

(1912) 07 MAD CK 0009
In the Madras High Court

Karyan Kandy Pattupurail Cheria Chirikandan and Others	APPELLANT
Vs	
Aylliath Kushitath Krishnan Nambiar and Others	RESPONDENT

Date of Decision : 19-07-1912

Acts Referred:

Citation : 16 Ind. Cas. 391

Hon'ble Judges : Sundara Aiyar, J;Sadasiva Aiyar, J

Bench : Division Bench

Judgement

1. The plaintiffs in this case sue to recover certain land held by defendants Nos. 1 and 2 with arrears of rent. They are the holders of a melcharth from the karnavan of a Mopillah tarwad governed by the Marumakatayam law. At the time of the melcharth, the land was in the possession of 1st and 2nd defendants on a lease for five years granted by the 3rd defendant under a power-of attorney from the karnavan,. Only three years of the lease had expired, but the karnavan, cancelling the power-of-attorney granted to the 3rd defendant, executed a melcharth in plaintiff's favour for a period of five years commencing after the expiration of the previous lease. Defendants Nos. 1 and 2 contended that they are now holding under a new lease granted by the 3rd defendant after he became the karnavan and that the melcharth in plaintiff's favour is invalid. The 3rd defendant supports their contention. The District Munsif held that the previous karnavan had no right to grant the melcharth; but, on appeal, the District Judge reversed the Munsif's decision and passed a decree in plaintiff's favour. The District Judge observes: ""To grant a melcharth is an ordinary incident of a kamavah's authority and quite within his powers."" He cites no authority in support of his position. It is the right and duty of the karnavm for the

time being to decide what arrangement should be made for the cultivation of the family lands and whether the lease in favour of any tenant should be renewed at the expiration of the period. Here, the kamavan, two years in advance of the expiration of the prior lease, executed a melcharth in plaintiff's favour. No justification has been pleaded for such an act. It is not alleged that there was any necessity for doing so, or that the tarwad derived any benefit from the transaction. It is impossible to countenance the proposition that the kamavan for the time being can tie down the discretion of those that are to succeed him in the management by granting leases of family lands when there is absolutely no reason for doing so, and the lands are being held by the tenants on leases which are still in force. We must, therefore, hold that the plaintiff's title under the melcharth is not binding on the tarwad. We reverse the decree of the District Judge and restore that of the District Munsif with costs both here and in the lower Appellate Court.