

(1920) 09 MAD CK 0020
In the Madras High Court

Kaithal Kuttiyal

APPELLANT

Vs

Ummamma Amma and Others

RESPONDENT

Date of Decision : 28-09-1920

Acts Referred:

Citation : AIR 1921 Mad 80 : (1921) ILR (Mad) 509

Hon'ble Judges : Odgers, J;Abdur Rahim, J

Bench : Division Bench

Judgement

1. The main question in these appeals depends on the construction of Exhibit A, which is a lease or rather counterpart of a lease known in Malabar

as taraga, the purpose of which admittedly was to enable the tenant or the lessee to reclaim the demised land and make improvements thereon.

The words of this lease, which was granted by the stanomdar, are these:

I shall well improve this paramba and plant, etc.; when the improvements have survived the period of decay and the cocoanut trees begin to bear

their first fruits, I shall take a taraga after fixing the rent in accordance with the local custom on an inspection of the Kuzhikanoms.

2. The Subordinate Judge has held that this clause merely gives an option to the landlord to renew the lease if he so chooses.

3. The appellant, on the other hand, contends that is a binding covenant for renewal for another term of twelve years beginning from the expiry of

the term of twelve years granted, by Exhibit A dated 9th May 1902. These words are almost identical with the words in another taraga lease

granted to the tenant by the same stanomdar or his predecessor in title in an unreported case Udayavarama Elaya Raja v. Kannan Nambiar

Second Appeal No. 1423 of 1901 (unreported). There, Benson, J., who had much

experience of Malabar law, and Bhashyam Ayyangar, J., held that having regard to the well-known tenures and customs of Malabar, the intention of the parties in executing the deed was to agree that the tenant should hold the land for the usual term of twelve years at the rent fixed in the document and should plant up the land during that time in a husbandlike manner, that at the end of that term the rent should be enhanced with reference to the improved state of the land and according to the custom of the country in fixing the rent of such improved land, and that the tenant should pay that rent for a further term of twelve years from the expiry of the first term and execute a document binding himself to do so. They granted a decree to the effect that the tenant was entitled to renew the lease which should bear date the day of the decree and run for the unexpired portion of twelve years from the expiry of the former lease, but without a covenant for further renewal. Having heard Mr. Madhavan Nayar fully, for the respondent, we are inclined to hold that the words quoted above mean that the parties intended that if the tenant made any improvements and those improvements were effective, he would be entitled to a lease for another term of twelve years from the date of the expiry of the prior lease, and the rent was to be revised in view of any larger yield from the land that may accrue, and also having regard to the custom of the country, with respect to such a lease. We have been pressed, however, by Mr. Madhavan Nayar with the decision in *Gopalan Nair v. Kunhan Menon* (1907) I.L.R., 30 Mad., 300. But that was a case of a kanom which is not a lease pure and simple but partakes also of the nature of a mortgage, and further, the learned judges one of whom was Benson, J., proceeded upon the fact that the terms of the renewed lease were not set out in the document. Here, the rent although not fixed is capable of being ascertained with reference to the nature and value of the improvements and the local custom. We are, therefore, of opinion that the appellant is entitled to a renewal for a further term of twelve years.

4. It was then argued by Mr. Madhavan Nayar that the stanomdar who granted the prior lease, the counterpart of Exhibit A, had no power to bind his successor, that is to say, the lease would be operative only during his lifetime and that this stipulation for renewal does not bind the successor in office. He contended this as an absolute proposition of law, while the very

authorities to which he has referred us as set out in Moore's Malabar

Law show that the stanomdar is entitled to grant a lease for a term exceeding his own lifetime so as to make it binding on his successor, provided

the lease is such as is beneficial to the estate. At page 349, Moore in his Malabar Law cites a dictum of Mr. Holloway, who was at the time

Subordinate Judge of Calicut, to the effect that the proof that the alienation of stanom property is for some purposes tending to the conservation or

improvement of the property for those who are to succeed must be clear in order to make such alienation binding. At page 351, a passage from

the judgment of Innes and Muttuswami Ayyar, JJ., runs thus:

But "he" (stanomdar or rather stanom-holder) "is also manager of the family for the time being; if he grants a lease or makes an alienation to enure

beyond his lifetime which is for the benefit of the family, it will be upheld as, on the other hand, any such transaction, if prejudicial to the family, will

be set aside.

5. Similarly, at page 352, it is laid down in another judgment of this Court:

It is certainly open to a stani to make a lease of forest land for a term of years, and the mere fact that the alienation is intended to hold good after

his lifetime will not invalidate it.

6. Here, in the written statement, paragraph 5, in Original Suit No. 24 of 1915 (Original Suit No. 61 of 1915 in the Additional District Munsif's

Court), a plea was taken that the lease was binding only on the stanom-holder who granted it and not on the succeeding stanom-holders. There is

a general issue, No. 1, to this effect ""whether the provision in the marupat to grant a renewal is binding on the first defendant."" This issue cannot be

said to be very happily worded. But it is capable of meaning that if the lease was beneficial to the family it would be binding on the first defendant in

Original Suit No. 24 of 1915, who is the present stanom-holder. That question, however, has not been tried by either of the lower Courts and we

think it is necessary in the view we take of the lease, Exhibit A, that this issue should be tried before the two suits could be disposed of. If it be

found that the lease is binding on the present stanom-holder, having regard to the provisions of law already set out, then the appellant, plaintiff in

Suit No. 61 of 1915, will be entitled to a decree for specific performance in the terms mentioned above, that is, to a renewed lease for twelve

years dating from the expiry of the lease of May 1902 without any covenant for a further renewal. The rent will have to be ascertained in

accordance with the provisions of Exhibit A, If the plaintiff in Original Suit No. 61 of 1915 succeeds ultimately in obtaining a decree for specific

performance, the suit (Original Suit No. 16 of 1915) will have to be dismissed with costs, and his own Suit No. 61 of 1915 will be decreed in his

favour.

7. These Second Appeals therefore are allowed and the judgments of the lower Courts reversed and the suits remanded to the Court of first

instance for disposal in the light of the above observations. The appellant will have his costs from the respondent. Only one vakil's fee in both

cases.