

(1918) 04 MAD CK 0034
In the Madras High Court

Eyunni Raghavacharyulu and Others

APPELLANT

Vs

Epuri Govindasari

RESPONDENT

Date of Decision : 18-04-1918

Acts Referred:

Citation : (1918) 35 MLJ 402

Judgement

1. The suit is by a few sharers of Samudayam or common lands for ejectment against the defendant who has obtained a lease of it from the other

share-holders. The lessee is himself a co-sharer and the kurnam of the village. The lease is a permanent one. The extent mentioned is 60 acres, but

it has been found by both the lower courts that it comprises nearly 240 acres. There is a clause in the lease to the effect that the property should be

regarded as comprising only 60 acres although the actual measurement may be more or less. The District Munsif held that the lease was not

binding and decreed joint possession to the plaintiffs with the defendant. On appeal the Subordinate Judge rightly held that the decree for joint

possession was wrong. His view was that, as the lease was given by a majority of the shareholders, it is binding on the plaintiffs.

2. The principal question argued in second appeal is whether a majority of co-sharers can validly grant a perpetual lease of common property. The

Courts below have found that it has not been proved that there is a custom authorising the majority to impose their will upon the minority. It is now

settled law that, unless for unavoidable necessity, a trustee cannot grant a permanent lease of trust property. See Palaniappa Chetty v. Sreemath

Devasikamani Pandara Sannadhi (1916) 83 M.L.J 1 : 40 Mad. 709. It has also been held that a karnavan of a Malabar tar wad cannot grant a

permanent lease except under exceptional circumstances. The same rule applies to the managers of Hindu families. At best the position of the majority in this case can only be regarded as that of managers of joint property for themselves and on behalf of others. Prima facie therefore, their action in granting a permanent lease is ultra vires. The learned Vakil for the respondent referred to the fact that the lands were waste and that it was a prudent act of management to grant a permanent lease. Under the Madras Estates Land Act, in exceptional circumstances the landlord for the time being is permitted to grant leases on favourable conditions. Even such a lease is not binding upon the successor. A fortiori a lease granted in perpetuity by a fraction of the share-holder should not be regarded as binding upon the dissenting minority. Mr. Govindaraghava Aiyar argued that, even if the lease is beyond the powers of the majority, the only remedy open to the plaintiffs is to sue for a partition of their shares. We are unable to agree, with this contention. *Watson and Company v. Ramchund Dutt* I.L.R. (1890) Cal. 10 was strongly relied on. In that case the propriety of the lease was not questioned. What the Judicial Committee decided was that it was not open to some of the shareholders to claim joint possession with the lessees who were let in by the other co-sharers. In *Lachmeswar Singh v. Manohar Hossain* I.L.R (1891) Cal.258 : L.R. 19 IndAp 48, is also to the same effect. In *Madan Mohun Shaha v. Rajab Ali* ILR (1900) C. 223 it was held that, a co-sharer being in possession, another co-sharer was not entitled to sue in ejectment against him. In *Dakhyayani Debi v. Mana Raut* (1913) 19 C.L.J. 113 : 19 C.W.N. 407 the courts implied an assent on the part of the dissentients from the fact of their not objecting to the lease for over ten years. These authorities do not hold that, where a lease is found to be invalid, the lessee should be maintained, in his possession leaving it to those objecting to his lease, to sue for partition as their only remedy. In the present case we are unable to agree with the learned vakil for the respondent that it was a prudent act of management to grant; a perpetual lease of such a large extent of property. We cannot help feeling that the kurnam, who must have known more or less the real extent of the property he had taken on lease, took undue advantage of the ignorance of the other co-sharers in obtaining a permanent lease and in getting the clause, we have referred to already, inserted in it.

3. In our opinion the proper decree to be passed is to declare that the lease is not binding on the plaintiffs and that they should be decreed possession for themselves and on behalf of the other co-sharers. We must therefore reverse the decrees of the courts below and grant a decree as above indicated. The plaintiffs are entitled to their costs against the defendant in this and in the lower appellate court. As they were content to have a decree for joint possession in the first court, we make no order as to costs in that court.