

(1923) 02 MAD CK 0011
In the Madras High Court

Kenath Puthen Veetil Koppassa Menon Kenath Achan Avergal	APPELLANT
Vs	
Karumathil Kalliani Amma and Others	RESPONDENT

Date of Decision : 28-02-1923

Acts Referred:

Citation : 75 Ind. Cas. 476 : (1923) 18 LW 203

Hon'ble Judges : Phillips, J;Devadoss, J

Bench : Division Bench

Judgement

Phillips, J.—The facts of this case are as follow: A previous karnavan of the plaintiff's tarwad granted a kanom of Rs. 12,000 and odd to

one Thappan Nair on the 11th of May 1896 and subsequently on the 30th of June 1902 executed a puramkanom deed for Rs. 1,350 under which

the original term of 12 years granted in 1896 was extended for another 12 years from 1908. Thappan Nair was, accordingly, entitled to hold the

property until 1920. Subsequently Thappan Nair transferred Rs. 6,000 of the kanom to defendants Nos. 1 to 3, the first defendant being the wife

of Raman Nair and the daughter of Thappan Nair. The remainder of the kanom passed to Raman Nair, the husband of the first defendant. In 1914

the 10th defendant, who had then become the karnavan, executed two demises one in favour of Raman Nair and one in favour of defendants Nos.

1 to 3. These demises renewed the existing tenure for a period of 12 years from their date, namely, until 1926. The plaintiff, the senior anandtavan

of the tarwad, has now brought suits to set aside these demised as not being binding on the tarwad. The case against Raman Nair has already been

disposed of and we are now only concerned with the demise in favour of defendants Nos. 1 to 3. In the lower Court the plaintiff's suit has been

dismissed and he appeals.

2. It has been consistently held in this Court that renewal of a kanom by a karnavan before the expiry of its period, when such renewal is to take

effect from the date of expiry, is not valid, unless it is shown to be for necessity, and it is the appellant's contention that the plaint demise, is, in

effect, a renewal of the puramkadam deed granted in 1914 for a period of six years from 1920, and that, therefore, unless the necessity for the

transaction is proved, it is not valid and binding on the tarwad. The case is not, however, quite so clear as that; for in all cases of renewal a fee is

payable by the tenant to the tarwad varying in amount according to circumstances. Ordinarily, therefore, the renewal fee is payable every 12 years

and in this case the tarwad would not have been entitled to a renewal fee until 1920, whereas a fee of Rs. 500 for this document was received by

the karnavan in 1914, although the prior demise, for which also a fee had been paid did not expire until 1920. The practical effect of the demise,

therefore, is that the tenant has a right to hold the property for an additional six years but has, in fact, paid a renewal fee for 12 years. The tarwad

loses the right to redeem for a period of six years but gains, what is, in effect, the renewal fee payable for six years.

3. The demise has been justified by the defendants on three grounds: (1) that it was executed for necessity; (2) that, as the puramkadam deed was

an invalid deed and it was a renewal before the date of the expiry of the kanom, the kanom was the only valid demise in existence in 1914, and (3)

that the demise was executed in settlement of a bona fide dispute between the parties. I do not think it necessary to discuss the first two grounds in

this judgment, for I am satisfied that on the third ground the defendant must succeed. Defendants Nos. 1 to 3 were holding the property under the

puramakdam demise of 1902, but the succeeding karnavan, the present 10th defendant, sent a notice in 1914 demanding surrender on the

payment of the kanom amount and value of improvements. A reply was sent by the first defendant's husband, a High Court Vakil of some

standing, to the effect that the konom of 1896 had been renewed by the puramkadam deed of 1902 and that the 10th defendant had no right to

evict until the expiry of the term under the litter. In the first place, it is contended for the appellant that there was no real dispute between the parties

and that, therefore, this demise cannot be treated as in the nature of a compromise and, consequently, that, if there was a dispute, the compromise not being entered into for the benefit of the tarziad is invalid. A large number of cases have been cited as to the circumstances in which a compromise entered into by disqualified owner should be recognised as binding on the estate, but most of these refer to the case of compromises entered into by widows. A karnavan's position is, however, somewhat higher than that of a Hindu widow and, in fact, a karnavan of a Malabar tarwad has, in some respects, greater powers than a manager of a joint Hindu family, as pointed out in Ponambilath Parapravan Kunhamod Hajee v. Ponambilath Parapravan Kutiat Hajee 3 M. 1692 : Ind. Dec. (N.S.) 675. He has full powers of management of the family property and is even allowed to give kanoms of the tarwad property without necessity, although a kanom amounts to an alienation of Immovable property. This power is, therefore, one which is not possessed either by a widow or by a manager of a Hindu family except in cases of necessity. The chief reason for holding that necessity must be proved in order to validate a renewal executed before the expiry of the subsisting kanom is, that it is impossible to predicate some years in advance what the state of affairs will be when the original kanom expires, and what incidents should be imposed in order to make the demise beneficial. In this case, however, the plaintiff demise is to take effect at once and, therefore, the above consideration does not come into play. If, therefore, a karnavan can obtain the consent of a karnomdar to a premature renewal to take effect from that date, in my opinion, it does not necessarily follow that it is an act of bad management even if necessity be not proved, for the karnavan has full powers of management and is in a position to decide whether the transaction is a prudent one or not. A somewhat different view has been taken in Vataavatta Raman Nair v. Kenath Puthen Vittal Kuppasnan Menon 51 Ind. Cas. 740 : 36 M.L.J. 630 but in the present case I think the validity of the demise can be supported on other grounds, without deciding this question here. I think that, even if we take it that the karnavan's powers in this instance are not higher than those of a Hindu widow the transaction can be justified on the ground that it was entered into bona fide for the benefit of the tarwad (vide Ramsumran Prasad v. Shyam Kumari 69 Ind. Cas. 1 : 49 I.A. 344 : 31 M.L.T. 200 : 3 P.L.T. 749 : AIR (1922) (P.C.) 356 : 1 Pat.

741 : 16 L.W. 956 : 21 A.L.J. 18 : 9 O. & A.L.R.175 : 27 C.W.N. 269 : 37 Cri.L.J. 356 : 44 M. L.J. 751 : 35 Bom. L.R. 634. The

puramkadam demise of 1902 was outstanding and, as it had been granted before the expiry of the prior demise, it would be invalid unless it were granted for necessity.

4. It was, of course, alleged that it was granted for necessity, but that was a fact which the defendants would have to prove. On the other hand, if

they did prove it, the defendants would be entitled to hold without payment of any further renewal fee till 1920. By compromising the claim,

therefore, the 10th defendant, allowed the defendants to remain in possession for a further period of 12 years on payment of a renewal fee which

would not become due until six years later. There is evidence that there were other disputes also. The first defendant's husband who, as I said

before, is a High Court Vakil of some standing, says, ""The 2nd defendant repudiated the demise under Exhibit XXI and threatened to recover the

property on the strength of Exhibit XX. Therefore, I consented to give up the unexpired period secured by Exhibit XXI and to accept a fresh

demise from him."" ""I was induced by my friends Mr. P. Kannan Nair and Mr. M. Narayana Menon to give up my term and take a renewal."" These

two friends are a High Court Vakil and a First Grade Pleader respectively, the former being the Vakil for Raman Nair, the first defendant's

husband, and the latter the 10th defendant's Vakil. They were both examined and they both said that there was a dispute about this demise and

also disputes with regard to their property and that, in settlement of these disputes, the plaintiff demise as well as the demise in favour of Raman Nair,

was executed.

5. The next question is, whether that compromise was entered into for the benefit of the estate, the allegation being that the karnavan entered into

the compromise in order to secure the renewal fee for his own purposes, and that, as there was no present necessity for the money, it was an

improvident action, that it alienated the property for an additional six years. No doubt, it is technically an alienation, but, if the circumstances of the

case are thoroughly examined, it is only an alienation in the technical sense. The property was outstanding on mortgage for nearly Rs. 14,000,

which apparently the karnavan was not in a position to pay, and the only effect

of the renewal was to put it out of the power of the tarwad to redeem the property for a further period of six years and it was very unlikely that they would be in a position to redeem at an earlier date, nor is it apparent that an earlier redemption would be beneficial to the tarwad. No additional money was borrowed and, consequently, no fresh burden imposed on the tarwad, but, on the contrary, a sum of money was received for the benefit of the tarwad. Taking this circumstance into consideration and the fact that litigation was avoided by the compromise, it appears to me that the transaction was certainly entered into bona fide and for the benefit of the estate. I am not prepared to accept the contention that it is necessary for a contracting party to prove that the estate did, in fact, actually benefit and, therefore, the suggestion that the money paid to the karnavan was appropriated by him for his own purposes and that the estate did not benefit at all need not be taken into consideration. If the contracting party is satisfied that the compromise is a bona fide one and that, in the ordinary-course, a benefit will accrue to the estate, it is not necessary for him to prove that it actually did so as against the allegation that the benefit which should have accrued was fraudulently misappropriated by the karnavan. A contracting party cannot presume that there will be a fraudulent misappropriation and, unless he is a party to that fraud and acts in collusion with the karnavan, he is entitled to protection. Whether, therefore, the 10th defendant did or did not spend the money received by him for the benefit of his tarwad is in this case immaterial, as it is not alleged that there was any collusion between defendants Nos. 1 to 3, and the 10th defendant in this respect. The money was paid to the karnavan for the benefit of the tarwad, and, consequently, the transaction was one beneficial to the tarwad, although, subsequently, that benefit was misappropriated by the karnavan.

6. On these grounds I think that the Subordinate Judge's decision is correct and dismiss this appeal with costs.

Devadoss, J.

7. I agree.

8. As regards the memorandum of objections we do not think that a successful party should be made to bear the loser's costs, save in exceptional cases, such as when his false contentions have been the cause of unduly swelling

his opponent's costs. That is not the case here. We accordingly direct, in modification of the Subordinate Judge's order, that each party do bear his own costs in the lower Court and also of the memorandum of objections.