

(1945) 09 MAD CK 0020
In the Madras High Court

Chakkiat Gopalan

APPELLANT

Vs

P.K. Sankaranarayana Iyer and Others

RESPONDENT

Date of Decision : 17-09-1945

Acts Referred:

Citation : AIR 1946 Mad 130 : (1945) 58 LW 628 : (1945) 2 MLJ 464

Hon'ble Judges : Somayya, J

Bench : Division Bench

Judgement

Somayya, J.—This second appeal raises an interesting question whether u/s 17, Clause (c), Malabar Tenancy Act, 14 [XIV] of 3930, which provides that where all the lands covered by a kanam are dry lands, the kanamdar is not entitled to a renewal, the question is to be determined on the state of the lands at the date of the application for renewal or at the date of the kanam. In this case the kanam in question was executed on 2nd December 1921. The jenmi filed Order Section No. 172 of 1940 for redemption of the kanam and for recovery of possession from the kanamdar. Thereupon the defendant kanamdar filed an application u/s 22, Malabar Tenancy Act, to compel the jenmi to execute a renewal of the kanam. u/s 22, Clause (1) a kanamdar is entitled to apply to the Court for the execution of a renewal deed and this notwithstanding any contract to the contrary whether made before or after the commencement of the Act We must now turn to Section 17 which enacts when the kanamdar is entitled to a renewal. Clause (a) of that section says:

A kanamdar shall on the expiry of the kanam under which he holds be entitled to claim and his immediate landlord shall be bound to grant a renewal, enuring for a period of twelve years, of the same on payment, as renewal fee....

Clause (c) says this:

Nothing in this section shall apply to a kanam:

(i) where the kanartham exceeds in south Malabar, sixty per cent, and in North Malabar, forty per cent., of the value of the jenmi's rights in the holding, or

(ii) where all the lands covered by the kananiare dry lands.

2. Two objections were put forward by the jenmi; first that the kanartham or the amount of the kanam exceeds 60 per cent, of the value of the jenmi's rights in the holding and secondly that all the lands covered by the kanam are dry lands. Both the lower Courts held against the kanamdar. No finding was given whether the kanartham or the amount secured by the kanam exceeded 60 per cent, of the value of the jenmi's rights in the holding.. Both the Courts held, however, that no portion of the lands was at the date of the suit cultivated with paddy and that therefore all the lands covered by the kanam are dry lands. The expression "dry land" is defined in Section 3, Clause (d) as meaning a land which is neither a "wet land" nor a "garden land." "Garden land" is defined in clause (g) as meaning any land used principally for growing fruit bearing trees. Clause (x) defines a wet land as meaning a land which is adapted for the cultivation of paddy. When the second appeal came on before me on a former occasion, it was urged that the expression "wet land" includes not merely lands on which paddy was being grown but also lands which are adapted for the cultivation of paddy. It was said that there was no finding by the lower Courts whether the land was adapted for cultivation of paddy. I called for findings on the two questions whether any portion of the lands demised under the kanam are wet lands and whether the kanartham exceeds 60 per cent, of the value of the jenmi's rights. The lower appellate Court has now returned findings. The findings are that the kanam amount does not exceed 60 per cent, of the value of the jenmi's rights in the holding and that all the lands are dry lands. The finding on the first question is one of fact and no reasons have been shown why I should not accept the finding.

3. Arguments centred on the second question, namely, whether the lands are dry lands within the meaning of Section 17, Clause (e)(ii). The kanam-deed under which the suit lands were demised is evidenced by Ex. p-1 which shows that at that time the lands were at least capable of paddy cultivation. The lands must, therefore, be taken to have been wet lands at the time of the kanam. The finding is that on the date of the suit and at the time of the application for renewal the lands are all dry lands. Mr. Kuttikrishna Menon the learned advocate for the appellant argues that the question is to be determined by the state of the lands at the date of the kanam and not at the time of the suit. Various considerations were put forward by the learned advocates in support of the respective contentions. Section 17 begins by saying that a kanamdar shall on the expiry of the kanam be entitled, to claim a renewal and Clause (c) says that nothing in the section shall apply to a kanam where all the lands covered by the kanam are dry lands. Reading the two together, it looks to me that the expression "where all the lands covered by the kanam are dry lands" refers to the point of time; when the kanamdar expresses his desire to get the renewal. Mr. Kuttikrishna Menon argues that if a jenmi or a landlord created a kanam of lands which were all dry at that time, he ought not to be prejudiced by anything done by the kanamdar after the date of the kanam and that if the other argument is accepted, a kanamdar can

easily defeat the right of the jenmi by converting a very small portion of the holding into wet lands. On the other side, it is said that conversion of dry land into wet is a normal feature in the west coast and that the argument of the appellant would result in preventing free conversion of dry lands into wet which it is said would be undertaken by a kanamdar only if he is assured of a fixity of tenure or a right of renewal. There may be much to be said for either view but the question ultimately depends upon the wording of the Act. Mr. Kuttikrishna Menon draws my attention to Section 17, Expln. II which says this:

For the purpose of Sub-section (c) the jenmi's rights in the holding shall be valued at twenty times the excess of the annual fair rent of the holding over the annual revenue payable thereon to Government-

(1) In the case of a kanam existing on the date of the commencement of this Act, on such date and

(2) in the case of a kanam created after the commencement of the Act, on the date of the kanam.

4. He, therefore, urges that for the purpose of determining the question under Clause (c)(i) whether the kanartham exceeds 60 per cent, in South Malabar and 40 per cent, in North Malabar, the relevant date is the commencement of the Act in cases of old kanams and the date of the kanam-deed in the cases of future kanams. If the language of the Legislature is clear, then other considerations do not arise. In Expln. II to Section 17, the Legislature expressly says that future kanams are governed by the state of things as they stand on the date of the creation of the kanams. Sections 33 and 34 provide that the amount payable by the tenant to purchase the landlord's right in the kudiyruppu is to be determined by the value on the date of the acceptance by the landlord of the tenant's offer.

5. There again the language is clear. Though the question is not quite free from difficulty, hold the expression where the land covered by the kanam are dry lands read with Section 17(a) that a "kanamdar shall on the expiry of the kanam under which he holds be entitled to claim a renewal" indicates that the relevant point of time is the time when the kanamdar claims the renewal and not the date of the original, kanam. The next point raised is whether all the lands included in the holding are in fact dry lands. The finding is that they are all dry lands and this finding is vehemently attacked, but I see no reason to differ from the finding of the lower Court on this point. First it was sought to be argued that the land was garden land. My attention was drawn to the evidence of the tenant examined as D.W. 1 that there are 500 coconut trees on the suit property but we have the report of the commissioner which shows that there are only very few trees. The commissioner says:

The suit properties, in respect of which renewal is sought, comprise four items, 2 3/4 acres in extent, situated in a crowded middle class residential quarter within the municipality (Calicut) between the 4th and 5th railway gates. There are 31

buildings in all in the properties. They are of all kinds and sizes and types ranging from small cadjan huts to commodious modern type bungalows, very close to one another, in fact some a few feet from one another. The major portion of the properties has been built upon and the few cocoanut and other trees occupy only a small portion, compared to the whole. All the buildings belong to the sub-tenants and almost all are occupied by the owners themselves. All the four items are mainly used for residence by the occupants and not for growing fruit bearing trees.

6. The italics are mine. As now held by this Court in *Kunhammad Koya v. Gopala Menon* AIR 30 1943 Mad. 181 a plot which is principally used as a residential house cannot by reason of the fact that there are a few cocoanut trees or other fruit bearing trees be said to be "land used principally for growing fruit bearing trees", which is the definition of a garden land. As 120 trees per acre is the maximum number of cocoanut trees planted in an acre even according to Mr. Kuttikrishna Menon, 830 will be the maximum that can be planted in 2 3/4 acres which is the extent of the whole land. If there are really 300 cocoanut trees as D.W. 1 deposes there would be no room for any buildings at all. The fact that there are 31 buildings some of which are modern type commodious bungalows shows that the defendant's evidence is obviously false. The commissioner's report shows that there are only a few trees. I, therefore, agree with the lower Court in its finding that the land is not a garden land. Then the next question is whether the whole or any part of the suit land is a wet land. The appellant attempted to-prove that a portion of the land was actually cultivated with paddy crops for Some years before the suit. But this evidence was not accepted by the lower Courts on the former occasion and the Subordinate Judge who has returned the finding has also rejected that evidence and that is a finding of fact which is binding upon the appellant.

7. The further point is that whether any of them is adapted for paddy cultivation. As pointed out by me in the order calling for findings, the definition of a wet land is "land which is adapted for the cultivation of paddy." I pointed out that though paddy may not be actually cultivated on the relevant date, if the land was adapted for the cultivation of paddy, the land would be a wet land as defined under the Act. The fight centred very seriously on this question whether any portion of the suit land was at the relevant date adapted for cultivation of paddy. The Subordinate Judge deals with this question in Paras. 6 to 13. As he points out there are four items included in the suit lands and all the four appear now as one block and are situated in a somewhat thickly populated area in Calicut Municipality. (After dealing with the findings of the Subordinate Judge on the four items his Lordship concluded:) The Subordinate Judge accepted the Commissioner's report and the other evidence and finds that the land ia not fit for paddy cultivation. The Subordinate Judge's finding on point 2 is expressed thus in para. 16:

On point 2 I find that the suit lands are all dry lands at present and that no

portion of the suit land is at present a wet land as defined in Section 3(x).

8. The proper standard of proof has been applied by the Subordinate Judge. The question is really one of fact and I see no reason to differ from the finding of the Subordinate Judge. It is unnecessary to go into the other questions. The result is, the appeal fails and it is dismissed with costs. No leave.