
(1935) 01 MAD CK 0003
In the Madras High Court

Ayilur Gramom Harihara Pattar's son Aghileswara Ayyar
Vs
Nochur Gramom Gopala Pattar's son Shamu Ayyar and Others

APPELLANT
RESPONDENT

Date of Decision : 10-01-1935

Acts Referred:

Citation : AIR 1935 Mad 411

Hon'ble Judges : Madhavan Nair, J

Bench : Division 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. 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.

2. 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 melcharath on 2nd

August 1897, which is expressly stated to have been for a period of 12 years : see Ex. 1. The original demisee took an assignment of this

melcharath 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 to "Sowjanya." 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 meleharath 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 sowjanyaam for renewal. It is not customary in the case of leases from year to year to, pay sowjanyaam for renewal. These two circumstances suggest that the original; of Ex. A must be held to have been a lease for 12 years.

3. Mr. Bamakrishna Ayyar strongly relied upon a case in Ganghadaran Pattar v. P.K. Manavikraman 1918 Mad 453. 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 Vernupattam lease. If the document in the present case cannot be distinguished having regard to its terms from Ex. B in Ganghadaran Pattar v. P.K. Manavikraman 1918 Mad 453, 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 on renewal after 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. P.K. Manavikraman 1918 Mad 453 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.

4. 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 kovilagom properties where renewal fees have been paid, even a veerumpattom 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. Bamakrishna 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.

5. 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 pattam 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 kovilagom 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.