ganghadaran Pattar v. Pattinhara Kovilakath Manavikraman* 42 Ind. Cas. 268 : 33 M.L.J. 512 : 6 L.W. 491 Ex. B in that case was a kychit executed with reference to properties granted by a kovilagam as in the present case in which also no term was fixed. The question for decision in the case was whether it was a lease from year to year or a kanom for 12 years. The High Court accepting the conclusion of the lower Court held that it evidenced a verumpattam lease. If the document in the present case cannot be distinguished having regard to its terms from Ex. B in *Ganghadaran Pattar v. Pattinhara Kovilakath Manavikraman* 42 Ind. Cas. 268 : 33 M.L.J. 512 : 6 L.W. 491 the argument that the present document is also a lease from year to year should be upheld. But there is one important distinguishing feature which to my mind makes a considerable difference between the two documents. In Ex. B there was no reference to the payment of any renewal fee at all, and further there was no indication that the suit renewal, i.e., the right renewed was of the property which was being held under a lease for 12 years. In both these respects Ex. A is distinguishable from Ex. B and the decision in *Ganghadaran Pattar v. Pattinhara Kovilakath Manavikraman* 42 Ind. Cas. 268 : 33 M.L.J. 512 : 6 L.W. 491 cannot therefore be of much help in deciding this case. I have no doubt, reading the terms of the document Ex. A, that the original of it evidences a lease for 12 years.

5. It was argued that this being a lease given by a kovilagam, there is a presumption that such leases must be construed to be leases for 12 years. It is not necessary for the purposes of this case to decide whether such a presumption exists. But there is authority in Mr. Sundara Ayyar's Book on Malabar Law for this position that in case of leases of kovilagam properties where renewal fees have been paid, even a verumpattom lessee is entitled to hold the lands for a period of 12 years. According to this view, seeing that the renewal fee has been paid, Ex. A in the present case should be construed to be a lease for 12 years. But I base my decision solely on the construction of the document. It is agreed that if the original of Ex. A evidenced a lease for 12 years, then the second appeal should be dismissed. I may in passing mention that the word "Andukattukanom" was used in Ex. A. Mr. Ramakrishna Ayyar sought to build an argument on the use of this term to the effect that kattukanoms are taken only with respect to annual leases. But the term used is not "Kattukanom" pure and simple, but "andukattukanom" and the document shows that it is paid at the end of the year along with the pattom when it is paid. Kattukanoms with respect to leases in Malabar are taken from the tenants at the commencement of the leases

and no annual payment styled kattukanom is ever made. In this case in the previous document Ex. 1 which evidenced a mortgage for 12 years, we find the payment of the "andukattukanom". This clearly shows that the use of the term cannot be relied upon in support of the argument that Ex. A. evidences a simple lease from year to year. Apparently, it is the custom with regard to the leases given by this kovilagam to provide for a payment called andukattukanom. It is not often found in the ordinary kinds of leases or mortgages executed in the District.

6. The second appeal fails and is dismissed with costs.