
(1924) 09 MAD CK 0069
In the Madras High Court

K. Chambu

APPELLANT

Vs

Pazani alias Chambu

RESPONDENT

Date of Decision : 30-09-1924

Acts Referred:

Citation : AIR 1925 Mad 740 : 90 Ind. Cas. 980 : (1925) 21 LW 78

Hon'ble Judges : Devadoss, J

Bench : Division Bench

Judgement

Devadoss, J.—This is a suit by a Melcharthdar. The Melcharthdar sues for the possession of property, in the hands of some members of the family, belonging to the tavazhi of the 4th defendant, who gave the Melcharth in plaintiff's favour. The District Munsif dismissed the suit, on the ground that the giving, of the Melcharth, in favour of the plaintiff, was not a bona fide mi and was not interest of the family. On appeal, the Subordinate Judge took the same view and held that the Karnavan maliciously granted the Melcharth, in order to prevent the defendants 2 and 3 from enjoying the property. The plaintiff has preferred this second Appeal.

2. It is urged by Mr. Narayanaswami Aiyar, on behalf of the appellant, that the karnavan has got the power to demise property on kanom and after the expiry of the kanom give Melcharth and that his powers are unlimited, as regards the granting of Melcharth, provided the term of the kanom has expired. In this case, the kanom demise was in 1895, in favour of the 1st defendant and the period of twelve years expired in 1907. The Melcharth was given in 1918. No doubt in ordinary cases, the karnavan of a tarwad or the karnavan of a tavazhi has got full power to demise lands, belonging to the tarwad or tavazhi on kanom and, after the expiry of the period of kanom, to give Melcharth. As observed by the learned Judges, in a case reported in Sankaranunni v. Appavu Pillai (1912) 12 M.L.T. 556 demising of lands on kanom is in the ordinary course of management by the karnavans of well-to-do families. In the case of families, which have very large landed properties, it is not possible for the family itself to cultivate all the

lands; one of the ways of enjoying the properties is by demising the lands on kanom and renewing the kanom from time to time. But the question is "where the landed property is small and the members of the family are prepared to cultivate it, is the demising of such property on kanom an act of management, which a prudent manager of a family would do." In this case, it appears from the evidence that the properties of the family are very limited. Ex. I is the arrangement, under which the properties of the family were divided between two tavazhis. The A Schedule properties were allotted to the family of defendants 2 to 4 and some other members. Now what the 2nd defendant did was to get a transfer of the kanom right of the 1st defendant and thereby she and her children maintained themselves out of the income of the property. She is only in the position of a kanomdar, inasmuch as she has purchased the right of the 1st defendant, in whose favour the kanom demise was made in 1895. The 4th defendant does not live with the members of the tavazhi but lives, as observed by the Subordinate Judge, at some distance from the place where defendants 2 and 3 are living; and he does not seem to take any interest in the management of the family. The question in such circumstances is whether, the giving of Melcharth in favour of the plaintiff is an act, which the Court should uphold, as being an act of a prudent manager or a karnavan. Both the Courts have come to the conclusion that the 4th defendant was not actuated by any good feeling towards defendants 2 and 3; and as the Subordinate Judge observes it is a malicious act, on his part, to have given the Melcharth, as it has deprived the second and third defendants of their means of subsistence. Mr. Narayanaswami Aiyar's argument is that the 4th defendant has only given a Melcharth and that it is open to defendants 2 and 3 to ask the 4th defendant for maintenance. This argument will be considered good, if it is shown that the 4th defendant is in possession of some property, out of the income of which, defendants 2 and 3 and the other members of the tavazhi could be maintained. From the evidence it is clear that he is not in possession of any property, from the income of which he could support the 2nd defendant and other members of the tavazhi. In such circumstances, is it proper for the karnavan to deprive the members of the family of the property from the income of which they were able to support themselves? The contention of Mr. Narayanaswami Aiyar is that if the Meloharth is held to be invalid, the 2nd defendant would become the perpetual kanomdar and the rights of the tavazhi might be endangered. I cannot see how this argument can have any weight, as a kanom is redeemable as soon as the period expires. In this case, the period of the kanom has already expired and it is open to the karnavan to redeem the kanom, at any time he likes. If he is not in a position to redeem the kanom, it is difficult to see how he could maintain these people, after depriving them of this property.

3. Various cases were relied upon, by Mr. Narayanaswami Aiyar, as supporting his contention. No doubt, in the case of any ordinary family, which has considerable properties, if the karnavan demises some property on kanom, his act cannot be questioned by the junior members of the family; but where the family property

consists of very few items, which items are actually in the possession of the members of the family and out of the income of which they are able to maintain themselves, it is not a prudent act, on the part of the karnavan, to dispossess them of the lands by giving the kanom to a stranger. In this case, there is the additional fact that under Ex. I, there was an arrangement by which the 2nd defendant's tavazhi was put in possession of the plaint and other properties and was asked to discharge the encumbrances on them. The 2nd defendant could not redeem the kanom, for the simple reason that the 4th defendant would not join in doing so. The 4th defendant could not possibly find the money for redeeming the kanom. The best thing to be done, in the circumstances, was to get a transfer of the right of the kanomdar and thereby get possession of the property.

4. If the 4th defendant was acting as karnavan and was maintaining the members of the family, one would naturally expect the documents of title, in respect of the plaint property, to be with him. Granting that he is the karnavan, there is no evidence that he was in a position to maintain the 2nd defendant and the other members of the tavazhi and that he gave the Melcharth in the ordinary course of management. When it is found that the 4th defendant was not living with the family, but was living away from the family and that he was not in possession of property, with which he could maintain the members of the family, it was not a prudent act, on his part, to deprive the members of the tavazhi of the possession of the property out of the income of which they were able to maintain themselves.

5. Another point was sought to be raised by Mr. Narayanaswami Aiyar that the plaintiff is a bona fide Melkanomdar and it is also urged by him that the onus is on defendants 2 and 3, to prove that he is not a bona fide Melkanomdar. This question was not specifically raised, in the lower Courts. Granting that he is entitled to raise this question, I think there are circumstances in the evidence to show that he is not a bona fide Melkanomdar. Ex. Brought to have put him on notice of the arrangement, under which this plaint property was allotted to the tavazhi. If he abstained from enquiry, he should be held to have knowledge of all the circumstances, under which this property came to be enjoyed by defendants 2 and 3. I do not think it is necessary to consider this question at any length, as it was not raised in the lower Courts and as the other side has not had an opportunity of meeting it.

6. In the result, the Second Appeal fails and is dismissed with costs.