
(1936) 10 MAD CK 0042
In the Madras High Court

Kannathazha Pakram and Others

APPELLANT

Vs

Manathil Eacharattil Krishnan Nair

RESPONDENT

Date of Decision : 23-10-1936

Acts Referred:

Citation : 169 Ind. Cas. 346

Hon'ble Judges : Burn, J

Bench : Single Bench

Judgement

Burn, J.—There is little that I can find to add to the judgment of the learned District Munsif and the judgment of the learned District Judge in this case. The points taken to behalf of the appellant, are the same as were taken by him in both the lower Courts.

2. The third point depends upon the definition of "Kanam" in Section 3 (L) of the Malabar Tenancy Act. In that definition it is stated that the 5th incident of the transfer described as kanam is the liability of the transferee to pay the renewal fee to the transferor if the transferee is permitted to enjoy the said property for a further period after the termination of the original period. In the present case the renewal fee calculated according to the provisions of the Act comes to less than nothing, and the contention is, therefore, that the transferee is not liable to pay any renewal fee at all and consequently there is no kanam. This is not a contention which I can accept. It would make the document a kanam at one time and no kanam at another time according to the varying prices of produce. It confuses the question of the liability of the transferee to pay the renewal fee with the question of the amount of the renewal fee which he is liable to pay. There is no doubt in this case about the liability to pay a renewal fee, the very argument advanced on behalf of the appellant can only be developed by assuming that the transferee is liable to pay a renewal fee and then proceeding to calculate the amount of it under the Act. I agree with the learned District Munsif and the learned District Judge that there is no substance in this contention.

3. The second point depends upon the fact that the kanam in this case expired

on July 13, 1905, and the kanamdar has been holding over ever since. The Act does not prescribe any period after the expiry of the kanam within which the landlord must sue for eviction. But it does provide that when a suit is filed for eviction on the ground that the period of the kanam has expired, the kanamdar shall be entitled to apply for execution of the renewal deed. I agree with the learned District Munsif and the learned District Judge that the kanamdar has not lost his privilege merely by reason of the fact that more than 12 years has expired since the period of the first kanam deed came to an end.

4. The first point that was taken has in my opinion even less substance. Section 22 provides that the kanam holder shall be entitled to apply to the Court in the form prescribed for the execution of a renewal deed. At the time this application was made no form was prescribed and the contention is that no application could therefore be made. This Contention is in my opinion quite untenable. It cannot have been the intention of the legislature to deprive the kanamdar of the right to make an application for renewal during the period-which must necessarily elapse after the passing of the Act and before prescribing the renewable.

5. For these reasons I agree with the learned District Munsif and the learned District Judge and dismiss this Second Appeal with costs.