

(1917) 03 MAD CK 0017
In the Madras High Court

Anantanarayana Iyen

APPELLANT

Vs

Khozhikote Patinhare Kovilakath Thiruveerarayan alias
Thampan Thamburan and Others

RESPONDENT

Date of Decision : 07-03-1917

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 103

Citation : (1917) 33 MLJ 459

Hon'ble Judges : Napier, J;Ayling, J

Bench : Full Bench

Judgement

Napier, J.—This is a suit by a melcharatdar from the Stani the 4th Rajah of Calicut to recover, from certain persons in possession of land

under Verampatum lease, the properties demised in the melcharath. The melcharatdar is the 2nd plaintiff the demisor being the 1st plaintiff. The 5th

defendant in the suit is a person to whom a melcharat had been granted by the predecessor of the 1st plaintiff with respect to the same properties

and the plaintiffs claim that that demise was bad and not binding on the present 1st plaintiff as having been given without any consideration and for

the purpose of depriving the 1st plaintiff of his lawful income and not for the purpose of the stani. This question was made the subject of the 7th

issue, namely, "" whether the lease relied on by the 5th defendant is valid and binding on the plaintiff."" We have already held in S.A. Nos. 581, 582

and 608 of 1916 that the property was held by the defendants in possession on a Verumpatum lease and that they were therefore liable to

surrender it. But the question we have to decide in this case is whether the prior melcharath granted to the 5th defendant is valid because, if so, the

present 2nd plaintiff has no title on which he can sue. The matter was considered

carefully by the District Munsif who held that the first melcharath was good. But it has been pointed out to us that the lower Appellate Court has not given any finding on this issue No. 7, having overlooked the necessity for it as the Court dealt with these cases and the prior cases S.A. Nos. 581 to 582 and 608 of 1916 in the same judgment.

2. The point urged by Mr. Subramania Sastri is really a point of law although it has to be applied to the facts of this case and as we have those facts before us and as they are not really in dispute, we propose to act u/s 103 of the CPC and determine this issue ourselves. The argument put forward by Mr. Subramania Sastri is that anything beyond a lease for a single year by a stani is voidable unless it has been shown to have been for the necessity of the stani. And he has invited our attention to a long series of cases beginning with two of the Sudder Adawlat Court. Those two cases are quoted in Moore's Malabar Law p. 353 the subject being dealt with by the learned author from p. 348. We do not think that those two cases really lay down anything in the way of a general proposition. They seem to me to have been decided on the facts of each case and are cases where a Zamorin practically on his death-bed and a Rajah of Palghat who had just suffered from a paralytic stroke endeavoured to defraud the person who would come into possession of the estate in a few months of the whole of what he might legitimately expect to get from the property.

Great reliance has naturally been placed by Mr. Subramania Sastri on the decision of the Privy Council in Venkateswara Iyan v. Shekari Varmma ILR (1881) M. 384. but I do not think that their Lordships intended to lay down that every lease, for however short a term, must be governed by the same rules as they applied in that case. That was a perpetual lease of stanom lands by a Rajah, and their Lordships say with regard to that, The stanomdar represents the corpus of his stanom much in the same way as a Hindu widow represents the estates which have devolved upon her and he may alienate the property for the benefit or proper expenses of the stanom." Now I think it is clear that in using this language their Lordships were referring to alienations by sale and mortgage by a Hindu widow in circumstances which have been held to be binding on the reversioners, and I do not think that they had in their minds in the very slightest the granting of a lease for the purpose of the cultivation of the stanom property. Even

this proposition has been held in a later case not to be of universal application, for it was decided in *Mana Vikraman v. Sundram Pattar* ILR

(1881) Mad. 148 that the granting of a perpetual lease is not necessarily bad if it is for the benefit of the stanom and on the facts the court held that

the approval of 8 stanis was sufficient to show benefit. In a later case dealing with a perpetual lease, *Mullath Tarwad Karnavan and Manager*

Katungi Velloti and Ors. v. Mullath Unni Nambi alias Kunhunni Velloti (1895) 5 M.L.J 219, it was laid down that such a lease is presumably

beyond the powers of a stani as it amounts to an alienation. Now, I do not think that we have to apply the principles governing these cases at all. It

seems to me that in dealing with a lease for 12 years we have to consider the matter from a different standpoint. The property has not been "

alienated" in the broad sense of the word. It remains for the benefit of the stanom and some rent is coming in and in course of time the lease will

come to an end, and the new stani get the benefit of the renewal. The tests to be applied to such a case have been considered in two very recent

cases S.A. No. 1874 and 1875 of 1914 and S.A. No. 1449 of 1912. The first of these was a judgment of this Bench and the second a judgment

of *Sadasiva Aiyar, and Bakewell, JJ.* I prefer to take the latter judgment especially in view of the admittedly close acquaintance which one of those

learned Judges has with Malabar customs and conditions. It was the grant of a melcharat for 12 years. The learned Judges say as follows.-""The

question is whether the previous stani in granting the melcharth to the plaintiff reserved a reasonable rent for the 12 years period, she having only a

life interest in the income, and her successor not being bound by a melcharth which was not granted in the ordinary course of business or which did

not reserve the proper and usual rent obtainable on renewal."" This of course is an entirely different test to that which had been applied to cases of

perpetual leases, and in my opinion it is one which we can very usefully adopt. Applying this test Mr. Subramania Sastri urges that on the facts it is

destructive. He points out that these properties were previously granted to the defendants in possession on Verumpattom tenure, that is, a lease for

a year. And he also points out that the properties have been consolidated into one melcharth which has been granted by thes tani to his own

nephew. Giving all weight to these considerations, I do not think that these facts are sufficient to bring the case within the mischief of the doctrine

laid down, especially as I am inclined to think that in the view of the learned Judges who decided that case it rests on the person who seeks to have the melcharth declared void to show that it is not of a reasonable nature and not granted in the ordinary course of the business. Although it is true that these properties were granted on Verumpattom lease, namely a lease for one year, the fact remains that between the year 1870 and the year 1913 there had only been four leases granted. The first was in 1870 and was renewed in 1881. It was renewed in 1888 and again in 1902, and the property was held under the last lease up to the date of this melcharth, which is 1912. So that, as a matter of fact the same tenant held these properties for periods between 7 and 14 years on the nominal lease for one year. Then as to the question of consolidation, it appears that it is only the last Verumpattom lease that has been split up into three for the previous leases were consolidated and the only reason why three different leases were granted in 1902 was because the holders of the lease had made a partition and the parties desired to have a lease of the property held by each in his own name. So I do not think any importance can be attached to the consolidation. The District Munsif has expressed his opinion that consolidation may be very good business and also that it may be a benefit to the stanom to get a solvent tenant to take the property on a lease instead of having the trouble of yearly lease with the possible insolvency of any lessee at any time. I think there is a great deal of force in this contention and unless it was demonstrated by evidence that the grant of a 12 year lease of this character was so unusual as evidently not to be in the ordinary course of the business, I should not be prepared to hold that was so. On the whole, I have come to the conclusion that there is nothing in this melcharth which offends against the test applied in the judgment of this Court in S.A. No. 1449 of 1912, the reasoning of which I adopt.

3. The result will be that this issue is found against the plaintiff and the suits will have to be dismissed with costs of the tenants (respondents) one set and 2nd respondent one set.

Ayling, J.

4. I agree.